Case No. S168047

IN THE

Supreme Court of the State of California

Karen L. Strauss, Ruth Borenstein, Brad Jacklin, Dustin Hergert, Eileen Ma, Suyapa Portillo, Gerardo Marin, Jay Thomas, Sierra North, Celia Carter, Desmund Wu, James Tolen, and Equality California,

Petitioners,

v.

Mark Horton, in his official capacity as State Registrar of Vital Statistics of the State of California and Director of the California Department of Public Health; Linette Scott, in her official capacity as Deputy Director of Health Information & Strategic Planning for the California Department of Public Health; and Edmund G. Brown, Jr., in his official capacity as Attorney General for the State of California,

Respondents,

Proposition 8 Official Proponents Dennis Hollingsworth, Gail J. Knight, Martin F. Gutierrez, Hak-Shing William Tam, and Mark A. Jansson; and ProtectMarriage.com - Yes on 8, a Project of California Renewal,

Proposed Intervenor Real Parties in Interest.

MOTION TO INTERVENE AS REAL PARTIES INTEREST BY PROPOSITION 8 OFFICIAL PROPONENTS, ET AL.; MEMORANDUM IN SUPPORT THEREOF; DECLARATIONS IN SUPPORT THEREOF

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SUPREME COURT
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Deputy

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Proposed Intervenors hereby certify that they are not aware of any person or entity that must be listed in accordance with California Rule of Court 8.208(d).

TABLE OF CONTENTS

Certificate Of Interested Entities Or Persons i

Table of Contents ii

Table of Authorities iv

Motion and Preliminary Statement 1

Statement of Facts 3

Memorandum of Points and Authorities 7

I. The Direct Legal Interest Of The Official Proponents Is Integral To The Effective Exercise Of The People's Reserved Power To Propose Constitutional Amendments By Initiative 7

II. Because The Amended Petition Directly Attacks The Official Proponents' Right To Propose Proposition 8 By Initiative, Prior Cases Denying Intervention To Groups Asserting Only An Ideological Or Political Interest Are Totally Inapplicable 8

III. Intervention for the Official Proponents is Mandatory 10

A. The Official Proponents Possess a Direct Interest in This Litigation. 12

1. Petitioners' Directly Challenge the Constitutional Right of the Official Proponents to Present a Substantive Alteration to the California Constitution Through the Initiative Process. 12

2. The Official Proponents Successful Use of the Initiative Process, Including Approval by the Voters, Provides Them With an Unparalleled Fundamental Interest in Defending Proposition 8. 13

3. By Definition, Official Proponents Are Real Parties In Interest In Any Challenge to the Right to Present an Initiative Petition to Voters 14

B. Any Ruling In Petitioners' Favor Will Clearly Impair And Impede The Official Proponents' Exercise Of The People's Reserved Power To Propose Constitutional Amendments To The Voters Directly By Initiative 17

C. The Official Proponents' Interest in Undertaking the Necessary Steps to Place Proposition 8 on the Ballot is Unique and, Therefore, Cannot be Adequately Represented by Existing Parties. 18

1. The Respondents Named In This Case Possess Only A Ministerial Interest In Proposition 8. 18

2. The Existing Parties Are All Philosophically And Politically Opposed To Proposition 8, Placing Into Question Their Willingness To Vigorously Defend Its Validity. 19

IV. The Official Proponents Also Meet All Requirements for Permissive Intervention 21

A. The Official Proponents Possess a Direct Interest In the Outcome of the Litigation. 22

B. The Official Proponents' Involvement Would Not Enlarge the Issues Before the Court. 22

C. This Lawsuit Involves the Voice of All Californians on an Important Social Issue, Thereby Outweighing any Suggestion That the Parties be able to Conduct the Lawsuit on their Own Terms. 23

V. The Committee Also Meets All Requirements for Permissive Intervention. 25

A. The Committee Possesses a Direct and Unparalleled Interest In the Outcome of the Litigation 26

B. The Committee's Involvement Would Not Enlarge the Issues Before the Court. 27

C. This Lawsuit Involves the Voice of All Californians on an Important Social Issue, Thereby Vitiating any Suggestion That the Parties be able to Conduct the Lawsuit on their Own Terms. 27

VI. California Courts Routinely Order the Intervention of Initiative Proponents. 25

Conclusion 32

Certificate of Word Count 33

Appendix of Exhibits .....

TABLE OF AUTHORITIES

CALIFORNIA CASES

20th Century Ins. Co. v. Garamendi
(1994) 8 Cal. 4th 216 28

Allen v. California Water & Tel. Co.
(1947) 31 Cal. 2d 104 11

Amwest Sur. Ins. Co. v. Wilson
(1995) 11 Cal. 4th 1243 28

Bennett v. Bowen (Hollingsworth et al.), California Supreme
Court Case No. S164520, Dismissed 7/16/2008 ..... 2, 5, 16

Building Indus. Ass'n v. City of Camarillo
(1986) 41 Cal. 3d 810 ..... 18, 21, 22

Calfarm Ins. Co. v. Deukmejian
(1989) 48 Cal. 3d 805 29

Citizens for Jobs and the Economy v. County of Orange
(2002) 94 Cal. App. 4th 1311 30

City and County of San Francisco v. State of California l
(2005) 128 Cal. App. 4th 1030 ..... 8, 9, 11, 21

City of Westminister v. County of Orange
(1988) 204 Cal. App. 3d 623 29

Community Health Ass'n v. Board of Supervisors of the County of Humboldt (1983) 146 Cal. App. 3d 990 30

Connerly v. State Personnel Bd. (2006) 37 Cal. 4th 1169 15

Costa v. Superior Court (2006) 37 Cal. 4th 986 ..... 7, 16

Deukmejian v. County of Mendocino
(1984) 36 Cal. 3d 476 30

DeVita v. County of Napa (1995) 9 Cal. 4th 763 14

Elliott v. Superior Court (1941) 168 Cal. 727 10-11

Hotel Employees and Restaurant Employees Int'l Union v. Davis (1999) 21 Cal. 4th 585 15

In Re Marriage Cases (2008) 43 Cal.4th 757 10

Independent Energy Producers Ass'n v. McPherson (2006) 38 Cal. 4th 1020 ..... 15, 16, 17, 25

Isaacs v. Jones (1898) 121 Cal. 257 11

Kopp v. Fair Political Practices Comm'n (1995) 11 Cal. 4th 607 15

Legislature of State of California v. Eu (1991) 54 Cal. 3d 492 29

Lockyer v. City and County of San Francisco (2004) 33 Cal.4th 1055 10

Nestande v. Watson (2003) 111 Cal. App. 4th 232 115

People v. Colver (1980) 107 Cal. App. 3d 277 11

People v. Superior Court of Ventura County (1976) 17 Cal. 3d 732 ..... 23, 27

Reliance Ins. Co. v. Superior Court (2000) 84 Cal. App. 4th 383 21

Rominger v. County of Trinity (1983) 147 Cal. App. 3d 655 ..... 21, 23, 24, 27, 31

Senate of State of California v. Jones (1999) 21 Cal. 4th 1142 15

Simac Design, Inc. v. Alciati (1979) 92 Cal. App. 3d 146 30

Simpson Redwood Co. v. State of California (1987) 196 Cal. App. 3d 1192 ..... 14, 22

Socialist Workers 1974 California Campaign Comm. v. Brown (1976) 53 Cal. App. 3d 879 30

Sonoma County Nuclear Free Zone '86 v. Superior Court (1987) 189 Cal. App. 3d 167 15

Truck Ins. Exch. v. Superior Court (1997) 60 Cal. App. 4th 342 22

U.C. Nuclear Weapons Labs Conversion Project v. Lawrence Livermore (1984) 154 Cal. App. 3d 1157 12

FEDERAL CASES

California Teachers Ass'n v. State Bd. of Educ. (9th Cir. 2001) 271 F.3d 1141 32

National Audubon Soc'y, Inc. v. Davis (9th Cir. 2002) 307 F.3d 835 31

CONSTITUTIONAL PROVISIONS AND STATUTES

Cal. Const. art. I, § 7.5 ..... 2, 7, 23

Cal. Const. art. II, § 8(a) 7

Cal. Const. art. II, § 8 12

Cal. Const. art. II, § 10(a) 17

Cal. Const. art. II, § 10(c) 24

Cal. Const., art. II, § 10(e) 7

Cal. Const., art. IV, § 1 7

Cal. Const. art. V, § 13 19

Cal. Const. art. XVIII, §§ 1-3 12

Cal. Const., art. XVIII, § 4 7

Code Civ. Proc. § 387 ..... 10, 21

Code Civ. Proc. § 2015.5 4

Elec. Code, § 342 ..... 8, 11

Elec. Code, § 9001 3

Elec. Code, § 9004 13

Elec. Code, § 9008 3

Elec. Code, § 9012 3

Elec. Code, § 9014 3

Elec. Code, § 9030 ..... 5, 13

Elec. Code, § 9031 ..... 5, 13

Elec. Code, § 9032 13

Elec. Code, § 9033 ..... 5, 13

Elec. Code, § 9065(d) 13

Elec. Code, § 9067(b) 5

Elec. Code, § 9607 14

Elec. Code § 18680(m)(2) 7, 26

Fam. Code § 308.5 8

Gov. Code § 1322(27) 19

Gov. Code § 1322(28) 19

Health & Safety Code § 102100 19

Health & Safety Code § 102175 19

Health & Safety Code § 103125 19

Health & Safety Code § 103175 19

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF CALIFORNIA:

The five Official Proponents of Proposition 8 (Dennis Hollingsworth, Gail J. Knight, Martin F. Gutierrez, Hak-Shing William Tam, and Mark A. Jansson) and the official campaign Committee in favor of Proposition 8 (ProtectMarriage.com - Yes on 8, a Project of California Renewal, FPPC ID #1302592), by and through counsel, respectfully move to intervene as Real Parties in Interest in the above-captioned matter.[1] Upon intervention, the Court is requested to consider the proposed Preliminary Opposition to the petitioners' Amended Petition, submitted concurrently with this motion to intervene. As specifically explained in the proposed Preliminary Opposition, although disagreeing with Petitioners on the substance, the Official Proponents strongly support exercise of this Court's original jurisdiction to consider the issues presented by the Amended Petition.

This motion is made and based upon the following statement of facts; memorandum of points and authorities; supporting declarations of the five Official Proponents; and the supporting declaration of David Bauer, Treasurer of the Committee.

PRELIMINARY STATEMENT

The sole question in the underlying extraordinary proceeding is whether the Official Proponents could, or could not, validly propose

[1] Substantially identical motions to intervene are filed concurrently in all three cases that all challenge Proposition 8 as an improper initiative: *Strauss v. Horton*, S168047; *City and County of San Francisco v. Horton*, S168078; and *Tyler v. State of California*, S168066.

Proposition 8 to the voters by initiative.[2] The Amended Petition claims that they could not. No one has a greater or more direct interest in the validity of Proposition 8 than the Official Proponents who themselves proposed Proposition 8 by initiative and whose right to do so is now challenged. The Committee, having spent over $37 million to successfully campaign for the measure's passage and being statutorily authorized to expend surplus funds for the legal defense of Proposition 8, also has a direct and substantial interest in a final judgment either upholding, or nullifying, Proposition 8. The unique and direct interests of the Official Proponents and Committee will either stand or fall by operation of the judgment in this case.

Just as the Official Proponents were properly named as Real Parties in Interest during the pre-election litigation involving the exact same claims,[3] the Petitioners here should have named the Official Proponents as Real Parties in Interest. As indispensable parties whose direct interests are at stake, the Official Proponents are entitled to intervene as of right and, if not as of right, should be permitted to intervene by leave of this Court. Indeed, California courts have often permitted official initiative proponents to intervene to defend the initiatives they sponsored. To conclude otherwise here would create an unjust result where the Official Proponents' interests in proposing and passing Proposition 8 by initiative would be adjudicated in their absence. Moreover, the unique perspective of the Official Proponents is essential here given the ambivalence or outright hostility of respondents toward Proposition 8.

