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

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

12 Plaintiffs,

13 v.

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

Defendants,

and

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

CASE NO. 09-CV-2292 VRW

**BRIEF OF AMICUS CURIAE OF
NATIONAL LEGAL FOUNDATION
IN SUPPORT OF DEFENDANT-
INTERVENORS**

1 Defendant-Intervenors.
2

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5 *The 2000 National Elections Study and Gay and Lesbian Rights: Support for*
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INTEREST OF *AMICUS CURIAE*

Amicus is a public interest law firm, litigating issues related to citizens’ constitutional rights—including the marriage issue before this Court. Its constituents, which include many California citizens, have a great interest in the outcome of this Court’s decision. They seek to provide information to this Court bearing on its decision of whether to endorse a legal declaration that the Lesbian, Gay, Bisexual, and Transgendered (LGBT) community lacks political power.

INTRODUCTION

Plaintiffs assert that they, and all members of a larger class of homosexuals and lesbians, should be characterized as a “suspect class” meriting heightened scrutiny and protection under the Equal Protection Clause of the Fourteenth Amendment. To date, only race, alienage, national origin, and gender have merited the level of heightened scrutiny that the plaintiffs request. In the past, that status has been granted, in part, on a finding that these groups “have historically been ‘relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process.’” *Plyer v. Doe*, 457 U.S. 202, 216 n.14 (1982) (citation omitted).

As an expert in equal protection law, *Amicus* offers information that is directly relevant to this court in assessing whether homosexuals and lesbians suffer from an inability, or even a lesser ability, to assert political power. We provide information demonstrating the broad and powerful array of political allies serving the homosexual and lesbian community. In addition, data indicates that the political interests of the homosexual and lesbian community enjoy substantial financial support and access to the influential platforms of prominent union and corporate supporters.

Political power extends beyond the influence of those in office today. Tomorrow’s political decisions are guided today by the media and, some might say, religious organizations. The homosexual and lesbian community benefits from overwhelming support from American media outlets. And while religious support may not be overwhelming, it is split, with many religious organizations strongly supporting the interests of homosexuals and lesbians. Positive changes in public opinion favoring homosexuality over the past decade reflect the comprehensive political power of the homosexual and lesbian community. As a result, the plaintiffs do not require extraordinary protection from the majoritarian political process that resulted in the passage of Proposition 8.

1 **I. HOMOSEXUALS AND LESBIANS HAVE POWERFUL POLITICAL ALLIES, BOTH**
 2 **LOCALLY AND NATIONALLY.**

3 “In California, supporting LGBT [Lesbian, Gay, Bisexual & Transgender] rights is a
 4 winning formula, as candidates who oppose equality are continually rejected by voters.” Press
 5 Release, Equality California, Pro-Equality Candidates Sweep Seats in the Legislature, Gain
 6 Ground in State (Nov. 8, 2006), *available at* <http://www.eqca.org/site/apps/nlnet/content2.aspx?c=kuLRJ9MRKrH&b=4025925&ct=5196849>. From city councils, mayors,¹ and state legislators²
 7 to members of U.S. Congress,³ California voters elect candidates who support LGBT rights.

8 In recent years, the many pro-LGBT candidates elected by California’s voters have
 9 contributed significantly to the advancement of the LGBT political agenda. Equality California,
 10 a homosexual rights organization, assessed the 2009 California Legislative session as “one of
 11 Equality California’s best yet in Sacramento. We passed a record 11 pieces of Equality
 12 California-sponsored legislation that will improve the lives of LGBT Californians.” Equality
 13 California, *2009 Legislative Scorecard*, 2, *available at* http://www.eqca.org/atf/cf/%7B34f258b3-8482-4943-91cb-08c4b0246a88%7D/EQCA_LEG_SCORECARD_2009.PDF. On the national
 14 front, Joe Solmonese, President of the Human Rights Campaign, an LGBT rights organization,
 15 described the actions of our most recent Congress in the following way:

16 The lesbian, gay, bisexual and transgender community has made unprecedented
 17 progress in Congress over this two-year session. For the first time, the U.S.
 18 Senate and U.S. House of Representatives have both passed hate crimes
 19 legislation that provides protection on the basis of sexual orientation and
 20 gender identity (the Matthew Shepard Act). The first-ever House vote on the

