

1 EDMUND G. BROWN JR.  
 Attorney General of California  
 2 JONATHAN K. RENNER  
 Senior Assistant Attorney General  
 3 TAMAR PACHTER  
 Deputy Attorney General  
 4 State Bar No. 146083  
 455 Golden Gate Avenue, Suite 11000  
 5 San Francisco, CA 94102-7004  
 Telephone: (415) 703-5970  
 6 Fax: (415) 703-1234  
 E-mail: Tamar.Pachter@doj.ca.gov  
 7 *Attorneys for Defendant*  
*Attorney General Edmund G. Brown Jr.*

8  
 9 IN THE UNITED STATES DISTRICT COURT  
 10 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 11

12  
 13 **KRISTIN M. PERRY, ET AL.,**

14 Plaintiffs,

15 v.

16  
 17 **GOVERNOR ARNOLD SCHWARZENEGGER, ET**  
**AL.,**

18 Defendants.  
 19

3:09-cv-02292-VRW

**ANSWER OF ATTORNEY GENERAL**  
**EDMUND G. BROWN JR.**

Date:  
 Time:  
 Courtroom:  
 Judge: Hon. Vaughn R. Walker, C.J.  
 Trial Date:  
 Action Filed: May 22, 2009

20 This case arises under a factual and legal history that is unique to California. In May 2008,  
 21 the California Supreme Court held that denying same-sex couples the right to marry while  
 22 affording them the benefits of marriage through the domestic partnership law violated principles  
 23 of equal protection, liberty, and privacy. *In re Marriage Cases*, 43 Cal.4th 757 (2008). The  
 24 following November, a bare majority of California voters passed Proposition 8, which amended  
 25 the State Constitution to declare that only marriages between a man and a woman would be  
 26 recognized. Between May and November 2008, over 18,000 same-sex couples were married. In  
 27 2009, the California Supreme Court upheld the validity of these marriages but declared that the  
 28

1 voters had the authority to carve out of the state constitution an exception to the rights of liberty  
2 and equal protection with respect to marriage. *Strauss v. Horton*, \_\_\_ Cal.4th \_\_\_, 93 Cal.Rptr.3d  
3 591 (2009). Still, the court reaffirmed the liberty and equal protection principles that were  
4 recognized in the *In re Marriage Cases* and that are at issue in this federal constitutional  
5 challenge.

6 The Attorney General of California is sworn to uphold the Constitution of the United States  
7 in addition to the Constitution of the State of California. Cal. Const., art. XX, § 3. The United  
8 States Constitution is the “supreme law of the land.” U.S. Const., art. VI, § 2; Cal. Const., art. III,  
9 § 1. Taking from same-sex couples the right to civil marriage that they had previously possessed  
10 under California’s Constitution cannot be squared with guarantees of the Fourteenth Amendment.  
11 Accordingly, the Attorney General answers the Complaint consistent with his duty to uphold the  
12 United States Constitution, as Attorney General Thomas C. Lynch did when he argued that  
13 Proposition 14, passed by the California voters in 1964, was incompatible with the Federal  
14 Constitution. *Reitman v. Mulkey*, 387 U.S. 369 (1967).

15 1. In response to paragraph 1 of the Complaint, the Attorney General admits that in  
16 November 2008 California adopted Proposition 8; that Proposition 8 amended Article I of the  
17 California Constitution by adding section 7.5 which provides that “[o]nly marriage between a  
18 man and a woman is valid or recognized in California;” and that the effect of Proposition 8 is to  
19 deny gay men and lesbians and their same-sex partners access to civil marriage in California and  
20 to deny them recognition of their civil marriages performed elsewhere. The Attorney General  
21 admits that lesbians and gay men and their same-sex partners may form domestic partnerships in  
22 California pursuant to California Family Code sections 297 through 299.6, and that such domestic  
23 partnerships are not equal to civil marriage, and that this unequal treatment denies lesbians and  
24 gay men rights guarantees by the Fourteenth Amendment to the United States Constitution.  
25 Except as specifically admitted herein, the Attorney General denies the allegations of paragraph 1  
26 of the Complaint.

27 2. In response to paragraph 2 of the Complaint, the Attorney General admits that it is for  
28 the reasons stated in paragraph 1 of the Complaint that the Plaintiffs ask this court to enjoin

1 enforcement of Proposition 8 and other California statutes. Except as specifically admitted  
2 herein, the Attorney General denies the allegations of paragraph 2 of the Complaint.