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[2] Effective the day after the November 4, 2008 election, Proposition 8 added Article 1, § 7.5 to the California Constitution to read: "Only marriage between a man and a woman is valid or recognized in California."

[3] *Bennett v. Bowen (Hollingsworth et al.),* California Supreme Court Case No. S164520, Dismissed 7/16/2008.

STATEMENT OF FACTS

The five Official Proponents of Proposition 8 (Dennis Hollingsworth, Gail J. Knight, Martin F. Gutierrez, Hak-Shing William Tam, and Mark A. Jansson) are registered California electors. (*See* Decls. of Hollingsworth (Exh. A), Knight (Exh. B), Gutierrez (Exh. C), Tam (Exh. D) and Jansson (Exh. E) (hereafter "Exhs. A-E") at ¶ 1.) The Official Proponents assumed numerous legal duties and took all steps required by California law to ensure that Proposition 8 was properly placed before the electors. Among these were the following:

- In October 2007, the Official Proponents supervised the preparation of the text of Proposition 8, and executed and submitted the necessary forms and documents prescribed by the Elections Code to the Attorney General for preparation of a title and summary of its chief purpose and points. (Exhs. A-E, ¶ 7.) By taking these actions to begin the initiative process, they became the "official proponents" within the meaning of Elections Code section 342. (*Id.* at ¶ 9.) As such, the Official Proponents were responsible for payment of the filing fee, were entitled by law to compel the Attorney General to draft a title and summary for the measure, and were the only persons authorized to submit amendments to the measure. (*Id.* at ¶ 8.)
- In the performance of their official duties, the Official Proponents also had to execute and submit to the Attorney General certifications acknowledging that it is a misdemeanor under state law to allow signatures on an initiative petition to be used for any purpose other than qualification of the proposed measure for the ballot, and certifying that they would not allow the signatures for Proposition 8 to be used for any purpose other than qualification of the measure for the ballot. (*Id.* at ¶ 10.)
- On November 29, 2007, the Attorney General issued a circulating Title and Summary for Proposition 8 to the Official Proponents. (Exhs. A-E at ¶11.) To validly collect petition signatures, the Official Proponents were legally responsible for preparing a petition form compliant with the requirements of Elections Code sections 9001, 9008, 9012, and 9014. (*Id.* at ¶13.) Then, before allowing signatures to be collected, the Official Proponents had a legal duty to obtain and keep on file an

executed certification by each person put in charge of signature gathering, certifying that he or she would not allow the signatures for Proposition 8 to be used for any purpose other than qualification of the measure for the ballot. (*Id.* at ¶15.) Moreover, the Official Proponents were legally responsible for ensuring that both volunteers and paid signature-gatherers for Proposition 8 received instruction on the requirements and prohibitions imposed by state law with respect to circulation of the petition for signatures. (*Id.* at ¶16.)

- For petition signatures to be valid, the Official Proponents were also charged with ensuring that each petition circulator who obtained signatures executed the Declaration of Circulator on each petition sheet, under penalty of perjury and including each circulator's signature, date, and place of signing in accordance with § 2015.5 of the California Code of Civil Procedure. (Exhs. A-E at ¶18 .)

- To propose Proposition 8 by initiative, the Official Proponents were responsible for obtaining at least 694,354 valid petition signatures within a maximum of 150 days between November 29, 2007 and April 28, 2008. (Exhs. A-E at ¶ 17; and Official Proponents' Request for Judicial Notice ("OPRJN"), filed herewith, at Exh. B.) In other words, the Official Proponents needed to supervise the collection of approximately 4,629 or more valid petition signatures per day.

- Even after a sufficient number of signatures had been collected, the Official Proponents retained the exclusive statutory right under Elections Code section 9032 to decide whether or not to file the initiative petitions for signature verification by county elections officials. (*Id.* at ¶19.) No other person or entity could submit petitions for signature verification, and any petitions submitted by voters other than the Official Proponents would have been rejected. (*Ibid.*; *see also* Elec. Code § 9032 ["The right to file the petition shall be reserved to its proponents, and any section thereof presented for filing by any person or persons other than the proponents ... shall be disregarded by the elections official"].)

- On April 24, 2008, the Official Proponents authorized the official petitions, bearing the signatures of over 1.2 million Californians, to be submitted for signature verification by county elections officials. (*Id.* at ¶20.) During the signature verification process, the Official Proponents were entitled to receive special notices

from county elections officials and the Secretary of State. (*Id.* at ¶21; see also Elec. Code, §§ 9030, 9031, and 9033.) Ultimately, the Official Proponents were notified on June 2, 2008 by the Secretary of State that Proposition 8 had been certified to have received the required number of voter signatures and was declared qualified for the statewide November ballot. (*Id.* at ¶22.)

- The Official Proponents also had the exclusive statutory authority to designate the written arguments and rebuttal arguments in favor of Proposition 8 for inclusion in the statewide voter pamphlet. (*Id.* at ¶23; see also Elec. Code § 9067(b).)

After completing these and other arduous tasks and fulfilling all other duties required by California law, the Official Proponents were sued as Real Parties in Interest in a pre-election attempt to have Proposition 8 removed from the ballot on grounds that it is a constitutional "revision" that cannot be proposed by initiative. (*Bennett v. Bowen (Hollingsworth et al.)*, California Supreme Court Case No. S164520.) The Official Proponents litigated against the pre-election petition in defense of their right to propose Preposition 8 as an initiative amendment to the Constitution. (*Id.* at ¶24.)

In the same pre-election case, the Official Proponents were was also sued as Real Parties in Interest on the ground that the title and summary that appeared on circulated petitions for Proposition 8 had been false and misleading. The Official Proponents successfully litigated in defense of the propriety of the title and summary appearing on the official petitions for Proposition 8. (*Bennett v. Bowen (Hollingsworth et al.)*, California Supreme Court Case No. S164520, Dismissed 7/16/2008.) (*Id.* at ¶25.)

In addition to performing all of the rights and duties of official proponents for Proposition 8, several of the Official Proponents also dedicated substantial time, effort, reputation and personal resources in campaigning for the passage of Proposition 8. (See, e.g., Exh. A at ¶ 26 (Hollingsworth); Exh. D at ¶ 26 (Tam); Exh. E at ¶ 26 (Jansson).)

Each of the Official Proponents believes that no other party in this case will adequately represent his or her interests as an official proponent having constitutional and statutory rights to propose Proposition 8 by initiative. (Exh. A at ¶28; Exh. B. at ¶28; Exh. C at ¶ 27; Exh. D. at 28; Exh. E at 28.)

Proposed intervenor ProtectMarriage.com – Yes on 8, a Project of California Renewal, FPPC ID #1302592 (the "Committee") is a "primarily formed ballot measure committee" under the Political Reform Act. As such, the Committee exists primarily to support the passage of just one ballot measure: Proposition 8. (Exh. F at ¶¶ 3, 4.) The Official Proponents designated the Committee as the official campaign committee responsible for receiving all contributions and making all expenditures in the campaign to qualify Proposition 8 for the ballot and pass it into law at the November General Election. (Exhs. A-E at ¶14; Exh. F at ¶6.) Since it was formed, the Committee has received financial contributions from over 83,000 individuals, the vast majority of which are registered California voters. (Exh. F at ¶8.) From these financial supporters, the Committee has received over $39 million in total contributions for the official campaign to pass Proposition 8. (*Id.* at ¶9.)

Subject only to the statutory powers and duties reserved exclusively to the Official Proponents by law, the Committee was directly responsible for all other aspects of the campaign to qualify Proposition 8 for the ballot and enact it into law. (Exh. F at ¶10.) In the campaign, the Committee spent over *$37 million* to qualify Proposition 8 for the ballot and wage a winning statewide campaign to persuade a majority of California voters to approve it. (*Id.* at ¶10.) After the election, the Committee has remaining surplus funds of over $1.6 million. (*Id.* at ¶11.) Under California law, the Committee is authorized to expend these surplus funds for legal defense "where the litigation arises directly out of ... The enactment, by the

initiative process, of any ... constitutional amendment." (*Id.* at ¶12; *see also* Elec. Code, § 18680(m)(2).)

On November 4, 2008, a majority of California voters approved Proposition 8 as an amendment to the state Constitution. (*See* OPRJN at Exh. A.) At 12:00 a.m. on November 5, 2008, Proposition 8 immediately became Article 1, § 7.5 of the California Constitution and reads as follows: "Only marriage between a man and a woman is valid or recognized in California."

MEMORANDUM OF POINTS AND AUTHORITIES

I. The Direct Legal Interest Of The Official Proponents Is Integral To The Effective Exercise Of The People's Reserved Power To Propose Constitutional Amendments By Initiative.

No person or entity has a more direct and immediate interest in the validity of Proposition 8 than the Official Proponents. The California Constitution reserves to the people the powers of initiative and referendum. (Cal. Const., art. IV, § 1.) The reserved initiative power is in fact twofold. It is "the power of the electors to propose statutes and amendments to the Constitution *and* to adopt or reject them." (Cal. Const., art. II, § 8(a) (emphasis added).) But since the electors ultimately must approve all proposed changes to the Constitution, whether by "amendment" or "revision" (Cal. Const., art. XVIII, § 4), the truly distinguishing feature of the initiative power is the right to *propose* Constitutional amendments directly. This Court has described the power to propose constitutional changes through the initiative process as a "fundamental right." (*Costa v. Superior Court* (2006) 37 Cal. 4th 986, 1006.)

The Constitution directs the Legislature to provide "the manner in which petitions shall be circulated, presented, and certified, and measures submitted to the electors." (Cal. Const., art. II, § 10(e).) The Legislature

has enacted a number of statutes implementing these provisions. (Elec. Code, §§ 9000 *et seq.*) Those statutes broadly confer upon initiative proponents many official powers, rights and duties, the performance of which facilitates the true exercise of the people's initiative power. Thus the constitutional and statutory role performed by official proponents produces a distinct legal status and interest for official proponents that – in order to protect the people's overall power of initiative – must itself be jealously guarded.

This is the legal interest belonging to the Official Proponents that is at stake in the Amended Petition, which expressly challenges as invalid the Official Proponents' performance of their constitutional and statutory role in connection with Proposition 8.

II. Because The Amended Petition Directly Attacks The Official Proponents' Right To Propose Proposition 8 By Initiative, Prior Cases Denying Intervention To Groups Asserting Only An Ideological Or Political Interest Are Totally Inapplicable.

To oppose intervention by the Official Proponents, Petitioners may attempt to rely on the inapposite case of *City and County of San Francisco v. State of California* (2005) 128 Cal. App. 4th 1030 (*CCSF v. State)*, which held that an organization created by ideological supporters of Proposition 22 (Fam. Code § 308.5) did not have a sufficiently direct interest to require that it be permitted to intervene in a case challenging the initiative's legality. (*Id.* at 1033.) But such reliance would be highly misplaced, for several reasons.

First, *CCSF v. State* emphasized that "this case *does not* present the question of whether an official proponent of an initiative (Elec. Code, § 342) has a sufficiently direct and immediate interest to permit intervention in litigation challenging the validity of the law enacted." (*Id.* at 1038

(italics added).)[4] Thus the holding in *CCSF v. State* regarding the insufficiency of interests asserted only by ideological supporters has no application to the present case where all five Official Proponents of the initiative seek to intervene as real parties in interest.