21 ¹ On December 1, 2009, the city council of Campbell, California elected one of its current
 22 members, Evan Low, to serve as mayor. Mayor Low is 26, Asian-American, and openly
 23 homosexual. A news article about Mayor Low’s election observed that “far more people in
 24 town mention his youth than his sexuality or ethnicity.” Ken McLaughlin, *Campbell Picks*
 25 *Young, Gay Mayor*, SAN JOSE MERCURY NEWS, Dec. 6, 2009, *available at* http://www.mercurynews.com/top-stories/ci_13941127?ncllick_check=1.

26 ² California was the first state to create an officially-recognized caucus of openly-
 27 homosexual state legislators. California’s LGBT Caucus has had as many as eight members.
 28 Today’s membership includes the current and very influential chair of the Assembly
 Democratic Caucus, John A. Perez, as well as Senators Mark Leno and Christine Kehoe and
 Assemblymember Tom Ammiano. *See* The California Legislative Lesbian, Gay, Bisexual &
 Transgender (LGBT) Caucus, http://www.assembly.ca.gov/LGBT_caucus/.

³ Senator Barbara Boxer, House Speaker Nancy Pelosi, and twenty-four other California
 Congressional members received top scores from the Human Rights Campaign. Human
 Rights Campaign, *Congressional Scorecard: Measuring Support for Equality in the 110th*
Congress, 6, 15-16, *available at* http://www.hrc.org/documents/Congress_Scorecard-110th.pdf. Senator Feinstein, who scored 75 out of 100, appeared in television ads for the
 “No on 8” campaign.

1 Employment Non-Discrimination Act (ENDA) was held. Since the “Don’t
2 Ask, Don’t Tell” law (DADT) was passed in 1993, no hearings examining the
3 negative impact of that policy had been held until this year. And the
4 discriminatory Federal Marriage Amendment was dead on arrival. . . . [T]hese
accomplishments would not have been possible without the support of
congressional leadership and allies in both the House and Senate.

5 *Congressional Scorecard: Measuring Support for Equality in the 110th Congress, 2,*
6 http://www.hrc.org/documents/Congress_Scorecard-110th.pdf.

7 California’s LGBT population can expect to continue to enjoy the support of their
8 powerful political allies. California is predominately a Democratic state, with a
9 consistent Democratic majority in the state Legislature and among the ranks of its U.S.
10 Congressional representatives and Senators. The 2008 California Democratic Party
11 Platform includes a pledge that California Democrats will fight for “[s]upport [for]
12 nondiscrimination and equality for Lesbian, Gay, Bisexual, and Transgender people in all
13 aspects of their lives. We support the LGBT Community in its quest for the right to legal
14 marriage.” The California Democratic Party, *2008 State Platform, Equality of*
15 *Opportunity*, available at [http://www.cadem.org/site/c.jrLZK2PyHmF/b.1193709/](http://www.cadem.org/site/c.jrLZK2PyHmF/b.1193709/k.7470/Equality_of_Opportunity.htm)
16 [k.7470/Equality_of_Opportunity.htm](http://www.cadem.org/site/c.jrLZK2PyHmF/b.1193709/k.7470/Equality_of_Opportunity.htm). This commitment by California’s most influential
17 political party to fight for LGBT issues, together with historic popular political support
18 for LGBT candidates and causes in California reflects the political power, rather than
19 powerlessness, of the homosexual and lesbian community.

20 **II. THE LGBT COMMUNITY IS WELL-FINANCED BY A BROAD RANGE OF** 21 **CONTRIBUTORS AND RESOURCES.**

22 ***A. Homosexual and lesbian political interests have demonstrated deep pockets.***

23 “Few questions are as important to an understanding of American democracy as the
24 relationship between economic power and political influence.” Lester M. Salamon & John J.
25 Siegfried, *Economic Power and Political Influence: The Impact of Industry Structure on Public*
26 *Policy*, 71 AM. POL. SCI. REV. 1026 (1977). In reality, money is the lifeblood of modern-day
27 politics. That lifeblood is flowing strongly for the homosexual and lesbian community, which
28 has access to tremendous financial support from many sources. In 2007, National Public Radio
(NPR) reported that “[a] new force is emerging in American politics: wealthy, gay political
donors who target state-level races.” Austin Jenkins, *Wealthy Gay Donors a New Force in*
Politics, NPR (June 26, 2007), available at <http://www.npr.org/templates/story/story.php?>

