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

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

23 v.

24 ARNOLD SCHWARZENEGGER, *et al.*,
25 Defendants,
and
26 PROPOSITION 8 OFFICIAL PROPONENTS
27 DENNIS HOLLINGSWORTH, *et al.*,
28 Defendant-Intervenors.

CASE NO. 09-CV-2292 VRW

**PLAINTIFFS' AND PLAINTIFF-
INTERVENOR'S NOTICE OF MOTION
AND MOTION *IN LIMINE* TO EXCLUDE
PORTIONS OF THE EXPERT REPORT,
OPINIONS, AND TESTIMONY OF
KENNETH P. MILLER**

PLAINTIFFS' MIL NO. 2 OF 2

*[Declaration of Jeremy M. Goldman In Support
and Proposed Order Filed Concurrently
Herewith]*

Date: December 16, 2009 [Pre-Trial Conf.]
Time: 10:00 a.m.
Judge: Chief Judge Walker
Location: Courtroom 6, 17th Floor
Trial Date: January 11, 2010

TO THE PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on December 16, 2009, at 10:00 a.m., or as soon thereafter as counsel may be heard, in the United States District Court for the Northern District of California, San Francisco Division, Courtroom 6, located at 450 Golden Gate Avenue, San Francisco, California 94102, Plaintiffs Kristin M. Perry, Sandra B. Stier, Paul T. Katami, and Jeffrey J. Zarillo (collectively, “Plaintiffs”) and Plaintiff-Intervenor the City and County of San Francisco (“Plaintiff-Intervenor”) will and hereby do move *in limine* pursuant to Fed. R. Civ. P. 37(c)(1) for an order (1) striking Paragraphs 53 through 72 of the rebuttal expert report of Kenneth P. Miller, Ph.D., who was designated as a rebuttal expert witness in this matter by Defendant-Intervenors Dennis Hollingsworth, Gail J. Knight, Martin F. Gutierrez, Hak-Shing William Tam, Mark A. Jansson, and ProtectMarriage.com – Yes on 8, A Project of California Renewal (collectively, “Proponents”), and (2) precluding Dr. Miller from offering any opinions or testimony at trial relating to the topics or materials in the stricken paragraphs.

TABLE OF CONTENTS

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

MEMORANDUM OF POINTS AND AUTHORITIES 1

INTRODUCTION 1

FACTS..... 1

 The Miller Report Does Not Rebut the Segura Report..... 1

 The Miller Report Duplicates The Nathanson Report 2

ARGUMENT..... 4

I. THE MILLER REPORT DOES NOT REBUT THE SEGURA REPORT 5

II. THE MILLER REPORT DUPLICATES THE NATHANSON REPORT..... 7

CONCLUSION 9

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

TABLE OF AUTHORITIES

FEDERAL CASES

Clausen v. M/V New Carissa,
339 F.3d 1049 (9th Cir. 2003)4

Crowley v. Chait,
322 F. Supp. 2d 530 (D.N.J. 2004)8

Internet Services v. Immersion Corp.,
No. C-06-02009, 2008 WL 2051028 (N.D. Cal. May 13, 2008).....4

Jarritos, Inc. v. Los Jarritos,
No. C-05-02380, 2007 WL 1302506 (N.D. Cal. May 2, 2007).....4, 5

J.W. v. City of Oxnard,
No. CV 07-06191, 2008 WL 4810298 (C.D. Cal. Oct. 27, 2008).....5

Johnson v. Grays Harbor Committee Hospital,
No. C06-5502, 2007 WL 4510313 (W.D. Wash. Dec. 18, 2007)5

Lindner v. Meadow Gold Dairies, Inc.,
249 F.R.D. 625 (D. Haw. 2008)5

Scientific Components Corp. v. Sirenza Micro., Inc.,
No. 03 CV 1851, 2008 WL 4911440 (E.D.N.Y. Nov. 13, 2008)7

United States v. So. Cal. Edison Co.,
1:01 CV 5167, 2005 U.S. Dist. LEXIS 24592 (E.D. Cal. Sept. 23, 2005)6

Universal Trading & Investment Co. v. Kiritchenko,
No. C-99-03073, 2007 WL 2141296 (N.D. Cal. July 25, 2007)5

Yeti By Molly Ltd. v. Deckers Outdoor Corp.,
259 F.3d 1101 (9th Cir. 2001)4

RULES

Fed. R. Civ. P. 26(a)(2)(C)(ii).....2, 4, 6, 7

Fed. R. Civ. P. 37(c)(1)5

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

Proponents have designated a rebuttal expert, Dr. Kenneth P. Miller, whose report contains a lengthy section on religion that duplicates almost in its entirety the previously served report of Dr. Paul Nathanson, and that does not actually rebut anything in the report of Plaintiffs’ expert, Dr. Gary M. Segura. Accordingly, the challenged section of Dr. Miller’s report is doubly improper and should be stricken on both grounds: (1) although it ostensibly rebuts the report of Dr. Segura, Dr. Miller’s report does not actually do so and instead mischaracterizes a single sentence of the report as a pretext to offer non-responsive “rebuttal” testimony; and (2) that section of Dr. Miller’s report impermissibly duplicates the report filed by Proponents’ expert, Dr. Nathanson, in their case-in-chief.

FACTS

Pursuant to the Court’s Civil Minute Order dated August 19, 2009 (the “August 19, 2009 Order,” Exhibit A to the Declaration of Jeremy M. Goldman, Esq., (“Goldman Decl.”)), initial expert reports were filed by Plaintiffs and the Proponents on October 2, 2009. Plaintiffs served the report of Dr. Segura (“Segura Report,” Goldman Decl. Ex. B). Proponents served the report of Paul Nathanson, Ph.D. (“Nathanson Report,” Goldman Decl. Ex. C). Appended to the back of Dr. Nathanson’s report was an “Index of Material Considered.” Goldman Decl. Ex. D. In accordance with the agreement of the parties, rebuttal expert reports were served on November 9, 2009. Proponents served the rebuttal expert report of Kenneth P. Miller, Ph.D. (“Miller Report,” Goldman Decl. Ex. E). Dr. Miller’s report also included an “Index of Material Considered” at the end. Goldman Decl. Ex. F.

The Miller Report Does Not Rebut the Segura Report

Dr. Segura, a Professor of American Politics in the Department of Political Science at Stanford University, discusses in his report “the relative political power of gays and lesbians as a class of citizens, and their level of political vulnerability.” Segura Report at 2. In one sentence of the report, Dr. Segura noted that “the San Francisco Chronicle reported that the campaign in favor of Proposition 8 was conceived and funded by a cooperative effort of the Roman Catholic Archbishop of San Francisco and the senior leadership of the Mormon Church.” Segura Report at 12. Dr.

1 Segura does not refer to the role of religious leaders or denominations in the Proposition 8 campaign
 2 in any other section of the report; he does not argue that religion played a role on only one side of the
 3 controversy; he does not claim that religious leaders were active only to support the passage of
 4 Proposition 8.

5 Nonetheless, based on this sentence in Dr. Segura's report, Dr. Miller devotes six single-spaced
 6 pages of his report to "rebutting" a claim that "Proposition 8 was the result of concerted activity by
 7 certain religious groups. *See* Segura Report at 12." Miller Report, ¶ 53. After attributing this
 8 opinion to Dr. Segura, Dr. Miller does *not* offer the contrary opinion that Proposition 8 was not "the
 9 result of concerted activity by certain religious groups." Instead, he writes: "Based on my own
 10 review of the relevant materials, I conclude that religious groups both supported and opposed
 11 Proposition 8." Miller Report, ¶ 53. Paragraphs 53-72 of the Miller Report then detail at length his
 12 conclusions regarding the stances that various religious denominations took regarding Proposition 8.

13 As set forth below, pursuant to Fed. R. Civ. P. 26(a)(2)(C)(ii), a rebuttal expert report is
 14 "intended solely to contradict or rebut evidence on the same subject matter identified by another party
 15 under Rule 26 (a)(2)(B)." These sections of the Miller Report cannot be considered a rebuttal report
 16 because they do not contradict or rebut a claim made by Dr. Segura. Thus, they do not constitute
 17 proper rebuttal expert report material, and should be stricken, and Dr. Miller's testimony limited to
 18 exclude any opinions or testimony regarding those sections at trial.