Second, unlike *CCSF v. State* where the validity of the initiative was challenged on grounds that it violated the substantive constitutional rights of same-sex couples (*id.* at 1034), in the present case Proposition 8 is challenged solely on the basis of the process selected to enact it. The heart of the Amended Petition is the claim that the Official Proponents had no power to propose Proposition 8 to the voters by initiative. So while "a ruling about the constitutionality of denying marriage licenses to same-sex couples" would not directly affect the personal rights of the ideological supporters in *CCSF v. State* (*id.* at 1038-39), by contrast the rights of the Official Proponents who proposed Proposition 8 would be directly impaired or invalidated by a ruling that it could not be validly proposed by initiative.

Third, the intervention question in *CCSF v. State* was not decided in the first instance, in contrast with the present original proceeding. Instead, *CCSF v. State* set forth the appellate court's deferential review of the trial court's ruling under the "abuse of discretion" standard. (*Id.* at 1036-37.) *CCSF v. State's* conclusion that the trial court did not abuse its discretion has no precedential value on whether this Court, in its own sound discretion, should permit the Official Proponents of Proposition 8 to intervene as real parties in interest.

In similar fashion, the discussion of standing in *In Re Marriage Cases* is also inapplicable to the Official Proponents' unique interest here in defending their right to propose Proposition 8 by initiative. In that case,

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[4] The one official proponent of Proposition 22, Senator Pete Knight, was already deceased and thus the proposed intervenor could "no longer be said to represent Knight's interest." (*CCSF v. State,* 128 Cal. App. 4th at 1038.)

this Court determined that an action filed by the Proposition 22 Legal Defense Fund, seeking to stop San Francisco officials from issuing marriage licenses to same-sex couples, no longer presented a justiciable controversy and became moot after this Court "effectively granted all of the relief" to which the Fund was entitled in *Lockyer v. City and County of San Francisco* (2004) 33 Cal.4th 1055. (*In Re Marriage Cases* (2008) 43 Cal.4th 757, 789-790.) Having obtained the mandamus relief the Fund had sought against the City, the Fund's remaining "ideological disagreement with the City's views" regarding Proposition 22 was not sufficient to afford continued standing to pursue a declaratory judgment. (*Id.* at 790-791.) By contrast, the present case does not involve merely an "ideological disagreement," but rather a direct attack on the validity of the Official Proponents' act of proposing Proposition 8 to the voters by initiative. The Official Proponents truly possess a "direct legal interest that will be injured or adversely affected" if Petitioners prevail.

III. Intervention for the Official Proponents is Mandatory.

Intervention is mandatory where "the person[s] seeking intervention claim[] an interest relating to the property or transaction which is the subject of the action and [those] person[s are] so situated that the disposition of the action may as a practical matter impair or impede [those persons'] ability to protect [their] interests, unless [those persons'] interests [are] adequately represented by existing parties . . . ." (Code Civ. Proc., § 387(b).) Where these circumstances exist, this Court "shall . . . permit [those] person[s] to intervene." (*Ibid.*)

"'The 'interest' mentioned in section 387 which entitles a person to intervene in a suit between other persons must be 'in the matter in litigation and of such a direct and immediate character that the intervener will either gain or lose by the direct legal operation and effect of the judgment' (*Elliott*

v. Superior Court, 168 Cal. 727; it must be 'direct and not consequential' (*Isaacs v. Jones*, 121 Cal. 257, 261).'" (*Allen v. California Water & Tel. Co.* (1947) 31 Cal. 2d 104, 109.) In this case, the Official Proponents possess substantial, direct, and weighty fundamental "interests" arising from their unique legal role in the Proposition 8 initiative process as prescribed by the California Elections Code. (Elec. Code, § 342.)

The "official proponents" of an initiative are those registered electors who submit a proposed statewide initiative to the Attorney General (*People v. Colver*, *supra*, 107 Cal. App. 3d at 287-88), and they are given special consideration regarding intervention under California law. But for the Official Proponents, Proposition 8 would not exist. The Official Proponents undertook and completed that arduous, expensive, complex initiative process to enact *this* constitutional amendment, and it is *their* constitutional and statutory rights to do so that are at issue in this case. As such, the Official Proponents possess a unique and fundamental interest in the outcome of this litigation.

The strength of the Official Proponents' interests is evident when compared with the interests asserted by other proposed intervenors. For example, proposed intervenor Campaign for California Families (CCF) points to certain efforts to support passage of Proposition 8, including its provision of educational materials and other information to encourage people to vote for Proposition 8.[5] Those efforts by a third party, however, are merely ideological or political in nature, and therefore not sufficient to support intervention. (*City and County of San Francisco v. State of California* (2005) 128 Cal. App. 4th 1030, 1039.) Such an interest could be

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[5] *See* Motion By Campaign For California Families To Intervene As Respondent With Supporting Memorandum Of Points And Authorities And Declaration Of Randy Thomasson In Support, filed herein 11/10/2008, at pp. 3, 13, 16.

claimed by large segments of the general public that worked to pass Proposition 8 into law. By contrast, the official and legal status of the Official Proponents of Proposition 8 is directly connected to the exercise of their rights under the state Constitution to propose the measure as an initiative.

A. The Official Proponents Possess a Direct Interest in This Litigation.

The Official Proponents' direct and fundamental interest herein is threefold, linked not only to the method they chose by which to substantively change the California Constitution, but also the multiple steps taken by only the Official Proponents to successfully enact Proposition 8. Moreover, California law is clear that the official proponents of an initiative are mandatory real parties in interest to any challenge to the right to have a matter presented to the voters through the initiative process.

1. Petitioners' Directly Challenge the Constitutional Right of the Official Proponents to Present a Substantive Alteration to the California Constitution Through the Initiative Process.

Proposed substantive alterations to California's Constitution can be presented to the California voters in one of three ways: (1) the initiative process utilized by the Official Proponents; (2) legislative proposals; or (3) a constitutional convention. (Cal. Const. art. XVIII, §§ 1-3.) The Official Proponents' choice to undertake this process through the initiative is fundamental, grounded in the California Constitution, and also part of California's cherished right to free speech. (Cal. Const. art. II, § 8; *U.C. Nuclear Weapons Labs Conversion Project v. Lawrence Livermore* (1984) 154 Cal. App. 3d 1157, 1163 [citation omitted] ["The right of free speech in this state is a vigorous one, largely because of the obligation and right of our citizens to be actively involved in government through the processes of

initiative, referendum and recall which distinguish our state constitutional system."].)

The Petitioners attack the fundamental constitutional right of the Official Proponents to engage in the initiative process specifically to restore the constitutional definition of marriage. Because the Official Proponents right to propose and pass this initiative is unique they have a right to defend the constitutional and fundamental process they undertook, which also directly implicates their right of free speech under California law.

2. The Official Proponents Successful Use of the Initiative Process, Including Approval by the Voters, Provides Them With an Unparalleled Fundamental Interest in Defending Proposition 8.

As already outlined in the Statement of Facts, the Official Proponents maintain a legal status distinct from the general public and directly related to the subject of this litigation. In addition to the Official Proponents' individual constitutional rights which Petitioners seek to have this Court abrogate, the Official Proponents' affected rights here are grounded in other aspects of California law which obligate their performance of many functions and duties and thus place them in a special and unique position for purposes of intervention.

For example, the Official Proponents were required to pay a fee to begin the initiative process, were entitled to have the Attorney General draft a summary of the measure, and were the only persons authorized to submit amendments to the measure. (Elec. Code, § 9004.) The Official Proponents were entitled to receive special notices during the signature verification process (*Id.*, §§ 9030, 9031, 9033), and the statutory right to file signed petitions in support of Proposition 8 was reserved exclusively to the Official Proponents. (*Id.*, § 9032.) The Official Proponents also had exclusive control over arguments and rebuttals printed in the sample ballot

in favor of the measure. (*Id.*, §§ 9065(d), 9067(b).) Additionally, the Official Proponents were legally responsible for training volunteers and other signature gatherers to ensure that they did not misuse the signatures in violation of law. (*Id.*, § 9607.)

Moreover, the Official Proponents, through their exceptional direct participation in the qualification of Proposition 8 for the November ballot, and in the campaign to win voter approval, staked their personal and professional reputations on the success of the measure. (*Simpson Redwood Co. v. State of California* (1987) 196 Cal. App. 3d 1192, 1201.) Clearly, the Official Proponents stand to gain or lose directly by this Court's determination of the merits of this case.

Therefore, the Official Proponents' interests are sufficiently direct to qualify for mandatory intervention. Further, it is this Court's duty to "jealously guard" the people's right to exercise their reserved power of initiative so as not to improperly limit its use. (*DeVita v. County of Napa* (1995) 9 Cal. 4th 763, 775-776.) For that reason, and as set forth below, intervention applications by initiative proponents have always been viewed favorably.

3. By Definition, Official Proponents Are Real Parties In Interest In Any Challenge to the Right to Present an Initiative Petition to Voters.

Under this Court's standard definition, the Official Proponents are real parties in interest in this action:

> 'Real party in interest' has been generally defined as 'any person or entity whose interest will be directly affected by the proceeding . . . .' [Citation.] While the real party in interest is 'usually the other party to the lawsuit or proceeding being challenged' [citation], it may be 'the person or entity in whose favor the acts complained of [operate]' or 'anyone having a direct interest in the result' [citation], or 'the real adverse party . . . in whose favor the act complained of has been done.'

(*Connerly v. State Personnel Bd.* (2006) 37 Cal. 4th 1169, 1178 [quoting *Sonoma County Nuclear Free Zone '86 v. Superior Court* (1987) 189 Cal. App. 3d 167, 173].) Given the vigor of the campaign, there can be no doubt the Official Proponents will "press their case with vigor."

Initiative proponents have always been considered real parties in interest in litigation pertaining to their own initiatives:

> Inasmuch as a real party's direct interest must be, like a beneficial interest, a 'special interest to be served or some particular right to be protected over and above the interest held in common with the public at large,' then . . . the proponent of the ballot initiative clearly met that definition when it came to litigation involving that initiative.

(*Connerly v. State Personnel Bd.*, *supra*, 37 Cal. 4th at 1179; *see also, e.g., Independent Energy Producers Ass'n v. McPherson* (2006) 38 Cal. 4th 1020, 1023-24 [acknowledging the proponents of Proposition 80 as "real parties in interest in this proceeding"]; *Kopp v. Fair Political Practices Comm'n* (1995) 11 Cal. 4th 607, 679 [Kennard, J., concurring and dissenting] [acknowledging proponents of Proposition 73 as real parties in interest]; *Hotel Employees and Restaurant Employees Int'l Union v. Davis* (1999) 21 Cal. 4th 585, 590 [acknowledging the proponent of Proposition 5 as a real party in interest]; *Senate of State of California v. Jones* (1999) 21 Cal. 4th 1142, 1146 [acknowledging the proponent of Proposition 24 as a real party in interest]; *Nestande v. Watson* (2003) 111 Cal. App. 4th 232, 236 [acknowledging the proponents of Measure W as a real parties in interest].)

Moreover, when this same challenge was filed prior to the November 4, 2008 election, the Official Proponents were appropriately

named as real parties in interest.[6] Now, in this post-election challenge, the Official Proponents are improperly omitted from Petitioners' challenge.

While many of the cases involve pre-election challenges, the Official Proponents' interest—the constitutional right to propose the matter by initiative to the California electorate—is valid both pre- and post-election. A challenge "based upon an allegation that a proposed initiative measure has failed to comply with the essential procedural requirements necessary to qualify an initiative measure for the ballot . . . may be brought and resolved prior to an election" (*Costa v. Superior Court, supra,* 37 Cal. 4th at 1006), or after an election.