3 3. In response to paragraph 3 of the Complaint, the Attorney General admits that this  
4 Court has jurisdiction over claims for injunctive and declaratory relief against the officials  
5 exercising executive powers that are named as defendants in the Complaint, and which may  
6 operate to enjoin future enforcement of Proposition 8. Except as specifically admitted herein, the  
7 Attorney General denies the allegations of paragraph 3 of the Complaint.

8 4. The Attorney General admits the allegations of paragraph 4 of the Complaint.

9 5. In response to paragraph 5 of the Complaint, the Attorney General admits that  
10 Plaintiffs seek the relief that they allege for the reasons that they allege. Except as specifically  
11 admitted herein, the Attorney General denies the allegations of paragraph 5 of the Complaint.

12 6. In response to paragraph 6 of the Complaint, the Attorney General admits that  
13 Plaintiffs seek the relief that they allege for the reasons that they allege. Except as specifically  
14 admitted herein, the Attorney General denies the allegations of paragraph 6 of the Complaint.

15 7. In response to paragraph 7 of the Complaint, the Attorney General admits that  
16 Proposition 8 denies same-sex couples the right to civil marriage in California, and that it  
17 therefore violates the Fourteenth Amendment to the United States Constitution. The Attorney  
18 General lacks knowledge or information sufficient to form a belief as to the truth of the remaining  
19 matters asserted in paragraph 7 of the Complaint and on that basis denies them.

20 8. In response to paragraph 8 of the Complaint, the Attorney General admits that  
21 Plaintiffs seek the relief that they allege for the reasons that they allege. Except as specifically  
22 admitted herein, the Attorney General denies the allegations of paragraph 8 of the Complaint.

23 9. The Attorney General lacks knowledge or information sufficient to form a belief as to  
24 the truth of the allegations of paragraph 9 of the Complaint and on that basis denies them.

25 10. The Attorney General lacks knowledge or information sufficient to form a belief as to  
26 the truth of the allegations of paragraph 10 of the Complaint and on that basis denies them.

27 11. The Attorney General lacks knowledge or information sufficient to form a belief as to  
28 the truth of the allegations of paragraph 11 of the Complaint and on that basis denies them.

1           12. The Attorney General lacks knowledge or information sufficient to form a belief as to  
2 the truth of the allegations of paragraph 12 of the Complaint and on that basis denies them.

3           13. In response to paragraph 13 of the Complaint, the Attorney General admits that  
4 Arnold Schwarzenegger is the Governor of the State of California; that in his official capacity the  
5 supreme executive power of the state is vested in him; that it is his duty to properly execute the  
6 laws of the state; and that the Governor has a district office in San Francisco. Except as  
7 specifically admitted herein, the Attorney General denies the allegations of paragraph 13 of the  
8 Complaint.

9           14. In response to paragraph 14 of the Complaint, the Attorney General admits that he is  
10 the Attorney General of the State of California; that in his official capacity he is the chief law  
11 officer of the state; that it is his duty to see that the laws of the state are uniformly and adequately  
12 enforced; and that the Attorney General has offices in Oakland and San Francisco. Except as  
13 specifically admitted herein, the Attorney General denies the allegations of paragraph 14 of the  
14 Complaint.

15           15. In response to paragraph 15 of the Complaint, the Attorney General admits that Mark  
16 B. Horton is the Director of the California Department of Public Health. The Attorney General  
17 lacks knowledge or information sufficient to form a belief as to the truth of the remaining  
18 allegations of paragraph 15 of the Complaint and on that basis denies them.

19           16. In response to paragraph 16 of the Complaint, the Attorney General admits that  
20 Linette Scott is the Deputy Director of Health Information and Strategic Planning for the  
21 California Department of Public Health. The Attorney General lacks knowledge or information  
22 sufficient to form a belief as to the truth of the remaining allegations of paragraph 16 of the  
23 Complaint and on that basis denies them.

24           17. In response to paragraph 17 of the Complaint, the Attorney General admits that  
25 Patrick O'Connell is the Auditor-Controller of Alameda County, which supervises the Clerk-  
26 Recorder's Office. The Attorney General lacks knowledge or information sufficient to form a  
27 belief as to the truth of the remaining allegations of paragraph 17 of the Complaint and on that  
28 basis denies them.

1           18. In response to paragraph 18 of the Complaint, the Attorney General admits that Dean  
2 C. Logan is the Registrar-Recorder/County Clerk for Los Angeles County. The Attorney General  
3 lacks knowledge or information sufficient to form a belief as to the truth of the remaining  
4 allegations of paragraph 18 of the Complaint and on that basis denies them.