19 **The Miller Report Duplicates The Nathanson Report**

20 The Nathanson Report – served on October 2, 2009, and thus part of the Proponents' case-in-
 21 chief – is devoted to the discussion of "religious attitudes toward Proposition 8." Nathanson Report,
 22 ¶ 2. Like Dr. Miller – but over a month earlier – Dr. Nathanson offered the opinion in his report that
 23 religious communities both supported and opposed Proposition 8:

24 Several religious communities—such as the (Mormon) Church of Jesus Christ of
 25 Latter-day Saints, the Southern Baptists, and Orthodox Judaism—do support
 26 Proposition 8. But within these communities are dissenters and even dissenting
 27 organizations. Moreover, other religious communities—such as the Episcopal Church,
 28

1 the Unitarian Universalist Association, the United Church of Christ, and Reform
2 Judaism—vigorously *oppose* Proposition 8.

3 *Id.* Thus, the thesis of the Nathanson Report is identical to that of Paragraphs 53-72 of the Miller
4 Report.

5 But the two reports share more than just a thesis; nearly every paragraph of the Miller Report
6 has an analog in the Nathanson Report. The striking and extensive similarities between the two
7 reports are set forth at length in the chart attached as Appendix A to this memorandum. Among those
8 similarities are the following:

- 9 • Dr. Miller concluded that “religious communities do not speak with one voice on matters
10 relating to same-sex marriage and homosexuality,” and that even within the Catholic
11 Church, which supported Proposition 8, “adherents can differ on the issue.” Miller
12 Report, ¶¶ 55-56. Dr. Nathanson concluded that “Bishops of the California Catholic
13 Conference support Proposition 8. So does a Catholic fraternal organization, the Knights
14 of Columbus.” Yet, he stated, “Catholics are profoundly divided over the issue,” and
15 “dissenters lack support from the hierarchy, it is true, but everyone hears their ‘voices.’”
16 Nathanson Report, ¶ 16.
- 17 • Dr. Miller cited the liberal position taken by some Protestant clergy, arguing that
18 “[n]umerous Christian laypersons, clergy, local congregations, and even entire
19 denominations, have stood at the forefront of the movement for LGBT rights and the
20 effort to win legal recognition for same-sex marriage.” Miller Report, ¶ 55. Dr.
21 Nathanson cited religious leaders who spoke against Proposition 8, saying that “[a]t the
22 very least, they confer religious prestige on the cause of opposition to Proposition 8,” and
23 then named several such religious leaders. Nathanson Report, ¶ 18.
- 24 • Dr. Miller cited the adoption in 2005 by the Twenty-fifth General Synod of the United
25 Church of Christ of a resolution urging congregations and individuals to support
26 legislation to grant equal marriage rights to couples regardless of gender. Miller Report, ¶
27 66. Dr. Nathanson stated that “[o]n 4 July 2005, the United Church of Christ officially
28 endorsed gay marriage.” Nathanson Report, fn. 18.

1 C-05-02380, 2007 WL 1302506, at *3 (N.D. Cal. May 2, 2007) (same), *aff'd on this ground and*
2 *rev'd on other grounds*, 2009 WL 2487066 (9th Cir. Aug. 14, 2009).

3 The appropriate way to limit the expert's testimony at trial is through a motion *in limine*.
4 "[T]he remedy for noncompliant expert reports is usually exclusion of the witness' testimony under
5 Rule 37(c) upon a proper motion in limine." *Universal Trading & Inv. Co. v. Kiritchenko*, No. C-99-
6 03073, 2007 WL 2141296, at *3 (N.D. Cal. July 25, 2007); *see also Johnson v. Grays Harbor Cmty.*
7 *Hosp.*, No. C06-5502, 2007 WL 4510313, at *2 (W.D. Wash. Dec. 18, 2007).

8 **I. THE MILLER REPORT DOES NOT REBUT THE SEGURA REPORT**

9 Although it purports to rebut the Segura Report, the challenged section of the Miller Report
10 (Paragraphs 53-72) does not actually contradict any claim Dr. Segura made in his report. Since the
11 Miller Report was designated as a rebuttal expert report – and served on the November 9 date for
12 rebuttal reports rather than the October 2 date for initial reports – both the report and his testimony
13 must be limited to subjects and evidence that fairly rebut Plaintiffs' experts. *See Johnson*, 2007 WL
14 4510313, at *2 ("By virtue of Plaintiff's designation of his experts purely as rebuttal experts,
15 Plaintiff has limited his experts to rebuttal testimony.").

16 A rebuttal report may be stricken and the expert excluded from testifying at trial if the subject
17 matter of the report does not actually rebut the other party's expert testimony. The *Jarritos* court
18 struck the bulk of the rebuttal expert reports because "the substance of their reports [did] not actually
19 rebut or even directly address [opposing expert's] opinion." *Jarritos, Inc.*, 2007 WL 1302506, at *5.
20 In *J.W. v. City of Oxnard*, No. CV 07-06191, 2008 WL 4810298 (C.D. Cal. Oct. 27, 2008), the trial
21 court excluded the testimony of one of the plaintiff's expert rebuttal witnesses because the plaintiff
22 "failed to show that [the expert's] testimony would be given 'solely to contradict or rebut'
23 defendants' expert testimony," as the defendants had not designated any expert testimony on the
24 same subject that the plaintiff's expert could possibly rebut. *Id.* at *4; *see also Lindner v. Meadow*
25 *Gold Dairies, Inc.*, 249 F.R.D. 625, 637 (D. Haw. 2008) (portion of rebuttal witness report that does
26 not contradict or rebut anything in other party's expert report "does not constitute a proper rebuttal
27 report," would be stricken, and expert would not be permitted to testify at trial regarding that portion
28 of the report).

1 Dr. Miller's opinions in paragraphs 53 to 72 of his report consist of a survey of positions
2 taken by religious denominations related to Proposition 8:

- 3 • the position of the Catholic Church and most Evangelical churches in opposition to same-
4 sex marriage and homosexuality, and the support by Catholic Church and many
5 Evangelical churches for Proposition 8. Miller Report, ¶¶ 55-57.
- 6 • statements by the Southern Baptist Convention and the American Baptist Churches in the
7 U.S.A opposing same-sex marriage, and the formation of a dissenting group within the
8 Baptist organization. Miller Report, ¶¶ 58-59.
- 9 • the positions of the United Methodist Church, the Presbyterian Church, and the Lutheran
10 Church-Missouri Synod on homosexuality and same-sex marriage. Miller Report, ¶¶ 61-
11 63.
- 12 • efforts by liberal Protestant clergy to support LGBT rights, including same-sex marriage.
13 Miller Report, ¶ 55.
- 14 • positions taken by groups such as the United Church of Christ, the Unitarian Universalist
15 Association, the California Council of Churches and certain Episcopal church members
16 urging recognition of same-sex marriage. Miller Report, ¶¶ 65-68.
- 17 • the positions of Orthodox, Conservative, Reform, and Reconstructionist Jewish
18 movements regarding homosexuality and same-sex marriage. Miller Report, ¶ 70.

19 The single sentence of the Segura Report offered as the basis for these six pages of "rebuttal"
20 is pretext. Dr. Segura's reference to the San Francisco Chronicle article regarding the role of the
21 Roman Catholic and Mormon Churches in conceiving and funding the campaign for Proposition 8 is
22 not contradicted by the paragraphs describing positions taken by other religious denominations.
23 Rather than contradict or rebut Dr. Segura's report, Dr. Miller confirms that both the Catholic Church
24 and the Mormon Church supported Proposition 8. Miller Report, ¶¶ 56, 60. Moreover, it is improper
25 under Fed. R. Civ. P. 26(a)(2)(C) to use a single line from an expert's report as a springboard into an
26 tangential subject matter. In *United States v. Southern California Edison Co.*, 1:01-CV-5167, 2005
27 U.S. Dist. Lexis 24592, at *14-16 (E.D. Cal. Sept. 23, 2005), the court struck a rebuttal expert's
28 opinion that seized upon a single line in the other party's expert report to launch a "detailed and

1 expansive analysis” of an ancillary subject, writing that the party proffering the rebuttal “might as
2 well thread an elephant through the eye of a needle.” *Id.* at *15.

3 Paragraphs 53-72 of Dr. Miller’s report do not meet the requirement that they be “intended
4 solely to contradict or rebut” the evidence proffered in the single sentence of Dr. Segura’s report,
5 because they confirm, rather than contradict or rebut, the facts in Dr. Segura’s statement. Fed. R.
6 Civ. P. 26(a)(2)(C)(ii). Moreover, as discussed below, the use of that sentence is pretextual: It is an
7 impermissible effort to put into the mouth of a new expert words that were already offered by another
8 expert as part of Proponents’ case-in-chief.