In *Independent Energy*, this Court retained jurisdiction of a pre-election challenge and issued a post-election opinion "to provide guidance for the future" on whether pre-election review is warranted for a claim that a proposed initiative is not one that can be adopted by a vote of the people through the initiative process. (*Independent Energy Producers Ass'n v. McPherson*, *supra*, 38 Cal. 4th at 1023-1024.) After noting that pre-election review of a claim that a measure is not one that properly may be enacted by initiative is not "presumptively improper" (*id.* at 1029-30), this Court made a new and important distinction for future cases:

> Nonetheless, although the strong presumption against preelection review does not apply to such a claim, we believe it is appropriate for a court presented with this type of preelection challenge to keep in mind that unlike the type of procedural challenge relating to the petition-circulation process at issue in our recent decision in *Costa, supra,* 37 Cal. 4th 986, 39 Cal. Rptr. 3d 470, 128 P.3d 675 - a type of claim that, as explained in *Costa*, generally can be remedied only prior to an election and that usually will become moot after an election (see *id.* at pp. 1006-1007, 39 Cal. Rptr. 3d 470, 128 P.3d 675) - **a contention that an initiative measure is**

[6] *Bennett v. Bowen*, S164520, Petition for Extraordinary Relief, Including Writ of Mandate and Request for Stay, Dismissed July 16, 2008.

> **invalid because the measure cannot lawfully be enacted through the initiative process is a type of claim that generally will not become moot if the initiative is approved by the voters at the election.** [Citations omitted.] Because this type of claim is potentially susceptible to resolution either before or after an election, there is good reason for a court to be even more cautious than when it is presented with the type of procedural claim at issue in *Costa* before deciding that it is appropriate to resolve such a claim prior to an election rather than wait until after the election. Of course... potential costs are incurred in postponing the judicial resolution of a challenge to an initiative measure until after the measure has been submitted to and approved by the voters, and such costs appropriately can be considered by a court in determining the propriety of preelection intervention. Nonetheless, because this type of challenge is one that can be raised and resolved after an election, deferring judicial resolution until after the election - when there will be more time for full briefing and deliberation - often will be the wiser course.

(*Independent Energy, supra,* 38 Cal. 4th at 1030 [emphasis added] [footnotes omitted].)

Accordingly, the standing and positioning of the parties to present the challenge presented herein does not change from pre-election to post-election. The Official Proponents of an initiative, like Proposition 8, are real parties in interest and, therefore, hold an interest that qualifies them for mandatory intervention regardless of whether a challenge is brought before or after an election.

B. Any Ruling In Petitioners' Favor Will Clearly Impair And Impede The Official Proponents' Exercise Of The People's Reserved Power To Propose Constitutional Amendments To The Voters Directly By Initiative.

Under California law, any duly enacted proposition, like Proposition 8, becomes effective "the day after the election." (Cal. Const. art. II, § 10(a).) This, of course, was the goal and objective of the Official

Proponents—that Proposition 8 would pass and become effective at 12:00 a.m. on November 5, 2008. Proposition 8 is now effective.[7]

But the Petitioners ask this Court, *inter alia*, for a writ of mandate and immediate injunctive relief to alter the *status quo* of California law and impede the objective of the Official Proponents. Accordingly, this Court's proceeding without the intervention and involvement of the Official Proponents would be improper.

C. The Official Proponents' Interest in Undertaking the Necessary Steps to Place Proposition 8 on the Ballot is Unique and, Therefore, Cannot be Adequately Represented by Existing Parties.

The Respondents named in this matter have no vested interest in defending the Official Proponents' constitutional rights to initiate and then pass Proposition 8. Worse, yet they are reliably reported as politically opposed to it (both before and after the election). Thus, there is an inherent lack of incentive and "[d]espite the fact that the [Respondents] have a duty to defend the ordinance, [they] might not do so with vigor if [they have] an underlying opposition to the ordinance." (*Building Indus. Ass'n v. City of Camarillo* (1986) 41 Cal. 3d 810, 822.) Where the government may not (or will not) defend an enactment like Proposition 8 with vigor, intervention is necessary to ensure full and vigorous development of the case.

1. The Respondents Named In This Case Possess Only A Ministerial Interest In Proposition 8.

The California Department of Public Health, by and through Drs. Horton and Scott, were named as Respondents to this matter because they perform certain ministerial or regulatory functions regarding marriages in

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[7] Ignoring the immediate effect of Proposition 8's passage, Petitioners erroneously cast the *status quo* as one permitting same-sex "marriage" when, in fact, the opposite is true. *See* Petitioners' Memorandum of Points and Authorities at 50-52.

the State of California. As the Director of the Department of Public Health, Dr. Horton is also the State Registrar of Vital Statistics. (Health & Safety Code § 102175.) He is thus charged with the ministerial duty of recording marriages and the dissolutions thereof. (Health & Safety Code § 102100; *see also Id.* §§ 103125, 103175 [regarding forms and certificates].) Dr. Scott assists Dr. Horton in the performance of these ministerial duties. Whether marriages in California include same-sex couples or not, there is no effect on the nature of the ministerial duties imposed upon Drs. Horton or Scott. Accordingly, neither Dr. Horton nor Dr. Scott possesses any official interest in the outcome of Proposition 8. Their job duties simply don't change in the wake of Proposition 8 becoming law.

The Attorney General is "the chief law officer of the State." (Cal. Const. art. V, § 13.) The Attorney General does not have a say as to what the laws of the State of California are, but rather is charged with ensuring that the laws are "uniformly and adequately enforced." Unlike the Official Proponents, the Respondents served no role in proposing Proposition 8 to the voters by initiative, and thus lack the Official Proponents' vested interest in vigorously defending Proposition 8.

2. The Existing Parties Are All Philosophically And Politically Opposed To Proposition 8, Placing Into Question Their Willingness To Vigorously Defend Its Validity.

Respondent Mark D. Horton, Director/State Public Health Officers of the California Department of Public Health, is appointed by and serves at the pleasure of the California Governor, Arnold Schwarzenegger. (Gov. Code § 1322(27).) Governor Schwarzenegger also appoints the Chief Deputies of the Department of Public Health. (Gov. Code § 1322(28).) Respondent Linette Scott serves at the pleasure of Dr. Horton and/or the

Chief Deputies and is, therefore, also under the umbrella of Governor Schwarzenegger's authority.

Governor Schwarzenegger, however, opposed Proposition 8. His public statements against Proposition 8 have been well documented, both before and after November 4, 2008. Governor Schwarzenegger has further urged this Court to overturn Proposition 8 through this very action. (*See* OPRJN, Exh. G ["Gov. Arnold Schwarzenegger on Sunday expressed hope that the California Supreme Court would overturn Proposition 8"]; and Exh. H ["I think that we will again maybe undo that, if the court is willing to do that, and then move forward from there and again lead in that area."].) The day before this motion was filed, Governor Schwarzenegger publicly announced that he believes this Court ultimately should overturn Proposition 8:

> I think that the Supreme Court was right by saying (a gay marriage ban) was unconstitutional and that everyone should have the right. So the Supreme Court, you know, I think ought to go and look at that again. And we'll go back to the same decision... I think that they will. And I think that the important thing now is to resolve this issue in that way."

(Dan Smith, *Schwarzenegger won't join Prop. 8 fight*, Sacramento Bee (November 16, 2008); OPRJN at Exh. I.) The appointees of Governor Schwarzenegger, in carrying out his political mission, cannot be expected to vigorously defend a proposition that the Governor himself publicly states should be overturned by this Court.

As for the Attorney General, he has already taken actions that have the appearance of intending to thwart passage of Proposition 8, including re-writing the ballot title in a way that cast it in a less favorable light. (*See* OPRJN at Exh. C ["Political analysts on both sides suggest that the language change will make passage of the initiative more difficult," and that at least one prominent analyst finds it to be "highly unusual" and

"likely to lead you to vote 'No'"]; OPRJN at Exh. D [Dan Walters, *Jerry Brown's cynical ploy on gay rights*, Sacramento Bee (July 30, 2008) p. A3]; and OPRJN at Exh. E ["ballot title written by Atty. Gen. Jerry Brown cast the measure as one that would revoke a right... viewed as particularly helpful to people who opposed the measure," Dan Morain, *Proposition 8 stands despite protests and court challenges,* LA Times (11/10/2008)].) It remains highly uncertain whether the Attorney General will vigorously defend Proposition 8.

In brief, there is serious doubt whether Respondents will properly defend Proposition 8. That is exactly why this Court has described intervention as the crucial mechanism by which initiative proponents may protect their interests. (*Building Indus. Ass'n v. City of Camarillo*, *supra*, 41 Cal. 3d at 822.)

IV. The Official Proponents Also Meet All Requirements for Permissive Intervention.

Section 387(a) of the California Code of Civil Procedure provides that "[u]pon timely application, any person, who has an interest in the matter in litigation, or in the success of either of the parties, or an interest against both, may intervene in the action or proceeding."

Here, this Court should allow intervention because the Official Proponents have established: (1) that they have a direct interest in the outcome of the litigation; (2) that intervention would not enlarge the issues beyond those raised by the original parties; and (3) that the reasons for intervention are not "outweighed by the rights of the original parties to conduct their lawsuit on their own terms." (*People ex rel. Rominger v. County of Trinity* (1983) 147 Cal. App. 3d 655, 661; *City and County of San Francisco v. State of California et al* (2005) 128 Cal. App. 4th 1030, 1036; *Reliance Ins. Co. v. Superior Court* (2000) 84 Cal.App.4th 383, 386.)

Under the first prong described above, the Official Proponents' interest in the litigation must be direct and immediate, as opposed to merely consequential. (*Truck Ins. Exch. v. Superior Court* (1997) 60 Cal. App. 4th 342, 346.) Whether that interest in litigation is sufficiently "direct" must be decided on the facts of each case. (*Simpson Redwood Co. v. State of California* (1987) 196 Cal. App. 3d 1192, 1200.) A "direct and immediate interest" in the litigation for purposes of permissive intervention exists when the intervenor stands to gain or lose by direct operation of the judgment, even if no specific interest in the transaction at issue exists. (*Id.*, 196 Cal. App. 3d at 1201.) An intervenor is not required to claim a pecuniary interest, nor even "a specific legal or equitable interest in the subject matter of the litigation." (*Ibid.*) Importantly, Section 387 should be liberally construed in favor of intervention. (*Ibid.*)

A. The Official Proponents Possess a Direct Interest In the Outcome of the Litigation.

As already outlined, the Official Proponents of Proposition 8 acquired an official legal role in the initiative process for Proposition 8, as prescribed by California law. The Official Proponents also stand to lose their investment of labor, funds, and reputation if Proposition 8 is inadequately defended. And the Official Proponents embody the profound right to exercise the initiative power. If this Court is to "jealously guard" that power (*Building Indus. Ass'n v. City of Camarillo*, *supra*, 41 Cal. 3d at 822), then it should allow the party that exercised that power to defend its use.

B. The Official Proponents' Involvement Would Not Enlarge the Issues Before the Court.

The Official Proponents bring no new issues to this Court with their intervention herein. The Official Proponents' unequivocal goal is

maintaining the *status quo* of California law that "only marriage between a man and a woman is valid or recognized in California." (Cal. Const. art. I, § 7.5.) In this regard, the Official Proponents seek only to clarify and defend against those arguments raised by Petitioners, and not to add or raise new or alternative claims.

As illustrated in the proposed Preliminary Opposition to the petitioners' Amended Petition (submitted concurrently with this motion to intervene), the Official Proponents seek only to address the single issue raised in the Amended Petition: whether Proposition 8 could, or could not, be proposed by initiative to amend the state Constitution. Unlike the proposed intervention of Campaign for California Families (CCF) which raises new and additional issues not raised on the Amended Petition, the Official Proponents have no intent to enlarge the issues in this writ proceeding.

C. This Lawsuit Involves the Voice of All Californians on an Important Social Issue, Thereby Outweighing any Suggestion That the Parties be able to Conduct the Lawsuit on their Own Terms.

Intervention must be granted if the reasons for intervention outweigh "the rights of the original parties to conduct their lawsuit on their own terms." (*People ex rel. Rominger*, *supra*, 147 Cal. App. 3d at 661; *see also People v. Superior Court of Ventura County* (1976) 17 Cal. 3d 732, 736 [the court must weigh the "interest of the original parties in pursuing their litigation"].)