1 storyId=11433268. In that report, NPR described an organized effort to finance candidates who
2 support homosexual and lesbian causes.⁴ *Id.*

3 But the story does not end there. Inspired by Jon Stryker, who was number 578 on
4 Forbes' 2008 list of the world's richest people and founder of the multi-million dollar
5 homosexual rights Arcus Foundation,⁵ wealthy homosexual men across America have organized
6 and vowed to contribute millions more to future campaigns. John Wildermuth, *Wealthy Gay*
7 *Men Backed Anti-Prop. 8 Effort*, S.F. CHRON., Nov. 16, 2008, at B1, available at <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2008/11/16/BAJG144PTB.DTL>. The San Francisco
8 Chronicle reported "a handful of the nation's wealthiest gay men pumped more than \$4.5 million
9 into the campaign against Prop. 8, part of a flood of lesbian, gay, bisexual and transgender
10 money that accounted for more than half of the \$38 million raised." *Id.* Final data reported to
11 the California Secretary of State shows that the total amount raised by the "No on 8" campaign
12 was actually higher—\$43,291,424. Campaign Finance: No on 8, Equality for All, [http://cal-access.sos.ca.gov/Campaign/Committees/Detail.aspx?id=1259396&session=2007&view=genera](http://cal-access.sos.ca.gov/Campaign/Committees/Detail.aspx?id=1259396&session=2007&view=general)
13 [l](http://cal-access.sos.ca.gov/Campaign/Committees/Detail.aspx?id=1259396&session=2007&view=general). In contrast, the Proposition 8 campaign raised \$3 million less—\$40,042,108. Campaign
14 Finance: Protectmarriage.com -Yes on 8, A Project of California Renewal, <http://cal-access.sos.ca.gov/Campaign/Committees/Detail.aspx?id=1302592&session=2007>.

15 Although the No on 8 campaign's excess spending was not rewarded with sufficient
16 votes to prevail, the concerted effort by wealthy homosexuals to finance campaigns has
17 succeeded elsewhere. Across America in the 2008 election, there was "an intriguing
18 development: anti-gay conservatives had suffered considerably. . . ." John Cloud, *The Gay*
19 *Mafia That's Redefining Liberal Politics*, TIME, Oct. 31, 2008, available at <http://www.time.com/time/politics/article/0,8599,1854884-1,00.html>. A 2008 Time Magazine article revealed the
20 scope and organization of the homosexual political movement, describing "the Cabinet" of
21 wealthy homosexual men. "Among gay activists, the Cabinet is revered as a kind of secret gay
22 Super Friends, a homosexual justice league that can quietly swoop in wherever anti-gay
23 candidates are threatening and finance victories for the good guys." *Id.* Even without an
24

25 ⁴ The story focuses on Tim Gill, who reportedly contributed \$720,000 to the No on 8
26 campaign in a combination of direct contributions and funding from his various
27 organizations. Proposition 8 Contributions, <http://www.sfgate.com/webdb/prop8/> (enter
28 "contributor name").

⁵ Mr. Stryker reputedly contributed more than \$1 million to the No on 8 campaign.
Proposition 8 Contributions, <http://www.sfgate.com/webdb/prop8/> (enter "contributor
name").

1 official-sounding moniker like “the Cabinet,” the LGBT political machine is a legitimate
2 financial powerhouse.

3 ***B. Enormously influential labor unions support homosexual and lesbian causes.***

4 “Perhaps the worst kept secret in . . . Washington . . . is the extent to which unions are
5 active in political campaigns.” Robert P. Hunter, Paul Kersey, and Shawn Miller, *Union*
6 *Political Involvement*, Mackinac Center for Public Policy (Dec. 15, 2001), available at
7 <http://www.mackinac.org/3979>. “Political action committee (PAC) contributions are a small part
8 of the union political effort, but even in that one area unions have a huge impact, with six of the
9 top twelve PACs nationwide being run by various labor unions.” *Id.* Many of the most
10 influential unions actively support the homosexual and lesbian community, which exponentially
11 furthers their political influence.