9 **II. THE MILLER REPORT DUPLICATES THE NATHANSON REPORT**

10 Paragraphs 53-72 of Dr. Miller’s report present nearly identical information to that contained
11 in the Nathanson Report, served on October 2. Where a party designates a purported rebuttal witness
12 who simply repeats the analysis of a witness designated as part of that party’s case-in-chief, the
13 rebuttal witness’s testimony may be limited at trial to preclude any duplicative testimony. *See*
14 *Scientific Components Corp. v. Sirenza Microdevices, Inc.*, No. 03 CV 1851, 2008 WL 4911440, *3-
15 4 (E.D.N.Y. Nov. 13, 2008).

16 In *Scientific Components*, which centered on the merchantability of amplifiers, the plaintiff
17 had first offered a witness in its case-in-chief to discuss the stability of the amplifiers, but then
18 offered a second witness, ostensibly a rebuttal witness, who included in his report a section that
19 “improperly repeats and restates” the analysis of the original report. *Id.* at *3. The court held that the
20 repetitive portion was not “intended *solely* to contradict or rebut evidence” as required by Fed. R.
21 Civ. P. 26 (a)(2)(C)(ii) and prejudice to the other party could be eliminated by limiting the witness’s
22 trial testimony to exclude any testimony that would duplicate the other witness. *Id.* at *3-4 (original
23 emphasis).

24 As set forth *supra* and in Appendix A, the reports submitted by Drs. Miller and Nathanson are
25 startlingly alike:

- 26 • Each expresses the thesis that religious groups acted both in support of and in opposition
27 to Proposition 8.

28

- 1 • Each details the support for Proposition 8 by the Catholic Church, as well as that church's
- 2 views on homosexuality and same-sex marriage, and the views of the other major religion
- 3 that was a significant supporter of Proposition 8, the Mormon Church.
- 4 • Each examines denominations that have taken official stances either in support of
- 5 Proposition 8 or against same-sex marriage, but, according to Drs. Miller and Nathanson,
- 6 experience some dissent among their adherents on the issue.
- 7 • Each examines the positions on homosexuality or same-sex marriage by other
- 8 denominations – in fact, they often cite the same denominations.
- 9 • Each details efforts by some Protestants churches in California to advocate for same-sex
- 10 marriage.
- 11 • Each examines the varying positions among the Orthodox, Conservative, Reform, and
- 12 Reconstructionist branches of Judaism.

13 Moreover, the “Index of Materials Considered” appended to each report indicates that Drs. Miller and
14 Nathanson considered over 150 identical materials, including websites, press releases, and newspaper
15 articles. *See* Appendix B. That list of duplicative materials includes 28 websites that have the same
16 “last visited” date. *See* Appendix C. It is not plausible that Dr. Nathanson and Dr. Miller visited
17 these 28 websites on the exact same date – each of which, moreover, proceeds the date on which Dr.
18 Segura’s report was served on the Proponents and therefore available to Dr. Miller.

19 It appears that Proponents are likely violating the rules governing rebuttal reports in an
20 attempt to substitute a new expert for a prior expert with whom they may now not wish to proceed.
21 But whatever the Proponents’ motivation in serving a duplicative rebuttal report, their tactic is
22 improper. Rebuttal testimony “is limited to that which is precisely directed to rebutting new matter
23 or new theories” and “is not an opportunity for the correction of any oversights in the [party’s] case
24 in chief.” *Crowley v. Chait*, 322 F. Supp. 2d 530, 550-51 (D.N.J. 2004) (internal citations and
25 quotation marks omitted). Not only are Dr. Miller’s opinions duplicative and cumulative to the
26 extent they repeat opinions offered by Dr. Nathanson, they also are not proper rebuttal because
27 whatever need there is for such evidence was known to Proponents when they served their initial
28

1 reports. The portions of the Miller Report should be excluded and the witness's testimony limited at
2 trial to exclude any testimony regarding those subjects.

3 **CONCLUSION**

4 For the reasons set forth above, Plaintiffs and Plaintiff-Intervenor request that the Court enter
5 an order striking paragraphs 53-72 of Dr. Miller's report and precluding him from offering opinions
6 or testimony on the subject matters expressed therein.

7
8 Dated: December 7, 2009

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APPENDIX A
SIMILARITIES BETWEEN NATHANSON AND MILLER REPORTS

MILLER	NATHANSON
<p>Based on my own review of the relevant materials, I conclude that religious groups both supported and opposed Proposition 8. ¶ 53</p>	<p>As I will demonstrate, religious attitudes to Proposition 8 vary considerably. Several religious communities—such as the (Mormon) Church of Jesus Christ of Latter-day Saints, the Southern Baptists, and Orthodox Judaism—do support Proposition 8. But within these communities are dissenters and even dissenting organizations. Moreover, other religious communities—such as the Episcopal Church, the Unitarian Universalist Association, the United Church of Christ, and Reform Judaism—vigorously <i>oppose</i> Proposition 8. ¶ 2</p>
<p>It is notable that the religious community does not speak with one voice on matters relating to same-sex marriage and homosexuality. The Catholic Church and most Evangelical churches defend the historic Christian doctrine that marriage is a union between a man and a woman. Even within these faiths, adherents can differ on the issue of same-sex marriage. ¶ 55</p>	<p>Bishops of the California Catholic Conference support Proposition 8. So does a Catholic fraternal organization, the Knights of Columbus. Nonetheless, this position has “met with mixed reactions among church members, including clergy.” Catholics are profoundly divided over gay marriage (along with many other social and political problems); dissenters lack support from the hierarchy, it is true, but everyone hears their “voices.” ¶ 16 (footnote omitted)</p>
<p>California’s mainline Protestant congregations and clergy have often staked out the liberal position in these denominational controversies. Numerous Christian laypersons, clergy, local congregations, and even entire denominations, have stood at the forefront of the movement for LGBT rights and the effort to win legal recognition for same-sex marriage. ¶ 55</p>	<p>Although religious leaders usually speak officially for their denominations or their organizations, some who support [sic] Proposition 8 speak primarily for themselves—in this case, usually (though not always) as gay people or people with gay friends or relatives. At the very least, they confer religious prestige on the cause of opposition to Proposition 8. These supporters of gay rights include V. Gene Robinson (Episcopalian bishop of New Hampshire); Denise L. Eger (rabbi of Congregation Kol Ami in West Hollywood and president of the Board of Rabbis of Southern California); Mark Pelavin (associate director of the</p>

	<p>Religious Action Center for Reform Judaism in Washington D.C.); and Elliot Dorff (Conservative rabbi and rector of American Jewish University in Los Angeles). ¶ 18</p>
<p>The Roman Catholic Church has consistently defended church teaching that marriage is a union between a man and a woman, and has opposed efforts to grant legal recognition to same-sex unions. In 2003, the Administrative Committee of the U.S. Conference of Catholic Bishops issued a statement declaring: “we strongly oppose any legislative and judicial attempts, both at state and federal levels, to grant same-sex unions the equivalent status and rights of marriage—by naming them marriage, civil unions or by other means.” The Catholic Church actively supported Proposition 8. ¶ 56</p>	<p>As evidence, they point to the fact that that some churches—notably the Roman Catholic Church and the (Mormon) Church of Jesus Christ of Latter-day Saints—actively promoted Proposition 8. ¶ 15 (footnote omitted).</p> <p>Officially supporting Proposition 8, and therefore supporting traditional marriage, are the Roman Catholic Church . . . ¶ 17</p>
<p>The Southern Baptist Convention is the largest Protestant denomination in the United States. In 2003, the Southern Baptist Convention reaffirmed its support for the traditional definition of marriage and its opposition to legal recognition of “same-sex marriage or other equivalent unions.” ¶ 58</p>	<p>Several religious communities—such as the (Mormon) Church of Jesus Christ of Latter-day Saints, the Southern Baptists, and Orthodox Judaism—do support Proposition 8. ¶ 2.</p> <p>Officially supporting Proposition 8, and therefore supporting traditional marriage, are the Roman Catholic Church, the Mormon Church, the Lutheran Church-Missouri Synod, the Southern Baptist Convention, and various organizations that represent Orthodox Judaism. ¶ 17</p>
<p>The Church of Jesus Christ of Latter Day Saints (LDS) has approximately 6 million members in the U.S. and 700,000 in California. The church affirms that marriage between a man and a woman is ordained by God and it opposes legal recognition of same-sex relationships. ¶ 60</p>	<p>Several religious communities—such as the (Mormon) Church of Jesus Christ of Latter-day Saints, the Southern Baptists, and Orthodox Judaism—do support Proposition 8. ¶ 2.</p> <p>Officially supporting Proposition 8, and therefore supporting traditional marriage, are the Roman Catholic Church, the Mormon Church, the Lutheran Church-Missouri Synod, the Southern Baptist Convention, and various organizations that represent Orthodox Judaism. ¶ 17</p>