Logically, this factor contemplates that an intervenor's direct interest could be different enough from the main controversy between the original parties that allowing the intervenor to participate would unduly interfere with the resolution of the main controversy. But in the present case, the only controversy before the Court is whether the Official Proponents could,

or could not, validly propose Proposition 8 by initiative. The Official Proponents' interest is in fact *the* subject matter of this case. It is difficult to see how the original parties have any right at all to conduct this lawsuit on their own terms and in the absence of the real parties in interest.

In *Rominger*, the court found the intervention of the Sierra Club to be proper in challenging the validity of a pesticide ordinance they believed to have a negative environmental affect. (*People ex rel. Rominger*, *supra*, 147 Cal. App. 3d at 665.) The *Rominger* court, in finding that the intervenor satisfied the third requirement for intervention, stated:

> [W]e conclude that the original parties' interest in litigating this case on their own terms does not outweigh the interests of the Sierra Club in intervening. Although the County is concerned with the protection of its residents, its interest in this case is primarily that of defending its jurisdiction to enact such pesticide control ordinances. The interest of the members of the Sierra Club, however, as direct beneficiaries of the County pesticide ordinances, stem from their concern for their own health and well-being. This interest is compelling enough that they should be permitted to intervene.

(*Ibid.*) Analogously, the Official Proponents are direct beneficiaries of the California Constitution defining marriage as being solely between a man and a woman, thus resolving the Official Proponents' concerns about their own well-being, the well-being of society, and their own right to enact voter initiatives. (Cal. Const. art. II, § 10(c).)

This last right -- the right of Californians to govern themselves through the constitutional amendment process -- is central to the Official Proponents' interests, but at best is only tangentially of interest to the Respondents. As appropriately stated by a former California Secretary of State:

> "[The initiative process] constitute[s] that safeguard which the people should retain for themselves, to supplement the work of the legislature by initiating those measures which the

> legislature either viciously or negligently fails or refuses to enact; and to hold the legislature in check, and veto or negative such measures as it may viciously or negligently enact. All objections finally and ultimately center in a distrust of democracy; in a challenge of the people to govern themselves. . . . Are the people capable of self-government? If they are, this amendment should be adopted. If they are not, this amendment should be defeated."

(*Independent Energy Producers Ass'n v. McPherson* (2006) 38 Cal. 4th 1020, 1041-42 [citation omitted].) Certainly, the parties are entitled to settle their differences. But their dispute implicates the ultimate right of Californians to self-govern. That right was uniquely exercised only by the Official Proponents—not the Petitioners, nor the Respondents –and is best defended by the Official Proponents. Where the right of self-government is at risk, rights of the original parties do not outweigh the reasons for intervention, especially where no party appears willing to vigorously defend Proposition 8.

That the Official Proponents are eager to mount a vigorous defense of Proposition 8 argues in favor of intervention. The Official Proponents have unique and weighty legal interests to preserve that are strongly impacted by the litigation yet not fully shared by any named party. These reasons for the intervention of the Official Proponents outweigh the rights of the original parties to conduct their lawsuit on their own terms and merit intervention.

V. The Committee Also Meets All Requirements for Permissive Intervention.

Under the legal standard for permissive intervention (Section II, *supra*), the Committee also qualifies for intervention and participation in this matter.

A. The Committee Possesses a Direct and Unparalleled Interest In the Outcome of the Litigation.

The Committee's ability to fulfill its purpose and further its avowed policies in the defense and finality of Proposition 8's becoming law will necessarily continue or end by the judgment in this case. The Committee's interest in this litigation is direct, and not simply consequential.

The Committee's interests in this litigation extend far beyond a general policy preference for maintaining the traditional definition of marriage. The Committee was formed by the Official Proponents, and trusted campaign organizers, who together share unique interests in Proposition 8's success on November 4, 2008. To that end, the California Legislature has granted registered ballot measure committees the unique statutory right to defend an enacted proposition, specifically contemplating cases like the one *sub judice*. (Elec. Code § 18680(m)(2).) The Committee is thus directly connected to a substantive statutory right of law which is not granted to others.

Moreover, the Committee raised an unprecedented $39 million in donations to support Proposition 8 (Bauer Decl., Exh. F, ¶ 9), together with the opposition campaign making this contest the most expensive social issue campaign in the history of the United States. (*See* OPRJN at Exh. F.) Given that a pecuniary interest is not even required for permissive intervention, this enormous investment magnifies the Committee's direct interest. Beyond the sheer magnitude of the financial investment made by the Committee in this matter, those monies provide the funds that the legislature has expressly authorized a campaign to spend in defense of the initiative it successfully passed. (Elec. Code, § 18680(m)(2).)

Accordingly, by operation of law, the Committee continues to exist for the purpose of promoting and defending Proposition 8 against legal challenges such as the current litigation, and has so represented itself to its

financial supporters. Any alteration by this Court in the result of the passage of Proposition 8 without the Committee's involvement would undoubtedly result in a direct and substantial loss of a statutory right, in addition to the pecuniary loss of approximately $37 million to the Committee.

B. The Committee's Involvement Would Not Enlarge the Issues Before the Court.

As with the Official Proponents, the Committee neither seeks nor intends to bring to this Court new issues via intervention. The Committee's unequivocal goal is maintaining the *status quo* of California law that "only marriage between a man and a woman is valid or recognized in California", and preserving its extraordinary financial investment in securing a fair election on an issue of immense social importance. In this regard, like the Official Proponents, the Committee seeks only to clarify and defend against those arguments raised by Petitioners, and not to add or raise new or alternative claims.

C. This Lawsuit Involves the Voice of All Californians on an Important Social Issue, Thereby Vitiating any Suggestion That the Parties be able to Conduct the Lawsuit on their Own Terms.

As with the Official Proponents, intervention for the Committee must be granted if the reasons for intervention outweigh "the rights of the original parties to conduct their lawsuit on their own terms." (*People ex rel. Rominger* (1983) 147 Cal. App. 3d 655, 661. *See also People v. Superior Ct. of Ventura County* (1976) 17 Cal. 3d 732, 736 [the court must weigh the "interest of the original parties in pursuing their litigation"].) Analogously to the Sierra Club's positioning in *Rominger*, the Committee's involvement herein is proper regarding this challenge. (*See* Section II.C., *supra*.) Moreover, the self-government issue is transcendent. In the

modern political economy, self-government is necessarily exercised through the association of those who seek to be so-governed, and an aggregation of their resources. The Committee's collection and expenditure of over 35 million dollars towards the passage of Proposition 8 is inextricably linked to self-government. This is why California recognizes a successful campaign's right to defend its initiative post-election.

Given the significant and unparalleled interests of the Committee, the rights of the original parties do not outweigh the reasons for intervention. To exclude the Official Proponents and the Committee from this case would be serious error.

VI. California Courts Routinely Order the Intervention of Initiative Proponents.

Many published decisions show that California courts (especially this Court) consistently have initiative proponents intervene in litigation where the validity or enforcement of those initiatives is challenged.

For example, in *20th Century Ins. Co. v. Garamendi* (1994) 8 Cal. 4th 216, this Court acknowledged that the citizen group Voter Revolt, the "proponent of Proposition 103" had intervened as a party defendant where insurance companies sued State officials to challenge the validity of Proposition 103 and regulations implementing it. (*Id.* at 241.) The Court noted the proponent's procedural involvement as a party, including the organization's separate notice of appeal and petition requesting pre-decision transfer of the matter from the Court of Appeal to this Court. (*Id.* at 269.)

Similarly, in *Amwest Sur. Ins. Co. v. Wilson* (1995) 11 Cal. 4th 1243, this Court again noted that Voter Revolt, "the organization that drafted Proposition 103 and campaigned for its passage," had intervened to help defend the initiative measure against conflicting acts of the

Legislature. (*Id.* at 1250.) Intervention was granted, even with the Governor, the Attorney General, the Insurance Commissioner, and the State Board of Equalization defending the initiative measure as party defendants. (*Id.* at 1249.)

Another example is *Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal. 3d 805, where this Court considered an original petition for writ of mandate filed by insurance companies, again alleging parts of Proposition 103 to be unconstitutional. This Court allowed the "Access to Justice Foundation" and other supporters of Proposition 103 (calling them the "proponents") to appear as real parties in interest to oppose the petition. (*Id.* at 812.) It is important to note that this Court allowed the initiative proponents to appear in that original writ proceeding as real parties in interest notwithstanding the fact that the Governor, the Attorney General, and other officers and agencies of the State were already defending the initiative measure. (*Ibid.*)

In *Legislature of State of California v. Eu* (1991) 54 Cal. 3d 492, this Court again considered a constitutional challenge against a voter-adopted initiative measure that was initiated by a petition for writ of mandate seeking original relief in the Supreme Court. (*Id.* at 499-500.) In that case, various plaintiffs alleged that the "Political Reform Act of 1990" (designated on the ballot as Proposition 140) was unconstitutional for a variety of reasons. (*Ibid.*) Even though the petitioners had named various public officials as respondents (including the Secretary of State, the state Controller, and the Board of Administration of the Public Employees Retirement System (PERS)), this Court allowed Californians for a Citizen Government, "the organization that sponsored Proposition 140," to formally intervene. (*Id.* at 500.)

In *City of Westminister v. County of Orange* (1988) 204 Cal. App. 3d 623, the plaintiff city sued for injunctive and declaratory relief in the superior court, challenging the constitutionality of Proposition 62, a

statewide statutory initiative which threatened the city's ability to collect a recently enacted utility users' tax. (*Id.* at 626.) The appellate decision acknowledged, without question or criticism, that Proposition 62's sponsor, an organization called the California Tax Reduction Movement, had "intervened in the action to defend the measure it had sponsored." (*Id.* at 627.) These cases from this Court strongly support the Official Proponents' intervention herein.

Numerous other cases demonstrate that California courts routinely allow official proponents of initiative measures to intervene in litigation where their initiatives are challenged. (*See, e.g.*, *Citizens for Jobs and the Economy v. County of Orange* (2002) 94 Cal. App. 4th 1311, 1322; *People ex rel. Deukmejian v. County of Mendocino* (1984) 36 Cal. 3d 476, 480 n.1; *Community Health Ass'n v. Board of Supervisors of the County of Humboldt* (1983) 146 Cal. App. 3d 990, 992; *Simac Design, Inc. v. Alciati* (1979) 92 Cal. App. 3d 146, 151-153 [groups of individuals who drafted and campaigned for local initiative measure permitted to intervene in action challenging the initiative after it was enacted].)

In contrast, those cases where intervention is not granted typically involve non-proponents who, unsurprisingly, lack the requisite "direct interest." Consider *Socialist Workers 1974 California Campaign Comm. v. Brown* (1976) 53 Cal. App. 3d 879), where multiple plaintiffs challenged the constitutionality of recently enacted campaign disclosure laws. (*Id.* at 883-85.) The group Common Cause attempted to intervene to help defend the statutes, alleging that some of its members are residents of California, and that the group's overall purpose was "to work for the improvement of political and governmental institutions and processes on federal, state and local levels in the United States." (*Id.* at 886.) Common Cause did not show any direct involvement in the enactment of the statutes challenged. Thus, the court found only an indirect and consequential interest in a final

judgment of validity or invalidity because Common Cause stood "in the same position as that of all of the people of California." (*Id.* at 892.)

As the Court of Appeal said in *People ex rel. Rominger v. County of Trinity* (1983) 147 Cal. App. 3d 655, "the mere support of a statute by a person" and a "general political interest in upholding a statute" are not sufficient interests for purposes of permissive intervention. (*Id.*, 147 Cal. App. 3d at 662.) However, where an intervener organization (or its members and the persons whom it represents) participated directly in the enactment of a statute being challenged, the intervener possesses "more than a general interest in upholding the statute in question" – rather, the intervener has a "specific interest that would be directly affected in a substantial way by the outcome of the litigation." (*Id.* at 662.)