12 For example, the National Education Association (NEA) has consistently ranked in the
13 top fifteen of the *Fortune* Washington Power 25 list. The NEA flexes its political power not just
14 in Washington, but also among its 3.2 million members, to whom it regularly advocates for
15 LGBT rights, including marriage recognition. National Education Association, *Focus on*
16 *Tomorrow: What Matters Most in 2008 and Beyond, Voters and the Issues* 2, 9-10 (2008),
17 available at <http://www.nea.org/assets/docs/votingfocus08.pdf>. The California Teachers
18 Association, which recommended a “No” vote on Proposition 8, is also no stranger to politics.
19 California Teachers Association, *Campaign 2008 – Recap*, available at [http://www.cta.org/](http://www.cta.org/issues/current/campaign/)
20 [issues/current/campaign/](http://www.cta.org/issues/current/campaign/). In some recent elections, the California Teachers Association outspent
21 oil companies by millions of dollars, earning a spot as the largest statewide lobby. Kathy
22 Robertson, *Union Spending Boosts Lobbying Total for 2004-2005*, SACRAMENTO BUS. J., Mar.
23 31, 2006, available at [http://sacramento.bizjournals.com/sacramento/stories/2006/04/03/](http://sacramento.bizjournals.com/sacramento/stories/2006/04/03/focus2.html)
24 [focus2.html](http://sacramento.bizjournals.com/sacramento/stories/2006/04/03/focus2.html). The California Teachers Association contributed \$1,312,998 to oppose Proposition
25 8. Proposition 8 Contributions, <http://www.sfgate.com/webdb/prop8/> (enter “contributor
26 name”).

27 With more than twice as many members as the California Teachers Association, the
28 700,000 member California State Council of the Service Employees International Union (SEIU)
is yet another solid ally of the homosexual and lesbian community. SEIU contributed more than
\$500,000 to the “No on 8” campaign and has very publicly expressed its support for LGBT
rights. In fact, SEIU was credited for its “strong leadership” in assembling a coalition of more
than fifty California labor groups who joined in an amicus brief filed with the California

1 Supreme Court opposing Proposition 8. Pride at Work, *California Labor Comes Together to*
2 *Oppose Prop. 8*, available at <http://www.prideatwork.org/page.php?id=617>; Brief for California
3 Federation of Labor, AFL-CIO, *et al.* as *Amici Curiae* Supporting Petitioners, *Strauss v. Horton*,
4 207 P.3d 48 (Cal. 2009) (Nos. S168047, S168066, S168078) (listing labor groups expressing
5 opposition to Proposition 8).

6 Union support for homosexual and lesbian rights will continue. Many unions have
7 adopted positions similar to that of the 1.6 million member American Federation of State,
8 County and Municipal Employees (AFSCME). AFSCME has resolved to “continue to support
9 the adoption of federal, state, and local civil rights laws that prohibit discrimination based on
10 sexual orientation in employment and other areas[;] . . . encourage negotiation of anti-
11 discrimination, pay equity and domestic partner benefits provisions in all contracts; and . . . [to]
12 strongly oppose any law or constitutional amendment that will abridge the rights of gays and
13 lesbians including ones that perpetuate unequal marriage treatment.” *Equal Rights for Gay and*
14 *Lesbian Citizens*, AFSCME Res. 49, 36th Int’l Convention (2004), available at [http://www.](http://www.afscme.org/resolutions/2004/r36-049.htm)
15 [afscme.org/resolutions/2004/r36-049.htm](http://www.afscme.org/resolutions/2004/r36-049.htm). The past political and financial support from these
16 powerful labor organizations and their pledge to offer future support demonstrates an additional
17 dimension of LGBT political power.