<p>The United Methodist Church (UMC), the nation's second-largest Protestant denomination (11 million members), is deeply divided over questions of homosexuality and same-sex unions. The General Conference of the UMC, the denomination's governing body, has affirmed that it "support[s] laws in civil society that define marriage as the union of one man and one woman." However, many Methodist congregations in California have been at the forefront of a movement in the church to affirm same-sex unions. Numerous United Methodist ministers in California have challenged denominational authorities by performing weddings for same-sex couples. In June 2009, 82 retired UMC pastors in Northern California signed a resolution offering to perform such ceremonies on behalf of active ministers who feel constrained by church discipline. The two United Methodist regional assemblies based in California declared their opposition to Proposition 8. The (Southern) California-Pacific assembly called on Methodists to "work with all their might for [Proposition 8's] defeat" and many UMC clergy and laypersons actively opposed the measure. ¶ 61</p>	<p>In September 2008, California Faith for Equality met in a West Hollywood church to oppose Proposition 8. Director Kerry Chaplin told clergy and laypeople that they should bear in mind the "spectrum of beliefs and opinions in the religious community [about gay marriage] ... Leaders in the Episcopal and United Methodist churches, two denominations torn over the homosexuality debate, oppose [Proposition 8] on civil rights grounds." On 1 November 2008, San Francisco's Glide Memorial [United Methodist] Church held an interreligious celebration of gay marriage. ¶ 21</p> <p>Central United Methodist Church in Sacramento sponsored "Sing Out the Vote and Take to the Streets: An Interfaith 'No on 8' Celebration." ¶ 22</p>
<p>The Presbyterian Church (U.S.A.) is another large mainline Protestant denomination that is internally divided on questions of homosexuality and same-sex unions. The General Assembly of PCUSA has not explicitly addressed the issue of same-sex marriage. PCUSA has denied ordination to persons in gay and lesbian relationships as a consequence of its rule that ministers must live in "fidelity within the covenant of marriage between a man and a woman, or chastity in singleness." A strong faction in the denomination has challenged this rule. The General Assembly has voted to remove this</p>	<p><i>The Presbyterian Church (USA):</i> Although not all Presbyterians oppose Proposition 8, many do. ¶ 28.</p>

<p>limitation, but this action has not received the necessary ratification from local presbyteries. ¶ 62</p>	
<p>The Lutheran Church-Missouri Synod supports the traditional definition of marriage and urged its members to support Proposition 8. ¶ 63</p>	<p>Officially supporting Proposition 8, and therefore supporting traditional marriage, are the Roman Catholic Church, the Mormon Church, the Lutheran Church-Missouri Synod, the Southern Baptist Convention, and various organizations that represent Orthodox Judaism. ¶ 17</p>
<p>The Episcopal Church (2.1 million members in the U.S.) has become increasingly active in promoting LGBT rights. In 2003, the Church consecrated its first openly gay bishop and the church supports the ordination of gay clergy, a position which causes tension within the global Anglican Communion. In 2006, the General Convention of the Episcopal Church stated its “support of gay and lesbian persons and [opposition to] any state or federal constitutional amendment prohibiting gay marriages or civil unions.” In September 2008, California’s six most senior Episcopal bishops issued a joint statement urging voters to defeat Proposition 8. The bishops argued that “the Christian values of monogamy, commitment, love, mutual respect, and witness of monogamy are enhanced for all by providing [the right to marry] to gay and straight alike.” ¶65</p>	<p>Moreover, other religious communities—such as the Episcopal Church, the Unitarian Universalist Association, the United Church of Christ, and Reform Judaism—vigorously <i>oppose</i> Proposition 8. ¶ 2</p> <p>But many other churches, including the United Church of Christ, the Episcopal dioceses of California, and the Unitarians opposed Proposition 8. ¶ 15</p>
<p>In October 2008, a national newsletter published by Integrity, a group within the Episcopal Church that advocates LGBT rights, reported: “We are delighted by the super work of our many ongoing groups in the Western Region—especially the many members, groups, and parishes opposing California's Proposition 8 (the anti-marriage amendment). We are very excited by the support of all the California bishops for the Vote No On Prop 8 campaign and by the work of many groups and parishes in hosting benefit parties, phone banks, and other anti-ballot</p>	<p>Two rabbinical associations came out against Proposition 8, as did Bishops in Episcopal, Lutheran, Methodist and several Black church traditions and other Christian leaders.” ¶ 25</p>

<p>events.” . . . In 2009, the General Convention voted to give bishops the option to bless same-sex unions. ¶ 65</p>	
<p>In 2005, the Twenty-fifth General Synod of the United Church of Christ (UCC) adopted a resolution urging congregations and individuals to “support local, state and national legislation to grant equal marriage rights to couples regardless of gender, and to work against legislation, including constitutional amendments, which denies civil marriage rights to couples based on gender.” Numerous UCC congregations in California have mobilized in support of same-sex marriage, by opposing Proposition 8 and endorsing legislation to grant marriage rights to same-sex couples. ¶ 66</p>	<p>On 4 July 2005, the United Church of Christ officially endorsed gay marriage:” Whereas the Bible affirms and celebrates human expressions of love and partnership, calling us to live out fully that gift of God in responsible, faithful, committed relationships that recognize and respect the image of God in all people; and Whereas the life and example of Jesus of Nazareth provides a model of radically inclusive love and abundant welcome for all; and Whereas we proclaim ourselves to be listening to the voice of a Still Speaking God at that at all times in human history there is always yet more light and truth to break forth from God’s holy word . . . Therefore let it be resolved that the Twenty-fifth General Synod of the United Church of Christ affirms equal marriage rights for couples regardless of gender and declares that the government should not interfere with couples regardless of gender who choose to marry and share fully and equally in the rights, responsibilities and commitment of legally recognized marriage; and Let it be further resolved that the Twenty-fifth General Synod of the United Church of Christ affirms equal access to the basic rights, institutional protections and quality of life conferred by the recognition of marriage . . .” Fn. 18</p>
<p>The Unitarian Universalist Association has adopted numerous resolutions supporting equal rights for LGBT persons, including support for same-sex unions. In 1996, the General Assembly of the UUA adopted a resolution reaffirming its support for legal recognition for marriage between members of the same sex and urged the organization to make its position known through the media and for local member congregations to promote it in</p>	<p>In 1996, the Unitarian Universalist Association officially endorsed gay marriage: “Because Unitarian Universalists affirm the inherent worth and dignity of every person; and Because marriage is held in honor among the blessings of life . . . Therefore be it resolved that the 1996 General Assembly of the Unitarian Universalist Association adopts a position in support of legal recognition for marriage between members of the same sex . . .” Fn.</p>

<p>their home communities. Unitarian Universalist congregations have actively pursued this goal. ¶ 67</p>	<p>19</p>
<p>The California Council of Churches is a prominent advocate of LGBT rights. This association represents 51 different mainline Protestant and Orthodox denominations and groups with more than 1.5 million members. Its member organizations include the denominations or local affiliates of the American Baptist Churches, African Methodist Episcopal Church, African Methodist Episcopal Zion Church, Armenian Church of America, Christian Church (Disciples of Christ), Christian Methodist Episcopal Church, Church of the Brethren, Church Women United, Community of Christ, Episcopal Church, Ethiopian Orthodox Church, Evangelical Lutheran Church of America, Greek Orthodox Church, Moravian Church, National Baptist Convention, Orthodox Clergy Council, Presbyterian Church (USA), Reformed Church in America, Swedenborgian Church, United Church of Christ, the United Fellowship of Metropolitan Community Churches, and the United Methodist Church. ¶ 68</p>	<p>At around that time, the Council of Churches of Santa Clara County Committee against Proposition 8, consisting of approximately 25 local churches, sponsored the following announcement in the <i>San Jose Mercury News</i>: “As people of faith, we believe that all people are made in the image of God. We believe in loving, faithful, and committed relationships. We affirm everyone’s right to the freedom to marry. We urge you to vote no on Proposition 8. Don’t eliminate marriage for anyone.”¹⁰ Among those who signed this announcement (in addition to members of the Metropolitan Community Church) were Episcopalians, Unitarians, United Methodists, Lutherans, Baptists, Presbyterians, and members of the United Church of Christ. ¶ 21</p>
<p>The California Council of Churches states that it is devoted to “creat[ing] a world that cares for all of its citizens regardless of economic class, ages, gender, race and ethnicity, religious belief, or sexual orientation.” The CCC operates an office in Sacramento to represent these member organizations on matters of public policy, and advocates on behalf of LGBT rights, including the right of same-sex couples to marry. It opposed Proposition 8, filed amicus briefs in support of same-sex marriage in both <i>In re Marriage Cases</i> and <i>Strauss v. Horton</i>, and through California Church IMPACT, endorsed A.B. 43 (Leno), the legislative measure seeking to end the ban</p>	<p>At around that time, the Council of Churches of Santa Clara County Committee against Proposition 8, consisting of approximately 25 local churches, sponsored the following announcement in the <i>San Jose Mercury News</i>: “As people of faith, we believe that all people are made in the image of God. We believe in loving, faithful, and committed relationships. We affirm everyone’s right to the freedom to marry. We urge you to vote no on Proposition 8. Don’t eliminate marriage for anyone.”¹⁰ Among those who signed this announcement (in addition to members of the Metropolitan Community Church) were Episcopalians, Unitarians, United</p>