The Official Proponents in this case are exactly the type of proposed intervenors that hold the interests of individuals who participated directly in the enactment of the initiative measure being challenged. (*See* Statement of Facts, *supra.*) Thus, their interest is distinguished from the "general interest" in seeing the laws enforced which is shared by public at large. They did not merely educate or support Proposition 8, but were solely responsible for Proposition 8's entire existence. Indeed, with the initiative process representing the ultimate exercise of the people's inherent legislative power, the Official Proponents are in a sense representing the interest of that ultimate legislature, the people.

Federal decisions track those of California courts and affirm the propriety of proponent intervention herein. For example, in *National Audubon Soc'y, Inc. v. Davis* (9th Cir. 2002) 307 F.3d 835, the "sponsors and other supporters" of Proposition 4, an environmental protection measure passed by California voters, were permitted to intervene and help defend the initiative against a legal challenge, even though the "sponsors

present[ed] essentially the same viewpoint as the state defendants." (*Id.* at 842.)

In *California Teachers Ass'n v. State Bd. of Educ.* (9th Cir. 2001) 271 F.3d 1141, the California Teachers Association sued various state education entities seeking to have Proposition 227, the voter-approved ballot initiative entitled "English Language in Public Schools," declared unconstitutional and its enforcement enjoined. (*Id.* at 1145.) In that case, Ron Unz, "the sponsor of Proposition 227," was permitted to intervene as a defendant. (*Id.* at 1157 n.3 (Tashima, Circuit Judge, dissenting).)

Each of the cases cited above implicitly or explicitly supports an initiative proponent's direct interest in the outcome of litigation over an initiative such that mandatory intervention is warranted. We found no published decision holding to the contrary. The long-standing case law demonstrates an implicit rule mandating intervention by proponents of California ballot initiatives.

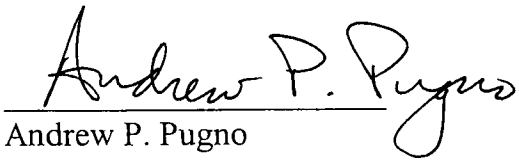
CONCLUSION

For the foregoing reasons, the motion of the Official Proponents and Committee to intervene as Real Parties in Interest should be granted.

Dated: November 17, 2008

Respectfully submitted,

LAW OFFICES OF ANDREW P. PUGNO
ANDREW P. PUGNO

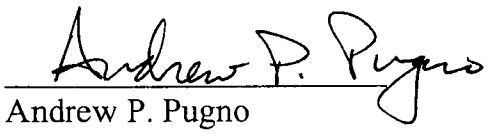


Andrew P. Pugno

Attorney for Proposed Intervenor Real Parties in Interest

RULE 8.204(C)(1) CERTIFICATE OF COMPLIANCE

Pursuant to Rule 8.204(c)(1) of the California Rules of Court, counsel for Proposed Intervenors hereby certifies that this MOTION TO INTERVENE AS REAL PARTIES INTEREST BY PROPOSITION 8 OFFICIAL PROPONENTS, ET AL. is proportionately spaced, has a typeface of 13 points or more, and contains 9,417 words, including footnotes but excluding the Table of Contents, Table of Authorities, and Certificate of Compliance, as calculated by using the word count feature in Microsoft Word.



Andrew P. Pugno

Attorney for Proposed Intervenor
Real Parties in Interest

APPENDIX OF EXHIBITS

Exhibit Tab	Document
A.	DECLARATION OF OFFICIAL PROPONENT DENNIS HOLLINGSWORTH
B.	DECLARATION OF OFFICIAL PROPONENT GAIL J. KNIGHT
C.	DECLARATION OF OFFICIAL PROPONENT MARTIN F. GUTIERREZ
D.	DECLARATION OF OFFICIAL PROPONENT HAK-SHING WILLIAM TAM
E.	DECLARATION OF OFFICIAL PROPONENT MARK A. JANSSON
F.	DECLARATION OF TREASURER DAVID BAUER

DECLARATION OF
OFFICIAL PROPONENT DENNIS HOLLINGSWORTH

I, Dennis Hollingsworth, declare as follows:

1. I am a resident, taxpayer, and registered elector of the County of Riverside, State of California. I submit this declaration in support of the Official Proponents' Motion to Intervene. I have personal knowledge of the facts stated herein and if called upon to testify I could, and would, competently testify to the facts stated below.

2. Under Article II, Section 8 of the California Constitution, I have a personal right as an elector "to propose statutes and amendments to the Constitution" by the initiative process.

3. As one of the five Official Proponents of Proposition 8, I have exercised my constitutional right to propose Proposition 8 as an initiative amendment to the Constitution in the manner described below.

4. The present case, in which I wish to intervene as an Official Proponent, directly challenges the exercise of my constitutional rights, claiming that I do not have the power to propose Proposition 8 as an initiative on the grounds that it is a constitutional "revision" that may be proposed only by a vote of the Legislature.

5. My constitutional right as an Official Proponent to propose Proposition 8 by initiative will be judicially determined in this case. My personal interest would be directly, immediately, and adversely affected by a judgment (as requested by Petitioners) determining that I have no constitutional right to propose Proposition 8 as an initiative amendment to the state Constitution.

6. As an Official Proponent of Proposition 8, I assert an individualized, personal, and constitutionally-based interest that is *distinguishable* from the generalized public policy interest in limiting

marriage to a man and a woman, shared by of the majority of California voters who voted in favor of Proposition 8.

7. In October 2008, I supervised the preparation of the appropriate language for Proposition 8, and executed and submitted the necessary forms and documents prescribed by the Elections Code to the Attorney General for preparation of a title and summary of the chief purpose and points of Proposition 8.

8. As an Official Proponent, under Elections Code section 9004 I was responsible for payment of the filing fee to begin the initiative process, I was entitled by law to have the Attorney General draft a title and summary for the measure, and I was the only person authorized to submit amendments to the measure.

9. Under Elections Code section 342, I hold the status of an "Official Proponent" of Proposition 8 because I submitted a draft of the petition proposing Proposition 8 by initiative to the Attorney General with a request that he prepare a title and summary of the chief purpose and points of the proposed measure.

10. To become an Official Proponent, I was also required by Elections Code section 9608 to execute and submit to the Attorney General a certification acknowledging that it is a misdemeanor under state law to allow the signatures on an initiative petition to be used for any purpose other than qualification of the proposed measure for the ballot, and certifying that I will not allow the signatures for Proposition 8 to be used for any purpose other than qualification of the measure for the ballot.

11. On November 29, 2007, the Attorney General issued a Title and Summary for petitions circulated to qualify Proposition 8 for the ballot.

12. As an Official Proponent, I had official and unique duties to perform and rights to exercise in the initiative process prescribed by the California Constitution and the Elections Code.

13. As an Official Proponent, I was legally responsible for preparing a petition form for Proposition 8, compliant with the requirements of Elections Code sections 9001, 9008, 9012, and 9014.

14. As an Official Proponent, I endorsed *ProtectMarriage.com – Yes on 8, A Project of California Renewal* (a primarily formed ballot measure committee registered with the Secretary of State) to wage a petition-gathering campaign to qualify Proposition 8 for the ballot.

15. Before allowing signatures to be collected for Proposition 8, as an Official Proponent I was required by Elections Code section 9609 to obtain and keep on file an executed certification by each person, company official, or other organizational officer in charge of signature gathering, certifying that he or she will not allow the signatures for Proposition 8 to be used for any purpose other than qualification of the measure for the ballot.

16. As an Official Proponent, I was responsible under Elections Code section 9607 for ensuring that both volunteers and paid signature-gatherers for Proposition 8 received instruction on the requirements and prohibitions imposed by state law with respect to circulation of the petition and signature gathering thereon, with an emphasis on the prohibition on the use of signatures on an initiative petition for a purpose other than qualification of the proposed measure for the ballot.

17. As an Official Proponent, I was responsible for obtaining at least 694,354 valid petition signatures within a maximum of 150 days between November 29, 2007 and April 28, 2008.

18. As an Official Proponent, I was responsible for ensuring that each petition circulator who obtained signatures executed the declaration of circulator on each petition sheet, under penalty of perjury and including each circulator's signature, date, and place of signing in accordance with § 2015.5 of the California Code of Civil Procedure.

19. As an Official Proponent, I had the exclusive statutory right

under Elections Code section 9032 to file the petitions for Proposition 8 with county elections officials for signature verification. No other person could submit petitions for signature verification.

20. As an Official Proponent, I authorized the official petitions, bearing the signatures of over 1.2 million people, to be submitted to county elections officials on April 24, 2008 for signature verification.

21. As an Official Proponent, I was entitled to receive special notices during the signature verification process conducted by county elections officials and the Secretary of State, pursuant to Elections Code sections 9030, 9031, and 9033.

22. As an Official Proponent, on June 2, 2008 I was notified by the Secretary of State that Proposition 8 had been certified to have received the required number of voter signatures and was declared qualified for the statewide November ballot.

23. As an Official Proponent, I had exclusive statutory authority under Elections Code section 9067(b) to designate the arguments and rebuttal arguments for inclusion in the statewide voter pamphlet in favor of Proposition 8.

24. After Proposition 8 qualified for the ballot, I was sued, in my capacity as an Official Proponent, in a pre-election attempt to have Proposition 8 removed from the ballot on grounds that it is a constitutional "revision" that I cannot propose by initiative. As an Official Proponent, through counsel I litigated against the petition in defense of my right to propose Preposition 8 as an initiative amendment to the Constitution. (*Bennett v. Bowen (Hollingsworth et al.),* California Supreme Court Case No. S164520, Dismissed 7/16/2008.) The present case in which I wish to intervene is based on the same legal challenge as the pre-election litigation, i.e., a claim that I have no power to propose Proposition 8 by initiative because it is a constitutional "revision."

25. In the same pre-election case, I was also sued, in my capacity as an Official Proponent, on grounds that the title and summary prepared by the Attorney General to appear on circulated petitions for Proposition 8 had been false and misleading. As an Official Proponent, through counsel I also litigated in defense of the propriety of the title and summary appearing on the official petitions for Proposition 8. (*Bennett v. Bowen (Hollingsworth et al.),* California Supreme Court Case No. S164520, Dismissed 7/16/2008.)

26. As an Official Proponent, I also invested substantial time, effort, reputation and personal resources in campaigning for passage of Proposition 8. For example, I authored campaign literature that was mailed to millions of California voters, and helped raise over $2 million for the campaign to pass Proposition 8 into law.

27. My right as an Official Proponent to propose Proposition 8 by initiative is directly challenged in the present case in which I wish to intervene. My constitutional right to propose Proposition 8 by initiative is a personal interest of such a direct, immediate and individualized nature that I will personally either gain or lose by the direct legal operation and effect of the judgment in this case.

28. I do not feel that any other party in this case will adequately represent my interests in defense of my constitutional and statutory rights as an Official Proponent to propose Proposition 8 by initiative.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 14th day of November, 2008, at Wailea, Maui, Hawaii.

_____

Dennis Hollingsworth

25. In the same pre-election case, I was also sued, in my capacity as an Official Proponent, on grounds that the title and summary prepared by the Attorney General to appear on circulated petitions for Proposition 8 had been false and misleading. As an Official Proponent, through counsel I also litigated in defense of the propriety of the title and summary appearing on the official petitions for Proposition 8. (*Bennett v. Bowen (Hollingsworth et al.)*, California Supreme Court Case No. S164520, Dismissed 7/16/2008.)

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27. My right as an Official Proponent to propose Proposition 8 by initiative is directly challenged in the present case in which I wish to intervene. My constitutional right to propose Proposition 8 by initiative is a personal interest of such a direct, immediate and individualized nature that I will personally either gain or lose by the direct legal operation and effect of the judgment in this case.