18 **C. Corporate America also supports LGBT interests.**

19 Political scholars often credit labor unions for providing a balance to the political power
20 wielded by Corporate America. Regardless of whether that is true, nearly all scholars accept that
21 “[t]he business community . . . is one of the most important sources of interest group activity.”
22 Wendy L. Hansen and Neil J. Mitchell, *Disaggregating and Explaining Corporate Political*
23 *Activity: Domestic and Foreign Corporations in National Politics*, 94 AM. POL. SCI. REV. 891
24 (2000). The homosexual and lesbian community also enjoys broad support from this important
25 source of interest group activity—Corporate America.

26 “No on 8” campaign contributors included many Fortune 500 corporations and their
27 founders: PG&E (\$250,000), Apple (\$100,000), Lucas Films (\$50,000, plus another \$50,000
28 from George Lucas), Levi Strauss (\$25,000), Williamson Capital (\$570,000), Google founders
Sergey Brin and Larry Page (\$140,000), David Geffen and Jeffrey Katzenberg of Dreamworks
Studios (\$125,000), and Bruce Bastian, founder of WordPerfect software (\$1,000,000).

Proposition 8 Contributions, <http://www.sfgate.com/webdb/prop8/> (enter “contributor name”).

Corporate America also provides continuing funding for broader homosexual and lesbian

1 causes. The Human Rights Campaign (HRC), a 750,000 member “civil rights organization
2 working to achieve equality for lesbian, gay, bisexual and transgender Americans” lists
3 numerous corporate sponsors: American Airlines, Bank of America, Citibank, Deloitte LLP,
4 Ernst & Young LLP, Mitchell Gold & Bob Williams, Prudential, Beaulieu Vineyard, British
5 Petroleum, Chevron, Harrah’s, Lexus, MGM Mirage, Nike, Shell, Chase, Cox Enterprises, Dell,
6 Google, IBM, KPMG, Orbitz, Paul Hastings, PricewaterhouseCoopers, Replacements, Ltd.,
7 Showtime, Starwood Hotels & Resorts, Sweet, and Tylenol PM. Human Rights Campaign,
8 National Corporate Sponsors, http://www.hrc.org/about_us/partners.asp. These corporations
9 provide a significant amount of HRC’s more than thirty million dollar annual budget. The Gay
10 Men’s Health Clinic (GMHC), an organization dedicated to fighting AIDS, has a similar list of
11 corporate sponsors that contribute a large portion of GMHC’s thirty million dollar annual
12 budget: Altria, Bristol-Meyers Squibb, Delta, Ford Foundation, Jeffrey Fashion Cares, MAC
13 AIDS Fund, Duane Read, Empire Blue Cross Blue Shield, Gap, Inc., Merck, NBC4/
14 Telemundo47, Wachovia, CBS, GlaxoSmithKline, IBM, JPMorgan Chase & Co., Macys,
15 Newman’s Own, Pfizer, PricewaterhouseCoopers, Target, Viacom, Abbott Laboratories,
16 American Express, Anheuser-Busch Companies, Inc, Barclays, Bloomberg, Davis Polk &
17 Wardwell, Deutsche Bank, Herrick, Feinstein LLP, Kenneth Cole Productions, Polo Ralph
18 Lauren, Prudential Financial, Roche, and Washington Mutual, among others. Gay Men’s Health
19 Crisis, 2008 Annual Report 17-18 (2009). The Gay, Lesbian, and Straight Education Network
20 (GLSEN) lists Cisco Systems, IBM, Morgan Stanley, Time-Warner, Disney-ABC Television,
21 Goldman, Sachs & Co., Merck & Co, UBS, Wachovia, Citigroup Global Markets, Credit Suisse
22 First Boston, Deutsche Bank, Dow Jones & Co., Eastman/Kodak Co., Holland & Knight LLP,
23 MTV Networks, Nixon Peabody LLP, PricewaterhouseCoopers, Weil, Gotshal & Manges LLP,
24 Wells Fargo, and many others. Gay, Lesbian, and Straight Education Network, 2008 Annual
25 Report 11 (2008). Lambda Legal, “the oldest national organization pursuing high-impact
26 litigation, public education and advocacy on behalf of equality and civil rights for lesbians, gay
27 men, bisexuals, transgender people and people with HIV,” includes a list of America’s premiere
28 law firms and corporations: Jeffrey Fashion Cares 2009, American Airlines, Merrill Lynch, Levi
Strauss, Deloitte, Baker & McKenzie, Bingham McCutcheon, Cadwalader, Covington & Burling
LLP, Cravath, Swaine & Moore LLP, Credit Suisse, Davis Polk & Wardwell, Hogan & Hartson,
Jenner & Block, Jones Day, Kirkland & Ellis LLP, Kramer Levin, Lathan & Watkins,
LexisNexis, Mayer Brown & Platt, McDermott Will & Emery, McGuireWoods, Mercedes-Benz,