5           19. The Attorney General admits that he has enforcement responsibilities in relation to  
6 California law, which includes Proposition 8, and that Plaintiffs seek the relief that they allege.  
7 Except as specifically admitted herein, the Attorney General denies the allegations of paragraph  
8 19 of the Complaint.

9           20. In response to paragraph 20 of the Complaint, the Attorney General admits that  
10 sexual orientation is a characteristic that bears no relation to a person's ability to perform or  
11 contribute to society and that the sexual orientation of gays and lesbians has been associated with  
12 a stigma of inferiority and second-class citizenship, manifested by the group's history of legal and  
13 social disabilities (see *In re Marriage Cases*, 43 Cal.4th at 841). The Attorney General admits the  
14 remaining allegations of paragraph 20 of the Complaint.

15           21. In response to paragraph 21 of the Complaint, the Attorney General admits that in the  
16 mid-1970s several same-sex couples sought and were denied marriage licenses from county  
17 clerks in California; and that in 1977, the California Legislature enacted California Family Code  
18 section 300, which defined marriage as "a personal relation arising out of a civil contract between  
19 a man and a woman, to which the consent of the parties capable of making that contract is  
20 necessary" (see *In re Marriage Cases*, 43 Cal.4th at 795). The Attorney General lacks knowledge  
21 or information sufficient to form a belief as to the truth of the remaining allegations of paragraph  
22 21 of the Complaint and on that basis denies them.

23           22. In response to paragraph 22 of the Complaint, the Attorney General admits that in  
24 1999 the California Legislature adopted a domestic partnership law codified at California Family  
25 Code sections 297-299.6; that the law defines domestic partners as "two adults who have chosen  
26 to share one another's lives in an intimate and committed relationship of mutual caring;" and that  
27 under the law domestic partners must share a common residence, each be at least 18 years of age,  
28 be unrelated by blood in any way that would prevent them from being married to one another, not

1 be married or a member of another domestic partnership, be capable of consenting, and either  
2 both be of the same sex or include one person more than 62 years of age. The Attorney General  
3 lacks knowledge or information sufficient to form a belief as to the truth of the remaining  
4 allegations of paragraph 22 of the Complaint and on that basis denies them.

5 23. In response to paragraph 23 of the Complaint, the Attorney General admits that  
6 California's domestic partnership law gives same-sex couples many of the substantive legal  
7 benefits and privileges that California civil marriage provides; that the domestic partnership law  
8 does not permit the marriage of same-sex couples; and that the California Supreme Court has  
9 noted at least nine ways in which statutes concerning marriage differ from corresponding statutes  
10 concerning domestic partnerships (see *In re Marriage Cases*, 43 Cal.4th at 805 fn. 24). The  
11 Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the  
12 remaining allegations of paragraph 23 of the Complaint, and on that basis denies them.

13 24. In response to paragraph 24 of the Complaint, the Attorney General admits that in  
14 2000, California voters approved Proposition 22 (codified as Cal. Fam. Code § 308.5), which  
15 provided that "[o]nly marriage between a man and a woman is valid or recognized in California;  
16 and that in *Lockyer v. City & County of San Francisco*, 33 Cal.4th 1055 (2004), the California  
17 Supreme Court found that Family Code sections 300 and 308.5 prohibited the City and County of  
18 San Francisco from issuing marriage licenses to same-sex couples but did not address whether  
19 those statutes were constitutional. The Attorney General lacks knowledge or information  
20 sufficient to form a belief as to the truth of the remaining allegations of paragraph 24 of the  
21 Complaint and on that basis denies them.

22 25. In response to paragraph 25 of the Complaint, on information and belief, the Attorney  
23 General admits proponents of Proposition 8 submitted petitions with sufficient signatures to place  
24 it on the November 2008 ballot. The Attorney General lacks knowledge or information sufficient  
25 to form a belief as to the truth of the remaining allegations of paragraph 25 of the Complaint and  
26 on that basis denies them.