<p>on same-sex marriage in California. ¶ 69</p>	<p>Methodists, Lutherans, Baptists, Presbyterians, and members of the United Church of Christ. ¶ 21</p> <p>[Religious denominations opposing Proposition 8] have described themselves to California’s Supreme Court,²² so there is no need to repeat that exhaustive account here. ¶ 26</p> <p>Fn. 22: Application for Leave to Join Brief of Amici Curiae California Council of Churches et al. in Support of Petitioners, Strauss et al. v. Horton et al., Nos. S168047/S168066 /S168078 (Cal. 2009)..</p>
<p>The leadership of Orthodox Judaism defines marriage as an institution between a man and a woman and does not accept same-sex marriage. ¶ 70</p>	<p>Orthodox Judaism generally supports Proposition 8 and therefore opposes gay marriage . . . ¶ 31.</p> <p>Hebrew scripture clearly forbids (male) homosexuality. Many groups that represent Orthodox Judaism <i>support</i> Proposition 8 (and therefore opposed gay marriage). Among the Orthodox organizations that take this position are the Orthodox Union, Agudath Israel of America, and Agudath Israel of California. ¶ 38 (footnote omitted)</p>
<p>The Conservative Jewish movement does not sanctify gay marriage, but grants autonomy to individual rabbis to choose whether or not to recognize same-sex unions. ¶ 70</p>	<p>(Conservative Jews are, as usual, more divided than the others.) ¶ 31.</p> <p>Conservative Judaism originated to occupy the middle ground between Orthodox traditionalism and Reform liberalism. It allows liberal interpretations of Jewish scripture and liberal rulings on matters of Jewish law, but it tries also to maintain the authority of both. This strategy does not always satisfy those at either end of the continuum between traditionalism and liberalism. As a result, Conservative Judaism allows a great deal of latitude to suit the needs of individuals, whether ordained or lay, and congregations. fn. 30.</p>

<p>The Reform and Reconstructionist Jewish movements strongly support LGBT rights, including the right of same-sex couples to marry. Numerous Jewish congregations, organizations, and rabbis have mobilized in favor of same-sex marriage and in opposition to Proposition 8. ¶ 70</p>	<p>Several Jewish denominations explicitly oppose Proposition 8 and therefore support gay marriage: Reform Judaism, Reconstructionist Judaism, and many independent Jewish communities. Moreover, many denominational and interdenominational Jewish organizations (most of them based in New York) take the same position. These include the American Jewish Committee; the National Council of Jewish Women, the Anti-Defamation League; the Union for Reform Judaism; and the Jewish Community Relations Council of San Francisco. ¶ 31</p>
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APPENDIX B
IDENTICAL SOURCES CITED IN DR. MILLER'S AND
DR. NATHANSON'S INDEXES OF MATERIALS CONSIDERED¹

Miller Index No.	Description	Nathanson Index No.
80	California Council of Churches Amicus Brief in <i>Strauss v. Horton</i> , Nos. S168047/S168066/S168078	221
82	Defendant –Intervenors’ Notice of Motion and Motion for Summary Judgment, and Memorandum of Points and Authorities in Support of Motion for Summary Judgment in <i>Perry et al. v. Schwarzenegger, et al.</i> , No. 09-CV-2292 in the Northern District of California.	58
91	A Brief Summary As to Why Promoting California’s Proposition 8 Was Contrary to Both Scripture & Official LDS Doctrine, http://h1.ripway.com/lds4gaymarriage/prop8.htm (last visited Sept. 27, 2009).	3
94	Lavina Fielding Anderson, <i>Against Proposition 8</i> , BY COMMON CONSENT, July 2008.	15
95	Marc Andrus & Steven Charleston, <i>After Prop 8, Love Endures</i> , http://diocal.org/index.php?option=com_content&task=view&id=336&Itemid=215 (last visited Sept. 27, 2009).	13
96	Marc Handley Andrus, <i>The Rt. Rev. Marc Handley Andrus writes letter to the diocese in response to Proposition 8 Decision</i> , http://oasiscalifornia.org/2009%20andrus%20resonds%20prop%208%20decision.htm (last visited Sept. 27, 2009).	14
97	Asian American & Pacific Islander Clergy Support the Right of Same-Sex Couples to Marry, http://www.netrj.org/resources/library/api-clergy-support-marriage.htm (last visited Sept. 27, 2009).	17
103	Letter from Ed Bacon, Rector, All Saints Church, Pasadena, Cal., to members of All Saints Church, <i>available at</i> http://www.allsaintspas.org/site/PageServer?pagename=ActionTable .	20
104	Christy Baker. <i>The Civil Right to Civil Marriage. August 3, 2008</i> Unitarian Universalist Church of Berkeley. http://www.uucb.org/sermons/2008080301	21

¹ Compare Goldman Decl. Ex. F with Goldman Decl. Ex. D.

106	Stephen Baxter, <i>The Rev. Carole Vincent of Almaden Hills United Methodist Church plans to retire at the end of June</i> , WILLCOX GLEN RESIDENT, Feb. 6, 2009.	23
107	Posting of Becks to Living in the O, http://oaklandliving.wordpress.com/2009/05/26/joinoaklanders-to-protest-the-supreme-court-ruling-on-prop-8/ (May 26, 2009).	166
109	Paster Susan Brecht Speaks out Against Prop 8: Pacific School of Religion, http://www.psr.edu/alum-rev-susan-brecht-against-prop-8 (last visited Sept. 27, 2009).	218
110	A Brief Summary of Actions, Evangelical Lutheran Church in America, August 17-23, 2009.	80
111	Jerry Brown, Sermon, <i>Protecting the Institution of Marriage...</i> , Yom Kippur, 5769/2008	29
116	The California Nevada Conference of the United Methodist Church, California UM Bishops on Record as 'Prop 8' Seems Headed for Courts, http://www.cnumc.org/news_detail.asp?TableName=oNews_PJAYMY&PKValue=978 (Nov. 14, 2008).	34
117	The California Nevada Conference of the United Methodist Church, Cal-Nevada Ums Join 'No on 8' Rallies, http://www.cnumc.org/news_detail.asp?PKValue=988 (Nov. 20, 2008).	35
121	Christ Chapel of Laguna Beach Orange County California Gay, http://www.christchapeloflaguna.org/events.htm (last visited Sept. 27, 2009).	38
124	Church of the Foothills, Pastor/Staff, http://chotf.org/staff.html (last visited Sept. 27, 2009).	39
125	Congregational Church of Belmont, http://www.uccbelmont.org/ (last visited Sept. 27, 2009).	46
126	Congregation Shomrei Torah, All in God's Image, http://www.shomreitorah.org/inthenews.html (last visited Sept. 27, 2009).	43
127	Congregation Shomrei Torah, Opposing Prop. 8 Interfaith service will support gay marriage, http://www.shomreitorah.org/inthenews.html (last visited Sept. 27, 2009).	44
128	Congregation Shomrei Torah, Please let my moms be married, http://www.shomreitorah.org/inthenews.html (last visited Sept. 27, 2009).	45
129	David J. Cooper, <i>Teshuva on Prop 8</i> , KOL KEHILLA (Kehilla Cmty. Synagogue, Piedmont, Cal.), Dec. 2008, at 1.	47
131	<i>Created in God's Image</i> , B'reishit 5769, October 24, 2008.	53