1 Microsoft, Morrison Foerster, Navigant Consulting, O’Melveny & Myers LLP, PaulHastings,
 2 Perkins Cole, Pillsbury, Sheppard Mullin, Sidley Austin, Sonnenschein, Wachtell, Lipton, Rosen
 3 & Katz, and Wells Fargo. Lambda Legal, *Sponsors*, [http://www.lambdalegal.org/about-](http://www.lambdalegal.org/about-us/sponsors/)
 4 [us/sponsors/](http://www.lambdalegal.org/about-us/sponsors/).

5 But while corporate funding for LGBT causes is generous, it is not the full extent of
 6 corporate support. “There are various dimensions to corporate political activity . . . [although]
 7 ‘corporate PAC donations are important in themselves, [] they also should be understood as
 8 [just] one quantitative indicator of a range of other corporate political activity.’” Wendy L.
 9 Hansen and Neil J. Mitchell, *Disaggregating and Explaining Corporate Political Activity:*
 10 *Domestic and Foreign Corporations in National Politics*, 94 AM. POL. SCI. REV. at 891 (citation
 11 omitted). Prominent corporations have actively supported LGBT non-discrimination legislation.
 12 Corporations also influence public policy by implementing their own internal nondiscrimination
 13 policies⁶ and providing health benefits to same-sex couples.⁷ And corporate leaders have a
 14 uniquely powerful platform when they express their support for LGBT rights, which they often
 15 do. See Value All Families Coalition, *Business Support for LGBT Non-Discrimination*
 16 *Legislation House Bill 300, 2*, available at [http://www.aclupa.org/downloads/](http://www.aclupa.org/downloads/TPsBusinessHB300.pdf)
 17 [TPsBusinessHB300.pdf](http://www.aclupa.org/downloads/TPsBusinessHB300.pdf) (quoting numerous corporate leaders).

18 The multi-faceted success of the homosexual and lesbian community in raising campaign
 19 funds and obtaining financial and other intangible support from both sides of the political
 20 balance—unions and corporate—is a tribute to their political power.

21 **III. OVERWHELMING MEDIA SUPPORT FOR HOMOSEXUALS AND LESBIANS IS**
 22 **LIKELY TO ENHANCE FUTURE POLITICAL POWER FOR THE LGBT**
 23 **COMMUNITY.**

24 Contributors to the “No on 8” campaign include a virtual Who’s Who of the Hollywood
 25 elite. Although Hollywood influences America’s thinking and actively supports homosexuals
 26 and lesbians with numerous positive portrayals of LGBT characters,⁸ America’s news media

27 ⁶ According to the Human Rights Campaign: Corporate Equality Index 2008, ninety-eight
 28 percent of America’s top grossing companies (including companies in the Fortune 1000,
 Forbes 200 top private firms, and/or American Lawyer’s top 200 law firms) have policies
 prohibiting discrimination on the basis of sexual orientation.

⁷ The HRC 2008 Corporate Equality Index indicated that sixty-six percent of all firms
 offering health benefits to employees’ spouses offered identical benefits to same-sex couples.

⁸ Numerous people have speculated that it was no coincidence that the Academy Award-
 winning film “Milk” was released in the critical week before the November 2008 election,
 providing invaluable publicity for the homosexual and lesbian community that could not be
 (Continued)