28. I do not feel that any other party in this case will adequately represent my interests in defense of my constitutional and statutory rights as an Official Proponent to propose Proposition 8 by initiative.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 14th day of November, 2008, at Wailea, Maui, Hawaii.

Dennis Hollingsworth

DECLARATION OF OFFICIAL PROPONENT GAIL J. KNIGHT

I, Gail J. Knight, declare as follows:

1. I am a resident, taxpayer, and registered elector of the County of Los Angeles, State of California. I submit this declaration in support of the Official Proponents' Motion to Intervene. I have personal knowledge of the facts stated herein and if called upon to testify I could, and would, competently testify to the facts stated below.

2. Under Article II, Section 8 of the California Constitution, I have a personal right as an elector "to propose statutes and amendments to the Constitution" by the initiative process.

3. As one of the five Official Proponents of Proposition 8, I have exercised my constitutional right to propose Proposition 8 as an initiative amendment to the Constitution in the manner described below.

4. The present case, in which I wish to intervene as an Official Proponent, directly challenges the exercise of my constitutional rights, claiming that I do not have the power to propose Proposition 8 as an initiative on the grounds that it is a constitutional "revision" that may be proposed only by a vote of the Legislature.

5. My constitutional right as an Official Proponent to propose Proposition 8 by initiative will be judicially determined in this case. My personal interest would be directly, immediately, and adversely affected by a judgment (as requested by Petitioners) determining that I have no constitutional right to propose Proposition 8 as an initiative amendment to the state Constitution.

6. As an Official Proponent of Proposition 8, I assert an individualized, personal, and constitutionally-based interest that is *distinguishable* from the generalized public policy interest in limiting

marriage to a man and a woman, shared by of the majority of California voters who voted in favor of Proposition 8.

7. In October 2008, I supervised the preparation of the appropriate language for Proposition 8, and executed and submitted the necessary forms and documents prescribed by the Elections Code to the Attorney General for preparation of a title and summary of the chief purpose and points of Proposition 8.

8. As an Official Proponent, under Elections Code section 9004 I was responsible for payment of the filing fee to begin the initiative process, I was entitled by law to have the Attorney General draft a title and summary for the measure, and I was the only person authorized to submit amendments to the measure.

9. Under Elections Code section 342, I hold the status of an "Official Proponent" of Proposition 8 because I submitted a draft of the petition proposing Proposition 8 by initiative to the Attorney General with a request that he prepare a title and summary of the chief purpose and points of the proposed measure.

10. To become an Official Proponent, I was also required by Elections Code section 9608 to execute and submit to the Attorney General a certification acknowledging that it is a misdemeanor under state law to allow the signatures on an initiative petition to be used for any purpose other than qualification of the proposed measure for the ballot, and certifying that I will not allow the signatures for Proposition 8 to be used for any purpose other than qualification of the measure for the ballot.

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12. As an Official Proponent, I had official and unique duties to perform and rights to exercise in the initiative process prescribed by the California Constitution and the Elections Code.

13. As an Official Proponent, I was legally responsible for preparing a petition form for Proposition 8, compliant with the requirements of Elections Code sections 9001, 9008, 9012, and 9014.

14. As an Official Proponent, I endorsed *ProtectMarriage.com – Yes on 8, A Project of California Renewal* (a primarily formed ballot measure committee registered with the Secretary of State) to wage a petition-gathering campaign to qualify Proposition 8 for the ballot.

15. Before allowing signatures to be collected for Proposition 8, as an Official Proponent I was required by Elections Code section 9609 to obtain and keep on file an executed certification by each person, company official, or other organizational officer in charge of signature gathering, certifying that he or she will not allow the signatures for Proposition 8 to be used for any purpose other than qualification of the measure for the ballot.

16. As an Official Proponent, I was responsible under Elections Code section 9607 for ensuring that both volunteers and paid signature-gatherers for Proposition 8 received instruction on the requirements and prohibitions imposed by state law with respect to circulation of the petition and signature gathering thereon, with an emphasis on the prohibition on the use of signatures on an initiative petition for a purpose other than qualification of the proposed measure for the ballot.

17. As an Official Proponent, I was responsible for obtaining at least 694,354 valid petition signatures within a maximum of 150 days between November 29, 2007 and April 28, 2008.

18. As an Official Proponent, I was responsible for ensuring that each petition circulator who obtained signatures executed the declaration of circulator on each petition sheet, under penalty of perjury and including each circulator's signature, date, and place of signing in accordance with § 2015.5 of the California Code of Civil Procedure.

19. As an Official Proponent, I had the exclusive statutory right

under Elections Code section 9032 to file the petitions for Proposition 8 with county elections officials for signature verification. No other person could submit petitions for signature verification.

20. As an Official Proponent, I authorized the official petitions, bearing the signatures of over 1.2 million people, to be submitted to county elections officials on April 24, 2008 for signature verification.

21. As an Official Proponent, I was entitled to receive special notices during the signature verification process conducted by county elections officials and the Secretary of State, pursuant to Elections Code sections 9030, 9031, and 9033.

22. As an Official Proponent, on June 2, 2008 I was notified by the Secretary of State that Proposition 8 had been certified to have received the required number of voter signatures and was declared qualified for the statewide November ballot.

23. As an Official Proponent, I had exclusive statutory authority under Elections Code section 9067(b) to designate the arguments and rebuttal arguments for inclusion in the statewide voter pamphlet in favor of Proposition 8.

24. After Proposition 8 qualified for the ballot, I was sued, in my capacity as an Official Proponent, in a pre-election attempt to have Proposition 8 removed from the ballot on grounds that it is a constitutional "revision" that I cannot propose by initiative. As an Official Proponent, through counsel I litigated against the petition in defense of my right to propose Preposition 8 as an initiative amendment to the Constitution. (*Bennett v. Bowen (Hollingsworth et al.),* California Supreme Court Case No. S164520, Dismissed 7/16/2008.) The present case in which I wish to intervene is based on the same legal challenge as the pre-election litigation, i.e., a claim that I have no power to propose Proposition 8 by initiative because it is a constitutional "revision."

25. In the same pre-election case, I was also sued, in my capacity as an Official Proponent, on grounds that the title and summary prepared by the Attorney General to appear on circulated petitions for Proposition 8 had been false and misleading. As an Official Proponent, through counsel I also litigated in defense of the propriety of the title and summary appearing on the official petitions for Proposition 8. (*Bennett v. Bowen (Hollingsworth et al.)*, California Supreme Court Case No. S164520, Dismissed 7/16/2008.)

26. As an Official Proponent, I also invested substantial reputation and personal resources in campaigning for passage of Proposition 8. For example, I personally attended and spoke at a major rally for Proposition 8, and donated personal funds several times to the campaign to pass Proposition 8 into law.

27. My right as an Official Proponent to propose Proposition 8 by initiative is directly challenged in the present case in which I wish to intervene. My constitutional right to propose Proposition 8 by initiative is a personal interest of such a direct, immediate and individualized nature that I will personally either gain or lose by the direct legal operation and effect of the judgment in this case.

28. I do not feel that any other party in this case will adequately represent my interests in defense of my constitutional and statutory rights as an Official Proponent to propose Proposition 8 by initiative.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 14th day of November, 2008, at Palmdale, California.

Gail J. Knight

Gail J. Knight

DECLARATION OF
OFFICIAL PROPONENT MARTIN F. GUTIERREZ

I, Martin F. Gutierrez, declare as follows:

1. I am a resident, taxpayer, and registered elector of the County of Yolo, State of California. I submit this declaration in support of the Official Proponents' Motion to Intervene. I have personal knowledge of the facts stated herein and if called upon to testify I could, and would, competently testify to the facts stated below.

2. Under Article II, Section 8 of the California Constitution, I have a personal right as an elector "to propose statutes and amendments to the Constitution" by the initiative process.

3. As one of the five Official Proponents of Proposition 8, I have exercised my constitutional right to propose Proposition 8 as an initiative amendment to the Constitution in the manner described below.

4. The present case, in which I wish to intervene as an Official Proponent, directly challenges the exercise of my constitutional rights, claiming that I do not have the power to propose Proposition 8 as an initiative on the grounds that it is a constitutional "revision" that may be proposed only by a vote of the Legislature.

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marriage to a man and a woman, shared by of the majority of California voters who voted in favor of Proposition 8.

7. In October 2008, I supervised the preparation of the appropriate language for Proposition 8, and executed and submitted the necessary forms and documents prescribed by the Elections Code to the Attorney General for preparation of a title and summary of the chief purpose and points of Proposition 8.

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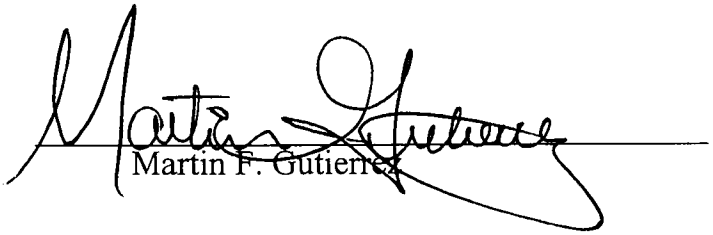
27. I do not feel that any other party in this case will adequately represent my interests in defense of my constitutional and statutory rights as an Official Proponent to propose Proposition 8 by initiative.

///

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 14th day of November, 2008, at Folsom, California.



Martin F. Gutierrez

DECLARATION OF OFFICIAL PROPONENT HAK-SHING WILLIAM TAM

I, Hak-Shing William Tam, declare as follows:

1. I am a resident, taxpayer, and registered elector of the City and County of San Francisco, State of California. I submit this declaration in support of the Official Proponents' Motion to Intervene. I have personal knowledge of the facts stated herein and if called upon to testify I could, and would, competently testify to the facts stated below.

2. Under Article II, Section 8 of the California Constitution, I have a personal right as an elector "to propose statutes and amendments to the Constitution" by the initiative process.

3. As one of the five Official Proponents of Proposition 8, I have exercised my constitutional right to propose Proposition 8 as an initiative amendment to the Constitution in the manner described below.

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13. As an Official Proponent, I was legally responsible for preparing a petition form for Proposition 8, compliant with the requirements of Elections Code sections 9001, 9008, 9012, and 9014.

14. As an Official Proponent, I endorsed *ProtectMarriage.com – Yes on 8, A Project of California Renewal* (a primarily formed ballot measure committee registered with the Secretary of State) to wage a petition-gathering campaign to qualify Proposition 8 for the ballot.

15. Before allowing signatures to be collected for Proposition 8, as an Official Proponent I was required by Elections Code section 9609 to obtain and keep on file an executed certification by each person, company official, or other organizational officer in charge of signature gathering, certifying that he or she will not allow the signatures for Proposition 8 to be used for any purpose other than qualification of the measure for the ballot.

16. As an Official Proponent, I was responsible under Elections Code section 9607 for ensuring that both volunteers and paid signature-gatherers for Proposition 8 received instruction on the requirements and prohibitions imposed by state law with respect to circulation of the petition and signature gathering thereon, with an emphasis on the prohibition on the use of signatures on an initiative petition for a purpose other than qualification of the proposed measure for the ballot.

17. As an Official Proponent, I was responsible for obtaining at least 694,354 valid petition signatures within a maximum of 150 days between November 29, 2007 and April 28, 2008.

18. As an Official Proponent, I was responsible for ensuring that each petition circulator who obtained signatures executed the declaration of circulator on each petition sheet, under penalty of perjury and including each circulator's signature, date, and place of signing in accordance with § 2015.5 of the California Code of Civil Procedure.

19. As an Official Proponent, I had the exclusive statutory right under Elections Code section 9032 to file the petitions for Proposition 8 with county elections officials for signature verification. No other person could submit petitions for signature verification.