27 26. The Attorney General admits the allegations of paragraph 26 of the Complaint.  
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1           27. In response to paragraph 27 of the Complaint, on information and belief, the Attorney  
2 General admits that the California Secretary of State certified that Proposition 8 qualified for the  
3 November 2008 General Election ballot; admits that the Official Title and Summary (prepared by  
4 the Attorney General) printed in the Voter Information Guide stated that Proposition 8 “Changes  
5 the California Constitution to eliminate the right of same-sex couples to marry in California” and  
6 “Provides that only marriage between a man and a woman is valid or recognized in California;”  
7 admits that the effect of passage of Proposition 8 was to overturn the decision of the California  
8 Supreme Court in *In re Marriage Cases*, by taking away the rights previously protected by the  
9 California Constitution to same-sex civil marriage in California, and the right to have a same-sex  
10 civil marriages that are performed elsewhere recognized in California; and admits that in doing so  
11 Proposition 8 imposed a special disability on gays and lesbians and their families on the basis of  
12 sexual orientation. The Attorney General lacks knowledge or information sufficient to form a  
13 belief as to the truth of the remaining allegations of paragraph 27 of the Complaint, and on that  
14 basis denies them.

15           28. The Attorney General admits the allegations of paragraph 28 of the Complaint.

16           29. In response to paragraph 29 of the Complaint, the Attorney General admits that since  
17 the passage of Proposition 8 it has not been lawful to issue a marriage license to same-sex couples  
18 in California. The Attorney General lacks knowledge or information sufficient to form a belief as  
19 to the truth of the remaining allegations of paragraph 29 of the Complaint, and on that basis  
20 denies them.

21           30. In response to paragraph 30 of the Complaint, the Attorney General admits that since  
22 the passage of Proposition 8, California law has restricted civil marriage to opposite-sex couples,  
23 and denied civil marriage to same-sex couples; that under California law, gay and lesbian couples  
24 cannot enter into a civil marriage with a person of their choice; and that, as the California  
25 Supreme Court found in *In re Marriage Cases*, 43 Cal.4th at 782, the inability to marry the  
26 person of their choice denies gays and lesbians, as well as their families, the personal and public  
27 affirmation that accompanies state-sanctioned civil marriage. Except as specifically admitted  
28 herein, the Attorney General denies the allegations of paragraph 30 of the Complaint.

1 31. The Attorney General lacks knowledge or information sufficient to form a belief as to  
2 the truth of the allegations of paragraph 31 of the Complaint, and on that basis denies them.

3 32. The Attorney General lacks knowledge or information sufficient to form a belief as to  
4 the truth of the allegations of paragraph 32 of the Complaint, and on that basis denies them.

5 33. The Attorney General lacks knowledge or information sufficient to form a belief as to  
6 the truth of the allegations of paragraph 33 of the Complaint, and on that basis denies them.

7 34. The Attorney General lacks knowledge or information sufficient to form a belief as to  
8 the truth of the allegations of paragraph 34 of the Complaint, and on that basis denies them.

9 35. In response to paragraph 35 of the Complaint, the Attorney General admits that the  
10 United States Supreme Court found in *Loving v. Virginia*, 388 U.S. 1. 12 (1967), that the  
11 “freedom to marry has long been recognized as one of the vital personal rights essential to the  
12 orderly pursuit of happiness by free men.” The Attorney General lacks knowledge or information  
13 sufficient to form a belief as to the truth of the remaining allegations of paragraph 35 of the  
14 Complaint, and on that basis denies them.

15 36. In response to paragraph 36 of the Complaint, the Attorney General admits that  
16 absent an adverse judgment or entry of an injunction in this case, the Defendants (excepting the  
17 Attorney General) will have a legal obligation to enforce Proposition 8 to the extent that  
18 Proposition 8 is subject to enforcement by them, *see* Cal. Const., art. III, § 3.5; that the passage of  
19 Proposition 8 was in violation of the Fourteenth Amendment to the United States Constitution;  
20 and that the Plaintiffs seek relief as alleged in the Complaint. The Attorney General lacks  
21 knowledge or information sufficient to form a belief as to the truth of the remaining allegations of  
22 paragraph 36 of the Complaint, and on that basis denies them.

23 **CLAIM ONE: DUE PROCESS**

24 37. In response to paragraph 37 of the Complaint, the Attorney General incorporates here  
25 by reference paragraphs 1 through 36 of this Answer as if fully set forth herein.

26 38. In response to paragraph 38 of the Complaint, the Attorney General admits that, to the  
27 extent that Proposition 8 took from Plaintiffs their previously held fundamental right to marry, the  
28 measure violates the Due Process Clause of the Fourteenth Amendment to the United States



1 Constitution on its face. The Attorney General lacks knowledge or information sufficient to form  
2 a belief as to the truth of the remaining allegations of paragraph 38 of the Complaint, and on that  
3 basis denies them.