renders even more direct and concrete support for the homosexual and lesbian community. In the November 2008 election, every major newspaper in California, along with the influential New York Times, expressed a “vote No on 8” editorial opinion. Editorial, *Californians Should Reject Proposition 8*, S.F. CHRON., Oct. 1, 2008, at B8; Editorial, *Endorsements '08: Say “No” to All Propositions Except 11*, SACRAMENTO BEE, Oct. 9, 2008; Editorial, *Initiative Against Gay Marriage Must Be Defeated*, S.J. MERCURY NEWS, Aug., 17, 2008; Editorial, *Intrusion Into Marriage Should Be Even-Handed*, THE ORANGE COUNTY REGISTER, Oct. 1, 2008; Editorial, *No on 8*, RIVERSIDE PRESS-ENTERPRISE, Sept. 27, 2008; Editorial, *No on Prop. 8*, THE FRESNO BEE, Oct. 21, 2008; Editorial, *No on Prop. 8*, LOS ANGELES DAILY NEWS, Oct. 20, 2008; Editorial, *No on Prop. 8*, S.D. UNION-TRIBUNE, Sept. 18, 2008; Editorial, *Preserving California’s Constitution*, N.Y. TIMES, Sept. 29, 2008, at A20; Editorial, *Reject the Rejection of Same-Sex Marriage*, THE PALM SPRINGS DESERT SUN, Sept. 7, 2008, at B6; Editorial, *Reneging on a Right*, L.A. TIMES, Aug. 8, 2008; Editorial, *Times Recommendations on California Propositions*, CONTRA COSTA TIMES, Oct. 19, 2008; Editorial, *Una Propuesta Innecesaria*, LA OPINION, Oct. 9, 2008; Editorial, *Vote No on Proposition 8*, THE BAKERSFIELD CALIFORNIAN, Oct. 15, 2008; *Press Democrat Recommendations*, SANTA ROSA PRESS DEMOCRAT, Oct. 29, 2008; *Record Endorsements in Tuesday’s Election*, STOCKTON RECORD, Nov. 2, 2008; *Star Editorial Board Recommendations*, VENTURA COUNTY STAR, Oct. 28, 2008. With the media firmly on its side, homosexuals and lesbians are well-positioned to pursue future political endeavors.

IV. ALTHOUGH THE RELIGIOUS COMMUNITY IS SPLIT OVER LGBT ISSUES, MANY RELIGIOUS GROUPS ENCOURAGE SUPPORT OF HOMOSEXUAL RIGHTS.

A recent compilation of religious groups’ official positions regarding same-sex marriage indicates continued dispute on this issue, with many religious organizations officially embracing the concept of homosexuality and same-sex partnership. The Pew Forum on Religion & Public Life, *Religious Groups’ Official Positions on Same-Sex Marriage*, July 9, 2009, available at <http://pewforum.org/docs/?DocID=426>. The official stance, however, does not accurately portray the level of religious support for same-sex marriage. For example, although the General Conference of the United Methodist Church officially supports laws defining marriage as the

(Cont’d)

purchased with campaign funds. See, e.g., John Patterson, *Why Gus van Sant’s Milk Is an Important Film*, THE GUARDIAN, Dec. 5, 2008, available at <http://www.guardian.co.uk/film/2008/dec/05/john-patterson-milk-gus-van-sant>.

1 union of one man and one woman, the California regional assemblies opposed Proposition 8.
 2 Duke Helfand, *Pastors Risk Careers Over Gay Marriage*, L.A. TIMES, July 17, 2008, available
 3 at <http://articles.latimes.com/2008/jul/17/local/me-methodist17>.

4 Meanwhile, other religious organizations united to provide support for the No on 8
 5 campaign efforts. In its November 2008 newsletter, the Unitarian Universalist Association,
 6 which has officially supported same-sex marriage since 1996, urged its Sacramento congregants
 7 to continue giving “time, attention, and money to protect marriage equality by joining the No on
 8 Prop. 8 campaign! . . . There is still time to spend a few hours on a phone bank, put up a yard
 9 sign, or talk to friends and coworkers.” Roger Jones, Family Minister, *Thanks to Friends of
 10 Fairness*, THE UNIGRAM, Nov. 2008, at 4, available at [http://uuss.org/Unigram/Unigram2008-
 11.pdf](http://uuss.org/Unigram/Unigram2008-11.pdf).