133	DIGNITY Los Angeles – Photos – Wedding of Jim and Raol 2008, http://www.dignitylosangeles.org/photos-15-prop8-pg.htm (last visited Sept. 27, 2009).	59
134	. Email from Dignity Los Angeles to Dignity Los Angeles Members (Aug. 27, 2008, 6:39 PST).	60
145	Lisa Edwards, <i>From the Rabbi's Study . . . Wedding Blues</i> , G'VANIM (Beth Cayim Chadashim, L.A., Cal.), Nov.-Dec. 2008, at 2.	71
147	<i>Election Forum</i> , STILL SPEAKING . . . (Cmty. Church of Atascadero, Atascadero, Cal.), Oct. 2008, at 1.	74
148	David Ellenson, Editorial, <i>Prop 8 goes against God's love for every person</i> , JTA, Nov. 3, 2008.	76
151	Equality Action Project, Day of Decision Rallies.	56
157	Joe Fanelli, <i>et al.</i> , <i>Day of Decision and the Day After</i> , FIRST WORDS (First Unitarian Universalist Church of San Diego, San Diego, Cal.), July 2009, at 1.	82
159	<i>FCCB Votes No on Prop. 8</i> , FCCB THE CARILLON (First Congregational Church of Berkeley, United Church of Christ, Berkeley, Cal.), Sept. 21, 2008, at 1.	87
161	The Flaming Chalice Newsletter, September 2008.	90
175	Leslie Fulbright, Matthai Kuruvila, <i>Prop 8 Rivals Seek Support in Black Churches</i> , SF Gate, October 22, 2008.	100
176	Gay, bisexual and other men who have sex with men (MSM) continue to have highest number of HIV infections in the U.S. Called Out eNews-August 2008 http://www.ucc.org/newsletter/called-out/called-out-enevs-august-2008.html	109
177	Rabbi Laura Geller. The Jigsaw Puzzle of Creation: A Jewish View Against Proposition 8. October 24, 2008.	110
178	George Gittleman, Rabbi, Congregation Shomrei Torah, Torah Teaches: Love the Stranger, Oct. 2008.	116
183	Rev. Bill Hamilton-Holway. We Can Make a Difference: Election 2008. October 12, 2008 Unitarian Universalist Church of Berkeley. http://www.uucb.org/sermons/2008101201	125
184	Duke Helfand, <i>Board of rabbis opposes California anti-gay-marriage initiative</i> . LA Times. September 26, 2008 http://latimesblogs.latimes.com/lanow/2008/09/proposition-8-i.html	128
185	Duke Helfand, <i>Clergy on Both Sides of Proposition 8 Speak Out (California)</i> , LA Times, Oct. 26, 2008.	129
187	Seth Hemmelgarn, <i>Black Faith, Community Leaders Urge Churchgoers to Oppose Prop8</i> , BAY AREA REP., Oct. 23, 2008.	132
188	Seth Hemmelgarn, <i>Churches Play Key Role in Prop 8 Campaigns</i> , The Bay Area Reporter, September 18, 2008.	133
189	Duke Helf, <i>California's top Episcopal bishops oppose gay marriage ban</i> , L.A. TIMES, Sept. 11, 2008.	126

190	Tim Herdt, <i>Supreme Court decides Tuesday on Prop 8</i> , VENTURA COUNTY STAR, May 22, 2009.	134
191	House of Danu – House of Danu Takes Stand on Proposition 8, http://www.houseofdanu.com/content/view/13/1 (last visited Sept. 27, 2009).	135
193	HUC-JIR Weekly Digest, Rabbis on Anti-Gay Marriage Prop 8, http://huc.edu/external/newsletter/08/10/17/ (last visited Sept. 27, 2009).	137
197	Identity-Based Ministries, Report to the UUA Board of Trustees, December 2008.	140
198	Inclusive Baptist Church, Welcoming & Affirming All, Readings for the Day: Matthew 2:1-12 and ‘The Journey of the Magi’ by T.S. Eliot, http://www.baptistchurchsf.org/sermons/detail.php?month=Jan%202009&mId=67 (last visited Sept. 27, 2009).	141
199	Inclusive Baptist Church, Welcoming & Affirming All, Their Story, Our Story, http://www.baptistchurchsf.org/sermons/detail.php?month=Nov%202008&mId=65#168 (last visited Sept. 27, 2009).	142
200	Inner Light Center, Communicate Prop 8, http://www.innerlightministries.com/documents/communications-on-8.pdf (last visited Sept. 27, 2009).	143
202	Integrity InfoLetter (Integrity, Rochester, N.Y.), Oct. 2008.	144
204	Elyse James, <i>Anti-Prop 8 rally at church on Thursday</i> , O.C. REG., Mar. 4, 2008.	145
205	Jewish Community Mobilization for Marriage Equality, <i>No on Prop 8!</i>	209
206	Jewish Community Relations Council, <i>Statement on Same-Sex Civil Marriage</i> , February 14, 2006.	146
207	The Jewish Gaily Forward (Congregation Shaar Zabav, S.F., Cal.), Sept.-Oct. 2008.	147
209	Deborah L. Johnson, Gutting Equality Out of the Constitution, http://www.innerlightministries.com/download/Gutting_Equality_Prop-8_Rev_Deborah_L_Johnson.pdf (last visited Sept. 27, 2009).	151
210	Bronwen Jones & Kris Langabeer, <i>Marriage Equality Team Fights to Defeat Proposition 8</i> , Unitarian Universalist Community Church of Santa Monica Newsletter, Sept. 2008.	153
211	Bronwen Jones, <i>Vote No on Prop. 8: Three Months of UUCCSM Grassroots Activism</i> , Unitarian Universalist Community Church of Santa Monica Newsletter, Nov. 2008.	152
213	Rabbi Jim Kaufman. ROSH HASHANA SERMON, 2008.	154
214	Kehilla Community Synagogue – Increase the Visibility of the “No on Proposition 8” Campaign, http://www.kehillasynagogue.org/article.php/20081024174712292 (last visited on Sept. 27, 2009).	157

216	Zelda Kennedy, <i>et al.</i> , “ <i>Let No One Put Asunder</i> ” – <i>Reflections on the Sanctity of Marriage</i> , SAINTS ALIVE (All Saints Episcopal Church, Pasadena, Cal.), Nov. 16, 2008, at 1.	158
217	KOL KEHILLA (Kehilla Cmty. Synagogue, Piedmont, Cal.), Nov. 2008.	159
219	Rabbi Klein, The Isain Newsletter, September, 2008.	99
220	Jessica Garrison Corina Knoll, <i>Prop 8 Opponents Rally Across California to Protest Gay-Marriage Ban</i> , LA Times, November 16, 2008.	106
221	Maria L. LaGanga, <i>Loudly and colorfully, opposing sides debate Proposition 8</i> , L.A. TIMES, Mar. 6, 2009.	160
222	Kris Langabeer & Bronwen Jones, <i>Help Make History! Help Defeat Prop. 8</i> , Unitarian Universalist Community Church of Santa Monica Newsletter, Oct. 2008.	163
226	Posting of Angela Lopez to CrossLeft: Balancing the Christian Voice, Christians Against Proposition 8, http://www.crossleft.org/node/6644 (Nov. 15, 2008, 11:45).	167
227	Los Angeles: All Saints, Pasadena, clergy opt out of civil marriages until gay couples can legally wed, http://www.pinknews.co.uk/aroundtheworld/2009/06/los-angeles-allsaints-pasadena-clergy-opt-out-of-civil-marriages-until-gay-couples-can-legally-wed/ (June 5, 2009).	169
228	Love, Marriage and Voting NO on Proposition 8, http://www.mccla.org/love_marriage_prop_8.html#4 .	178
231	Seba Martinez, AP Story Features Mormon Supporter of Marriage Equality, October 6, 2008. http://www.affirmation.org/news/2008_057.shtml	171
232	Dennis McMillan, <i>Religious Leaders Speak Out Against Prop 8</i> , S.F. BAY TIMES, Mar. 12, 2009.	183
233	<i>Members of Basileia participate in Rally to Overturn Prop. 8</i> , WCNNEWSLETTER (The Welcoming Cmty. Network, Independence, Mo.), Mar. 2009, at 2.	185
236	The Metropolitan Community Church of San Jose, <i>MCC Sane Jose Creates Two New “No on Eight” Videos</i> .	180
237	The Metropolitan Community Church of San Jose, <i>“No on 8” Rally at MCC on September 21</i> .	181
239	Barbara Meyers, Quarterly Report to MPUCC Board of Trustees, Mission Peak Unitarian Universalist Congregation, December 2008.	176
240	Lee Michael, Activist Rev. Still Performing Gay Marriages, Santa Monica Mirror, http://www.smmirror.com/MainPages/DisplayArticleDetails.asp?eid=8761 .	41
242	<i>Modesto area religious leaders respond to Proposition 8 ruling</i> , THE MODESTO BEE, May 27, 2009.	188
249	Neighborhood Unitarian Universalist Church of Pasadena Newsletter, October 26, 2008.	196