4 39. In response to paragraph 39 of the Complaint, the Attorney General admits that, to the  
5 extent that Proposition 8 took from Plaintiffs their previously held fundamental right to marry, the  
6 measure violates the Due Process clause of the Fourteenth Amendment to the United States  
7 Constitution on its face; and that by denying civil marriage to gay and lesbian same-sex couples  
8 that it affords to heterosexual opposite-sex couples, the California Constitution denies gay and  
9 lesbian couples and their families the same dignity, respect, and stature afforded families headed  
10 by a married couple. *See In re Marriage Cases*, 43 Cal.4th at 846-47.

#### 11 **CLAIM TWO: EQUAL PROTECTION**

12 40. In response to paragraph 40 of the Complaint, the Attorney General incorporates here  
13 by reference paragraphs 1 through 39 of this Answer as if fully set forth herein.

14 41. In response to paragraph 41 of the Complaint, and in light of the state constitutional  
15 rights confirmed by the California Supreme Court in *In re Marriage Cases*, the Attorney General  
16 admits that the passage of Proposition 8 violates the Equal Protection Clause of the Fourteenth  
17 Amendment to the United States Constitution on its face. The Attorney General lacks knowledge  
18 or information sufficient to form a belief as to the truth of the remaining allegations of paragraph  
19 41 of the Complaint, and on that basis denies them.

20 42. In response to paragraph 42 of the Complaint, the Attorney General admits that  
21 Proposition 8 restricts civil marriage in California to opposite-sex couples; that gays and lesbians  
22 are therefore unable to enter into a civil marriage with the person of their choice; that the  
23 California Constitution treats similarly-situated persons differently by providing civil marriage to  
24 opposite-sex couples, but denying it to same-sex couples; that domestic partnership under  
25 California law is available to same-sex couples, but is not the equivalent of civil marriage; that  
26 even if domestic partnership were the substantive equivalent to civil marriage, it would still be  
27 unequal to deny civil marriage to same-sex couples because, as recognized by the California  
28 Supreme Court in *In re Marriage Cases*, domestic partnership would carry with it a stigma of

1 inequality and second-class citizenship; that under the California Constitution, gay and lesbian  
2 same sex couples are unequal to heterosexual opposite sex couples; and that article I, section 7.5  
3 of the California Constitution discriminates on the basis of sexual orientation. The Attorney  
4 General lacks knowledge or information sufficient to form a belief as to the truth of the remaining  
5 allegations of paragraph 42 of the Complaint, and on that basis denies them.

6 43. In response to paragraph 43 of the Complaint, the Attorney General admits that article  
7 I, section 7.5 of the California Constitution was passed as a result of disapproval of or animus by  
8 the majority of voters against same-sex marriages; that Proposition 8 took away from gays and  
9 lesbians and their families rights that the California Supreme Court previously recognized to exist  
10 in the California Constitution (see *In re Marriage Cases*, 43 Cal.4th at 853-54); that in doing so,  
11 Proposition 8 imposed a special disability on gays and lesbians alone; and that as a result,  
12 Proposition 8 violates the Equal Protection Clause of the Fourteenth Amendment to the United  
13 States Constitution. The Attorney General lacks knowledge or information sufficient to form a  
14 belief as to the truth of the remaining allegations of paragraph 43 of the Complaint, and on that  
15 basis denies them.

16 **CLAIM THREE: VIOLATION OF 42 U.S.C. § 1983**

17 44. In response to paragraph 44 of the Complaint, the Attorney General incorporates here  
18 by reference paragraphs 1 through 43 of this Answer as if fully set forth herein.

19 45. The Attorney General lacks knowledge or information sufficient to form a belief as to  
20 the truth of the allegations of paragraph 45 of the Complaint, and on that basis denies them.

21 **IRREPARABLE INJURY**

22 47. In response to paragraph 47 of the Complaint, the Attorney General incorporates here  
23 by reference paragraphs 1 through 46 of this Answer as if fully set forth herein.

24 48. The Attorney General lacks knowledge or information sufficient to form a belief as to  
25 the truth of the allegations of paragraph 48 of the Complaint, and on that basis denies them.

26 49. The Attorney General lacks knowledge or information sufficient to form a belief as to  
27 the truth of the allegations of 49 of the Complaint, and on that basis denies them.

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Dated: June 12, 2009

Respectfully submitted,  
  
EDMUND G. BROWN JR.  
Attorney General of California  
JONATHAN K. RENNER  
Senior Assistant Attorney General

/S/  
TAMAR PACTER  
Deputy Attorney General  
*Attorneys for Defendant*  
*Attorney General Edmund G. Brown Jr.*

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