11 Equality California, a proponent of same-sex marriage, acknowledged the valuable
 12 support of religious groups, saying “[w]hile our opponents certainly invoke scripture and
 13 theology to justify their beliefs, there are many clergy and denominations that feel equally
 14 passionate that their faiths call them to stand up for marriage equality.” Equality California,
 15 *Winning Back Marriage Equality in California: Analysis and Plan 22* (2009), available at
 16 [http://www.eqca.org/atf/cf/%7B34f258b3-8482-4943-91cb-08c4b0246a88%7D/EQCA-
 17 WINNING_BACK_MARRIAGE_EQUALITY.PDF](http://www.eqca.org/atf/cf/%7B34f258b3-8482-4943-91cb-08c4b0246a88%7D/EQCA-WINNING_BACK_MARRIAGE_EQUALITY.PDF).

18 **V. PUBLIC OPINION IS TRENDING IN FAVOR OF PLAINTIFFS’ INTERESTS.**

19 The success of the homosexual and lesbian community in obtaining funding, union
 20 support, corporate sponsorship, media endorsement, and religious backing is paying dividends
 21 beyond today’s ballot box. Public opinion about homosexuality is trending in a positive
 22 direction. A recent national survey gauging attitudes towards homosexuals and lesbians showed
 23 a substantial upward trend over the past twenty-five years, from a 1984 rating of 30 on a
 24 “feeling thermometer” of 100 up to a 2008 rating of 49.4. The American National Election
 25 Studies (ANES; www.electionstudies.org), The ANES 2008 Time Series Study [dataset],
 26 Stanford University and the University of Michigan [producers]. And a March 2006 survey of
 27 Californians reported that forty-one percent said they were more accepting of homosexuality
 28 now than they were when they were eighteen. Mark DiCamillo & Mervin Field, *Greater
 Acceptance of Homosexual Relations & Support for Anti-Discriminatory Policies Towards Gays
 & Lesbians*, The Field Poll, Mar. 22, 2006. The Policy Institute of the National Gay and
 Lesbian Task Force Foundation recognized that in the 1990s, “[p]ublic attitudes toward . . . key

1 gay and lesbian rights issues have undergone a striking liberalization over the past decade.”
2 Alan S. Yang, Policy Institute of the National Gay and Lesbian Task Force Foundation, *The*
3 *2000 National Elections Study and Gay and Lesbian Rights: Support for Equality Grows 3*,
4 *available at* [http://www.thetaskforce.org/downloads/reports/reports/2000NationalElections](http://www.thetaskforce.org/downloads/reports/reports/2000NationalElectionsStudy.pdf)
5 [Study.pdf](http://www.thetaskforce.org/downloads/reports/reports/2000NationalElectionsStudy.pdf).

6 This trend continued in the most recent decade, as shown by the narrowing margin in the
7 Proposition 8 vote. In 2000, California voters added identical language to the California Family
8 Code through Proposition 22. Proposition 22 passed with 61.4 percent of the vote. Its
9 opponents registered 38.6 percent in 2000. California Secretary of State, *State Ballot Measures*
10 *10-12, available at* http://www.sos.ca.gov/elections/sov/2000_primary/measures.pdf. In 2008,
11 however, the opponents of Proposition 8 garnered 47.7 percent of the popular vote—an increase
12 of nearly nine full points.

13 CONCLUSION

14 To date, homosexuals and lesbians have benefited greatly from the democratic process.
15 California’s legislature has broken ground in extending benefits based on sexual orientation. On
16 a national level, California’s voters have sent LGBT allies—including House Speaker Nancy
17 Pelosi—to Washington, where their voice is clearly heard. The LGBT message is carried
18 through paid efforts, funded by numerous wealthy individuals, unions, and corporations across
19 America. Homosexual and lesbian rights have also been embraced by influential labor,
20 corporate, and religious organizations that have pledged to fight for marriage equality.

21 Homosexual and lesbian political muscle is a model of the power of American
22 democracy. This is not a case of “political powerlessness” meriting “extraordinary protection
23 from the majoritarian political process.” *Pylar*, 457 U.S. at 216 n.14. As a result, we suggest
24 that it would be inappropriate for this court to grant suspect status to Plaintiffs, because the court
25 cannot conclude that it should provide the Plaintiffs with extraordinary protection from the
26 political process that was recently exercised by California voters in passing Proposition 8.

27 Dated: January 8, 2010

28 Respectfully submitted,

Holly L. Carmichael