250	Neighborhood Unitarian Universalist Church of Pasadena Newsletter, November 2, 2008.	197
251	Neighborhood Unitarian Universalist Church of Pasadena Newsletter, October 19, 2008	341
252	Neighborhood Unitarian Universalist Church of Pasadena Newsletter, March 1, 2009.	199
254	Jim Nelson Sermon, <i>Today and Tomorrow</i> , June 14, 2009.	200
255	Erin Yazgan, <i>UC Santa Cruz Raises Its Voice Against Prop 8</i> , City on a Hill Press, November 20, 2008.	337
256	NEWS – LUTHERANS LOVE!! Lutherans Concerned/Los Angeles, http://www.lutheranslove.com/ChapterNews.html (last visited Sept. 27, 2009).	205
257	News! News! – Hollywood Lutheran Church, Congregation Still Opposed <i>Proposition 8!</i> , http://www.hollywoodlutheran.org/HLCNews.html (last visited Sept. 27, 2009).	206
259	<i>Open and Affirming – The Journey Continues</i> , CCC (Cmty. Congregational Church, Tiburon, Cal.), Oct. 2008, at 2.	215
260	Pacific School of Religion, <i>PSR Faculty and Staff Arrested Following Prop 8 Decision</i> , May 26, 2009.	247
261	Pacific School of Religion, <i>Religious Leaders Against Prop 8</i> , October 28, 2008.	253
262	Pacific Southwest District of the Unitarian Universalist Association at Camp de Benneville Pines, Annual Meeting, May 1-3, 2009.	16
263	Palomar Unitarian Universalist Fellowship Telescope Newsletter, November 2008.	296
264	Pastoral Letter on the Supreme Court’s Prop 8 Ruling, http://www.uusf.org/Flame/nl-090526-Prop8PastoralLetter.html (last visited Sept. 27, 2009).	219
266	PCD Currents, <i>News from the Pacific Central District of the UUA</i> , May 10, 2009.	202
267	PCD Currents, <i>News from the Pacific Central District of the UUA</i> , May 25, 2009.	203
268	PCD Currents, <i>Proposition 8 Passes in California</i> , November 10, 2008.	245
271	Pilgrim Congregationalist, <i>Prop 8 Update</i> , May 5, 2009.	186
272	Dan Pine, <i>Jews take to the streets after Prop. 8 ruling</i> , JWEEKLY.COM, May 28, 2009.	223
273	Frank Pizzoli, <i>Breaking News: CA Prop. 8 Opponents Speak to Central Voice</i> , Press Release, October 20, 2006.	224
277	Press Release, <i>Affirmation: Gay & Lesbian Mormons, Gay Mormons and Allies Coming Together Against Proposition 8: October 11 Gathering in Los Angeles</i> (Oct. 4, 2008).	227

278	Press Release, Cal. Council of Churches, Religious Leaders, Faith Organizations to Court: Invalidate Prop 8 (Jan. 14, 2009).	229
279	Press Release, NO on Prop 8, Faith Leaders Across State to Speak Out Against Proposition 8 (Oct. 31, 2008).	238
281	Press Release, Congregation Kol Ami, Congregation Kol Ami Says Court Ruling to Uphold Proposition-8 is a Set-Back for Civil Rights and Religious Rights for Everyone (May 26, 2009).	231
282	Press Release, Jewish Family Serv., Jewish Family Service of Los Angeles Opposes California Proposition 8 (Oct. 17, 2008).	234
284	Press Release, Recon Movement, Judaism's Reconstructionist Movement Condemns Bans on Same-Sex Marriage (Nov. 21, 2008).	239
285	Press Release, Rick Schlosser, Reverend, Cal. Council of Churches, Proposition 8 Amici Brief Filing Press Conference (Jan. 14, 2009).	240
288	<i>Protests held in Calif. on post-Prop.8 Sunday</i> , Assoc. Press, Nov. 9, 2008, http://www.msnbc.msn.com/id/27634025/ns/politics-decision_08/ (last visited Sept. 27, 2009).	241
289	The PSWD NetwUrk Newsletter, Fall 2008	204
290	The PSWD NetwUrk Newsletter, Summer 2009.	248
291	Redlands United Church of Christ, Wanderings Newsletter, April 2009.	322
293	Religious Action Center, <i>Reform Movement Perspective</i> .	252
297	<i>Response to CA Supreme Court Decision on Prop. 8</i> , FCCB THE CARILLON (First Congregational Church of Berkeley, United Church of Christ, Berkeley, Cal.), May 31, 2009, at 1.	256
298	J.B. Sacks, Rabbi, Congregation Sha'ar Zahav, Abraham and Obama: Reflections on Senator Obama's Victory and the Passage of Proposition 8.	260
300	Hugo Salinas, <i>Affirmation Couples Get Married</i> , AFFIRMATION: GAY & LESBIAN MORMONS, June 2008, http://www.affirmation.org/voices/robert_moore.shtml (last visited Sept. 27, 2009).	263
301	Hugo Salinas, <i>Marching for Equality: A Conversation with Robert Moore</i> , http://www.affirmation.org/voices/robert_moore.shtml (last visited Sept. 27, 2009).	262
303	Santa Clara County Council of Churches – Council of Churches Urges NO on Proposition 8, http://www.councilofchurches-scc.org/article.php/aspeopleoffaith (last visited Sept. 27, 2009).	264
304	Santa Clara County Council of Churches – Court Ruling on Prop 8 Tuesday, May 26: Pray Together!, http://www.councilofchurchesscc.org/article.php?story=courtdecision&query=prop (last visited Sept. 27, 2009).	265

310	Seventh-Day Adventist Kinship, <i>Prop 8 Results</i> , November 5, 2008.	242
311	Rabbi Shifra. 2008 Yom Kippur Sermon.	269
312	Sierra Foothills Unitarian Universalists, December Services, December 2008.	271
313	Sierra Foothills Unitarian Universalists, May Services, May 2009	273
314	Sierra Foothills Unitarian Universalists, June Services, June 2009.	272
315	The SLO UU News, September 2008.	276
316	The SLO UU News, November 2008	275
317	The SLO UU News, July 2009	274
324	Greg Stewart, <i>Minister's Mailbox: Reduce, Reuse, Repeal!</i> , FIRST NEWS (The First Unitarian Universalist Soc'y of S.F., S.F., Cal.), Mar. 2009, at 3.	288
325	St. Francis Times, <i>Festival of the Reformation</i> , October 26, 2008.	286
326	St. Francis Times, <i>All Saints Sunday</i> , November 2, 2008.	
327	St. Francis Times, <i>Day of Pentecost</i> , May 31, 2009.	283
329	Arvid Straube, <i>Arvid's Arcana: Lies, Fears and Marriage Licenses</i> , FIRST WORDS (First Unitarian Universalist Church of San Diego, San Diego, Cal.), Apr. 2009, at 2.	289
330	Deborah Streeter, <i>Congregations continue to respond to Prop. 8</i> , UNITED CHURCH NEWS – THE PAC., Feb.-Mar. 2009, at B7.	290
332	Tapestry, A Unitarian Universalist Congregation, Annual Committee Reports, FY July 1, 2007-June 30, 2008	281
335	Paul Tellstrom, Proper 19 A “Forgiveness,” http://www.iucc.org/Sermon/sermon-09-15-08.pdf (last visited Sept. 27, 2009).	297
336	Paul Tellstrom, Stewardship Sunday/Veterans Day “Joe,” http://www.iucc.org/Sermon/sermon-11-09-08.pdf (last visited Sept. 27, 2009).	298
338	Morris A. Thurston, <i>Religious Organizations Should Not Rely on False or Misleading Legal Arguments in their Zeal to Support California Proposition 8</i> , AFFIRMATION: GAY & LESBIAN MORMONS, Oct. 2, 2008, http://www.affirmation.org/me/religious_organizations.shtml (last visited Sept. 27, 2009).	301
339	Kerana Todorov, <i>Rally against Prop. 8</i> , NAPA VALLEY REG., Nov. 16, 2008.	302
341	Gregory Tomlin, Split among American Baptists over homosexuality is final, Baptist Press, May 18, 2006.	303
342	Transcript of “Equally Speaking”, The Human Rights Campaign, October 16, 2008.	138
343	Transcript of “Equally Speaking”, The Human Rights Campaign, October 22, 2008.	139