20. As an Official Proponent, I authorized the official petitions, bearing the signatures of over 1.2 million people, to be submitted to county elections officials on April 24, 2008 for signature verification.

21. As an Official Proponent, I was entitled to receive special notices during the signature verification process conducted by county elections officials and the Secretary of State, pursuant to Elections Code sections 9030, 9031, and 9033.

22. As an Official Proponent, on June 2, 2008 I was notified by the Secretary of State that Proposition 8 had been certified to have received the required number of voter signatures and was declared qualified for the statewide November ballot.

23. As an Official Proponent, I had exclusive statutory authority under Elections Code section 9067(b) to designate the arguments and rebuttal arguments for inclusion in the statewide voter pamphlet in favor of Proposition 8.

24. After Proposition 8 qualified for the ballot, I was sued, in my capacity as an Official Proponent, in a pre-election attempt to have Proposition 8 removed from the ballot on grounds that it is a constitutional "revision" that I cannot propose by initiative. As an Official Proponent, through counsel I litigated against the petition in defense of my right to propose Preposition 8 as an initiative amendment to the Constitution. (*Bennett v. Bowen (Hollingsworth et al.)*, California Supreme Court Case No. S164520, Dismissed 7/16/2008.) The present case in which I wish to intervene is based on the same legal challenge as the pre-election litigation, i.e., a claim that I have no power to propose Proposition 8 by initiative

because it is a constitutional "revision."

25. In the same pre-election case, I was also sued, in my capacity as an Official Proponent, on grounds that the title and summary prepared by the Attorney General to appear on circulated petitions for Proposition 8 had been false and misleading. As an Official Proponent, through counsel I also litigated in defense of the propriety of the title and summary appearing on the official petitions for Proposition 8. (*Bennett v. Bowen (Hollingsworth et al.),* California Supreme Court Case No. S164520, Dismissed 7/16/2008.)

26. As an Official Proponent, I also invested substantial time, effort, reputation and resources in campaigning for passage of Proposition 8. For example, I have dedicated the majority of my productive time since January 2008 toward qualifying Proposition 8 for the ballot and campaigning for its passage. I personally organized several rallies in support of Proposition 8 attended by thousands of voters, organized volunteers throughout the Asian-American community, and raised thousands of dollars for the campaign to pass Proposition 8.

27. My right as an Official Proponent to propose Proposition 8 by initiative is directly challenged in the present case in which I wish to intervene. My constitutional right to propose Proposition 8 by initiative is a personal interest of such a direct, immediate and individualized nature that I will personally either gain or lose by the direct legal operation and effect of the judgment in this case.

28. I do not feel that any other party in this case will adequately represent my interests in defense of my constitutional and statutory rights as an Official Proponent to propose Proposition 8 by initiative.

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 14th day of November, 2008, at San Francisco, California.

Hak-Shing William Tam

DECLARATION OF
OFFICIAL PROPONENT MARK A. JANSSON

I, Mark A. Jansson, declare as follows:

1. I am a resident, taxpayer, and registered elector of the County of Sacramento, State of California. I submit this declaration in support of the Official Proponents' Motion to Intervene. I have personal knowledge of the facts stated herein and if called upon to testify I could, and would, competently testify to the facts stated below.

2. Under Article II, Section 8 of the California Constitution, I have a personal right as an elector "to propose statutes and amendments to the Constitution" by the initiative process.

3. As one of the five Official Proponents of Proposition 8, I have exercised my constitutional right to propose Proposition 8 as an initiative amendment to the Constitution in the manner described below.

4. The present case, in which I wish to intervene as an Official Proponent, directly challenges the exercise of my constitutional rights, claiming that I do not have the power to propose Proposition 8 as an initiative on the grounds that it is a constitutional "revision" that may be proposed only by a vote of the Legislature.

5. My constitutional right as an Official Proponent to propose Proposition 8 by initiative will be judicially determined in this case. My personal interest would be directly, immediately, and adversely affected by a judgment (as requested by Petitioners) determining that I have no constitutional right to propose Proposition 8 as an initiative amendment to the state Constitution.

6. As an Official Proponent of Proposition 8, I assert an individualized, personal, and constitutionally-based interest that is *distinguishable* from the generalized public policy interest in limiting

marriage to a man and a woman, shared by of the majority of California voters who voted in favor of Proposition 8.

7. In October 2008, I supervised the preparation of the appropriate language for Proposition 8, and executed and submitted the necessary forms and documents prescribed by the Elections Code to the Attorney General for preparation of a title and summary of the chief purpose and points of Proposition 8.

8. As an Official Proponent, under Elections Code section 9004 I was responsible for payment of the filing fee to begin the initiative process, I was entitled by law to have the Attorney General draft a title and summary for the measure, and I was the only person authorized to submit amendments to the measure.

9. Under Elections Code section 342, I hold the status of an "Official Proponent" of Proposition 8 because I submitted a draft of the petition proposing Proposition 8 by initiative to the Attorney General with a request that he prepare a title and summary of the chief purpose and points of the proposed measure.

10. To become an Official Proponent, I was also required by Elections Code section 9608 to execute and submit to the Attorney General a certification acknowledging that it is a misdemeanor under state law to allow the signatures on an initiative petition to be used for any purpose other than qualification of the proposed measure for the ballot, and certifying that I will not allow the signatures for Proposition 8 to be used for any purpose other than qualification of the measure for the ballot.

11. On November 29, 2007, the Attorney General issued a Title and Summary for petitions circulated to qualify Proposition 8 for the ballot.

12. As an Official Proponent, I had official and unique duties to perform and rights to exercise in the initiative process prescribed by the California Constitution and the Elections Code.

13. As an Official Proponent, I was legally responsible for preparing a petition form for Proposition 8, compliant with the requirements of Elections Code sections 9001, 9008, 9012, and 9014.

14. As an Official Proponent, I endorsed *ProtectMarriage.com – Yes on 8, A Project of California Renewal* (a primarily formed ballot measure committee registered with the Secretary of State) to wage a petition-gathering campaign to qualify Proposition 8 for the ballot.

15. Before allowing signatures to be collected for Proposition 8, as an Official Proponent I was required by Elections Code section 9609 to obtain and keep on file an executed certification by each person, company official, or other organizational officer in charge of signature gathering, certifying that he or she will not allow the signatures for Proposition 8 to be used for any purpose other than qualification of the measure for the ballot.

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25. In the same pre-election case, I was also sued, in my capacity as an Official Proponent, on grounds that the title and summary prepared by the Attorney General to appear on circulated petitions for Proposition 8 had been false and misleading. As an Official Proponent, through counsel I also litigated in defense of the propriety of the title and summary appearing on the official petitions for Proposition 8. (*Bennett v. Bowen (Hollingsworth et al.),* California Supreme Court Case No. S164520, Dismissed 7/16/2008.)

26. As an Official Proponent, I also invested substantial time, effort, reputation and resources in qualifying Proposition 8 for the ballot and campaigning for its passage. For example, I have spent many hundreds of hours of time since January 2008 working on a daily basis in support of Proposition 8, including obtaining petition signatures to qualify for the ballot, traveling throughout the state to organize volunteers and work parties, speaking to community organizations, meeting with leaders of the various ethnic communities in California, and serving on the executive committee of the official campaign to pass Proposition 8.

27. My right as an Official Proponent to propose Proposition 8 by initiative is directly challenged in the present case in which I wish to intervene. My constitutional right to propose Proposition 8 by initiative is a personal interest of such a direct, immediate and individualized nature that I will personally either gain or lose by the direct legal operation and effect of the judgment in this case.

28. I do not feel that any other party in this case will adequately represent my interests in defense of my constitutional and statutory rights as an Official Proponent to propose Proposition 8 by initiative.

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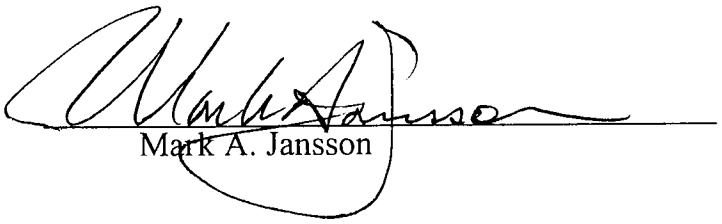
I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 14th day of November, 2008, at Folsom, California.



Mark A. Jansson

DECLARATION OF
TREASURER DAVID BAUER

I, David Bauer, declare as follows:

1. I am the Treasurer of the official campaign committee for Proposition 8: *ProtectMarriage.com – Yes on 8, a Project of California Renewal*, FPPC ID #1302592 (the "Committee"). I submit this declaration in support of the Committee's Motion to Intervene. I have personal knowledge of the facts stated herein and if called upon to testify I could, and would, competently testify to the facts stated below.

2. In November 2007, I was requested by the Official Proponents of Proposition 8 and other members of a broad-based coalition of community leaders to serve as Treasurer of the official campaign in favor of Proposition 8. I agreed to serve as Treasurer for the Committee.

3. On November 27, 2007, I executed and filed with the Secretary of State a "Statement of Organization" for the purpose of creating and registering the Committee as a "primarily formed ballot measure committee" under the Political Reform Act.

4. Pursuant Government Code section 82047.5(b), the Committee has the legal status of a "primarily formed committee" because the Committee exists primarily to support just one ballot measure: Proposition 8.

5. Pursuant to Government Code section 82048.7, the Committee is "sponsored" by California Renewal, a California nonprofit organization, because that organization is responsible for setting the policies for soliciting contributions and making expenditures of committee funds.

6. The Official Proponents of Proposition 8 designated the Committee as the official campaign committee responsible for receiving all

contributions and making all expenditures in the campaign to qualify Proposition 8 for the ballot and pass it into law at the November General Election.

7. As the Treasurer, I accounted for the raising and spending of all campaign contributions to pay for professional signature gathering, campaign personnel, television and radio advertisements, newspaper advertisements, media relations, and all other campaign expenses to promote the passage of Proposition 8. In this role, I invested a substantial amount of personal time and effort in promoting the enactment of Proposition 8.

8. Since it was formed, the Committee has received financial contributions from over 83,000 individual donors, the vast majority of which are registered California voters.

9. From these financial supporters, the Committee has received over $39 million in total contributions for the official campaign to pass Proposition 8.

10. Subject only to the statutory powers and duties reserved exclusively to the Official Proponents by law, the Committee was directly responsible for all other aspects of the campaign to qualify Proposition 8 for the ballot and enact it into law.

11. In the campaign, the Committee spent over *$37 million* of its financial resources to collect the required number of petition signatures to put Proposition 8 on the ballot and to wage a statewide campaign to persuade a majority of California voters to approve it.

12. After the election, the Committee currently has remaining surplus funds of over $1.6 million.

13. Pursuant to Elections Code section 18680(m)(2), the Committee is expressly authorized to expend these surplus funds for, among other things, "attorney's fees and other costs in connection with

litigation where the litigation arises directly out of ... The enactment, by the initiative process, of any ... constitutional amendment."

14. Because of the Committee's statutorily-authorized role in providing for the legal defense of Proposition 8, and the Committee's enormous pecuniary investment of over $37 million in the campaign to pass Proposition 8 into law, the Committee has a unique stake, not shared by the general public, in any litigation where it may be determined that Proposition 8 could not be lawfully proposed and enacted by initiative.

15. Therefore, the Committee stands to gain or lose directly by the final judgment in this case insofar as the Petitioners seek a judicial determination that Proposition 8 could not lawfully be proposed by initiative, but only by the "revision" process.

16. If the final judgment in this case declares Proposition 8 could not be proposed by initiative, all of efforts and pecuniary investment of the Committee and its 83,000 financial supporters will be nullified.

17. I do not feel that any other party can adequately represent the interests of the Committee in this litigation.

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 15th day of November, 2008, at Sacramento, California.

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David Bauer

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David Bauer