344	Tom Tugend, <i>Rabbis on anti-gay marriage Prop 8: Yes, no, maybe</i> , JEWISHJOURNAL.COM, Oct. 9, 2008, http://www.jewishjournal.com/elections/article/rabbis_on_anti_gay_marriage_prop_8_yes_no_maybe_20081009/ (last visited Sept. 27, 2009).	305
345	<i>The Unigram</i> . The Monthly Newsletter of the Unitarian Universalist Society of Sacramento. Vol. 39, No. 5. November 2008. www.uuss.org	307
346	Unitarian Universalist Association of Congregations, <i>Unitarian Universalists Protest Proposition 8</i> , June 3, 2009	311
347	Unitarian Universalist Fellowship of Visalia, Calendar August 2008. http://www.uuvisalia.org/newsletter/2008/uuvisalia_august_2008.html	308
348	Unitarian Universalist Legislative Ministry, Marriage Equality. http://www.uulmca.org/programs/me.html	309
349	United Church of Christ, Called Out eNews – October 2008.	306
351	UUA, Support of the Right to Marry for Same-Sex Couples, 1996 Resolution of Immediate of Witness.	344
352	UUCB, From Our Co-Ministers, October 2008.	98
353	The UUC qUQuarterly, Unitarian Universalist Church of Davis, Spring 2009	315
354	UUSS Online Calendar Week of November 2, 2008. Unitarian Universalist Society of Sacramento. www.uuss.org	310
355	UU Update, Unitarian Universalist Congregation, Santa Rose, August 2008.	316
358	Vestry of Saint Gregory of Nyssa Episcopal Church, Meeting Minutes, September 23, 2008.	184
359	Video Clip, “Foes of Proposition 8 hold interfaith Service,” San Diego Tribune, November 2, 2008 available at http://video.signonsandiego.com/vmix_hosted_apps/p/media?id=2347697&item_index=25&genre_id=4676&sort=NULL	92
360	David W. Virtue, <i>California Episcopal Bishops Excoriate Passage of Proposition 8</i> , VIRTUEONLINE, Nov. 9, 2008, http://virtueonline.org/portal/modules/news/article.php?storyid=9324 (last visited Sept. 27, 2009).	319
361	Rev. Rebecca Voelkel. A Time To Build Up: ANALYSIS OF THE NO ON PROPOSITION 8 CAMPAIGN AND ITS IMPLICATIONS FOR FUTURE PROLBGTQQIA RELIGIOUS ORGANIZING. National Gay and Lesbian Task Force’s National Religious Leadership Roundtable. 2009.	317
364	Welcome! To the Unitarian Universalist Fellowship of Tuolumne County, General Announcements, http://www.mlodeuu.com/current_events.html (last visited Sept. 27, 2009).	326
368	Rev. Faith Whitmore. Faith Whitmore Invocation. May 26, 2009. http://www.stmarksumc.com/invocation	84

369	John Wildermuth, <i>Both sides make last-minute Prop. 8 push</i> , S.F. CHRONICLE, Nov. 2, 2008.	331
372	Nancy Wilson, <i>Queer Theology as Change Agent</i> , MCC Moderator, March 3, 2009.	332
373	Greg Wolfe, <i>Equality for All Rally – May 26, 2009</i> , Congregation Bet Haverim.	334
378	Summary of Actions of the 76th General Convention	111

APPENDIX C
WEBSITES WITH THE SAME “LAST VISITED” DATE CITED IN
DR. MILLER’S AND DR. NATHANSON’S INDEXES OF MATERIALS CONSIDERED¹

Miller Index No.	Description	Nathanson Index No.
91	A Brief Summary As to Why Promoting California’s Proposition 8 Was Contrary to Both Scripture & Official LDS Doctrine, http://h1.ripway.com/lds4gaymarriage/prop8.htm (last visited Sept. 27, 2009).	3
95	Marc Andrus & Steven Charleston, <i>After Prop 8, Love Endures</i> , http://diocal.org/index.php?option=com_content&task=view&id=336&Itemid=215 (last visited Sept. 27, 2009).	13
96	Marc Handley Andrus, <i>The Rt. Rev. Marc Handley Andrus writes letter to the diocese in response to Proposition 8 Decision</i> , http://oascalifornia.org/2009%20andrus%20resonds%20prop%208%20decision.htm (last visited Sept. 27, 2009).	14
97	Asian American & Pacific Islander Clergy Support the Right of Same-Sex Couples to Marry, http://www.netrj.org/resources/library/api-clergy-support-marriage.htm (last visited Sept. 27, 2009).	17
109	Paster Susan Brecht Speaks out Against Prop 8: Pacific School of Religion, http://www.psr.edu/alum-rev-susan-brecht-against-prop-8 (last visited Sept. 27, 2009).	218
121	Christ Chapel of Laguna Beach Orange County California Gay, http://www.christchapeloflaguna.org/events.htm (last visited Sept. 27, 2009).	38
124	Church of the Foothills, Pastor/Staff, http://chotf.org/staff.html (last visited Sept. 27, 2009).	39
125	Congregational Church of Belmont, http://www.uccbelmont.org/ (last visited Sept. 27, 2009).	46
126	Congregation Shomrei Torah, All in God’s Image, http://www.shomreitorah.org/inthenews.html (last visited Sept. 27, 2009).	43
127	Congregation Shomrei Torah, Opposing Prop. 8 Interfaith service will support gay marriage, http://www.shomreitorah.org/inthenews.html (last visited Sept. 27, 2009).	44
128	Congregation Shomrei Torah, Please let my moms be married, http://www.shomreitorah.org/inthenews.html (last visited Sept. 27, 2009).	45

¹ Compare Goldman Decl. Ex. F with Goldman Decl. Ex. D.

133	DIGNITY Los Angeles – Photos – Wedding of Jim and Raol 2008, http://www.dignitylosangeles.org/photos-15-prop8-pg.htm (last visited Sept. 27, 2009).	59
191	House of Danu – House of Danu Takes Stand on Proposition 8, http://www.houseofdanu.com/content/view/13/1 (last visited Sept. 27, 2009).	135
193	HUC-JIR Weekly Digest, Rabbis on Anti-Gay Marriage Prop 8, http://huc.edu/external/newsletter/08/10/17/ (last visited Sept. 27, 2009).	137
198	Inclusive Baptist Church, Welcoming & Affirming All, Readings for the Day: Matthew 2:1-12 and ‘The Journey of the Magi’ by T.S. Eliot, http://www.baptistchurchsf.org/sermons/detail.php?month=Jan%202009&mId=67 (last visited Sept. 27, 2009).	141
199	Inclusive Baptist Church, Welcoming & Affirming All, Their Story, Our Story, http://www.baptistchurchsf.org/sermons/detail.php?month=Nov%202008&mId=65#168 (last visited Sept. 27, 2009).	142
200	Inner Light Center, Communicate Prop 8, http://www.innerlightministries.com/documents/communications-on-8.pdf (last visited Sept. 27, 2009).	143
209	Deborah L. Johnson, Gutting Equality Out of the Constitution, http://www.innerlightministries.com/download/Gutting_Equality_Prop-8_Rev_Deborah_L_Johnson.pdf (last visited Sept. 27, 2009).	151
256	NEWS – LUTHERANS LOVE!! Lutherans Concerned/Los Angeles, http://www.lutheranslove.com/ChapterNews.html (last visited Sept. 27, 2009).	205
257	News! News! – Hollywood Lutheran Church, Congregation Still Opposed <i>Proposition 8!</i> , http://www.hollywoodlutheran.org/HLCNews.html (last visited Sept. 27, 2009).	206
264	Pastoral Letter on the Supreme Court’s Prop 8 Ruling, http://www.uusf.org/Flame/nl-090526-Prop8PastoralLetter.html (last visited Sept. 27, 2009).	219
301	Hugo Salinas, <i>Marching for Equality: A Conversation with Robert Moore</i> , http://www.affirmation.org/voices/robert_moore.shtml (last visited Sept. 27, 2009).	262
303	Santa Clara County Council of Churches – Council of Churches Urges NO on Proposition 8, http://www.councilofchurches-scc.org/article.php/aspeopleoffaith (last visited Sept. 27, 2009).	264
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335	Paul Tellstrom, Proper 19 A “Forgiveness,” http://www.iucc.org/Sermon/sermon-09-15-08.pdf (last visited Sept. 27, 2009).	297
336	Paul Tellstrom, Stewardship Sunday/Veterans Day “Joe,” http://www.iucc.org/Sermon/sermon-11-09-08.pdf (last visited Sept. 27, 2009).	298

338	Morris A. Thurston, <i>Religious Organizations Should Not Rely on False or Misleading Legal Arguments in their Zeal to Support California Proposition 8</i> , AFFIRMATION: GAY & LESBIAN MORMONS, Oct. 2, 2008, http://www.affirmation.org/me/religious_organizations.shtml (last visited Sept. 27, 2009).	301
344	Tom Tugend, <i>Rabbis on anti-gay marriage Prop 8: Yes, no, maybe</i> , JEWISHJOURNAL.COM, Oct. 9, 2008, http://www.jewishjournal.com/elections/article/rabbis_on_anti_gay_marriage_prop_8_yes_no_maybe_20081009/ (last visited Sept. 27, 2009).	305