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12 *Attorneys for*
NO ON PROPOSITION 8,
13 CAMPAIGN FOR MARRIAGE EQUALITY:
A PROJECT OF THE AMERICAN CIVIL
14 LIBERTIES UNION OF NORTHERN CALIFORNIA

15 **UNITED STATES DISTRICT COURT**
16 **NORTHERN DISTRICT OF CALIFORNIA**

17 KRISTIN M. PERRY, SANDRA B. STIER, PAUL
18 T. KATAMI, and JEFFREY J. ZARRILLO,

19 Plaintiffs,

20 v.

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

27 Defendants.
28

CASE NO. 09-CV-2292 VRW

**SUPPLEMENTAL DECLARATION OF
ELIZABETH GILL IN SUPPORT OF
OPPOSITION OF NO ON PROPOSITION 8,
CAMPAIGN FOR MARRIAGE EQUALITY:
A PROJECT OF THE AMERICAN CIVIL
LIBERTIES UNION OF NORTHERN
CALIFORNIA TO DEFENDANT-
INTERVENORS' MOTION TO COMPEL
COMPLIANCE WITH NONPARTY
DOCUMENT SUBPOENAS**

Judge: Chief Judge Walker
Location: Courtroom 6, 17th Floor
Trial Date: January 11, 2010

1 I, Elizabeth Gill, hereby declare:

2 1. I am a Staff Attorney for the LGBT & AIDS Project of the ACLU Foundation
3 and for the ACLU Foundation of Northern California. I am counsel of record for non-party No on
4 Proposition 8, Campaign for Marriage Equality: A Project of the American Civil Liberties Union of
5 Northern California, which is a state-registered political action committee (“ACLU PAC”). The
6 ACLU of Northern California also reported the time I spent working to defeat Proposition 8 through
7 the ACLU PAC. I have personal knowledge of the matters contained in this declaration, except
8 where such facts are stated to be based on information and belief, and those facts I believe to be true.
9 If called to testify to the matters set forth in this declaration, I could do so competently.

10 2. I submit this declaration in response to the Court’s February 11, 2010 order
11 (Docket # 589) requesting that non-party ACLU PAC submit a declaration “identifying the core
12 group of individuals engaged in the formulation of campaign strategy and messaging.”

13 3. In my capacity as Staff Attorney, I spent a significant amount of time between
14 June 2008 and November 2008 working to defeat Proposition 8. I did this work in two ways: (1) I
15 worked with numerous other individuals and organizations for an umbrella campaign organization
16 “No on 8 – Equality for All,” of which the ACLU of Northern California was a member; and (2) I
17 worked with others within the ACLU on various activities directed toward defeating the initiative
18 (such as communicating to ACLU members about the initiative, holding fundraisers at the ACLU,
19 etc). I also oversaw the work of several other ACLU employees to defeat Proposition 8. All of this
20 work was reported as required as contributions to an issue campaign by the ACLU PAC.

21 4. The other employees at the ACLU who worked to defeat Proposition 8
22 between June 2008 and November 2008 (collectively, “the ACLU employees”) were:

- 23 ➤ Paul Cates, Public Education Director, LGBT & AIDS Project
- 24 ➤ Matthew Coles, Director, LGBT & AIDS Project
- 25 ➤ Rebecca Farmer, Media Relations Director, ACLU of Northern California
- 26 ➤ Shayna Gelender, Field Organizer, ACLU of Northern California
- 27 ➤ Maya Harris, Executive Director, ACLU of Northern California
- 28 ➤ Ashley Morris, Field Organizer, ACLU of Northern California

- Gigi Pandian, Graphic Design and Public Production Manager, ACLU of Northern California
- Skylar Porras, Director San Jose office, ACLU of Northern California
- Catrina Roallos, Web Content Manager and New Media Strategist, ACLU of Northern California
- Laura Saponara, Communications Director, ACLU of Northern California

5. Like me, most of these other ACLU employees worked to defeat Proposition 8 in two ways—by participating in the Equality for All campaign, and by working on ACLU-specific activities directed toward defeating the initiative. For all the ACLU employees, the formulation of campaign strategy and messaging took place in several different ways.

6. First, a number of the ACLU employees communicated regularly with other participants in the Equality for All campaign about campaign strategy and messaging. Maya Harris and Matt Coles were on the Equality for All Executive Committee; I was on the Statewide Campaign Committee; and Shayna Gelender and Ashley Morris worked for the Equality for All campaign as field organizers. As described in Geoff Kors's supplemental declaration (which I herein incorporate by reference as it pertains to the structure of Equality for All), communication about the formulation of campaign strategy and messaging happened at all levels of the Equality for All campaign structure. For example, the Executive Committee communicated regarding the statewide campaign strategy and messaging to be used in television and other statewide media advertising; the Statewide Campaign Committee communicated regarding the implementation of this strategy and messaging in regionally specific ways (such as a messaging strategy for voters in Fresno); and the field organizers in Northern California communicated regarding the strategy of field outreach in Northern California and the messaging used by volunteers when talking to voters. As also explained in Geoff Kors's declaration, the individuals who made up the Equality for All campaign were sometimes paid campaign staff and sometimes (like the ACLU employees) employees of one of Equality for All's member organizations. And all tiers of the Equality for All campaign communicated with various consultants regarding campaign strategy and messaging.

7. Second, the ACLU employees communicated with activists around Northern

1 California about campaign strategy and messaging. For example, starting in the summer of 2008,
2 Shayna Gelender and I travelled around Northern California starting “local action committees”—or
3 groups of volunteers dedicated to working to defeat Proposition 8 in their community. By the end of
4 the campaign, we were regularly working with approximately 10 such groups (in Chico, Contra Costa
5 County, Davis, Monterey, Sacramento, Salinas, San Jose, Santa Clara County, Santa Cruz, and San
6 Mateo County). Together with the individuals in these groups, we strategized as to how best to reach
7 voters in those communities, and formulated messaging tailored to those communities. In a number
8 of the communities, we and the local groups planned and held press conferences, in which local
9 politicians and prominent citizens spoke against Proposition 8.

10 8. Third, the ACLU employees communicated with one another about campaign
11 strategy and messaging. As explained above, in addition to participating in the umbrella campaign
12 organizations and assisting regional activists, the ACLU engaged in its own activities directed toward
13 defeating Proposition 8. For example, the ACLU sent out e-mails to its e-mail lists asking its
14 members to vote against Proposition 8 and telling them what they could do to help defeat the
15 measure. While the ACLU has already produced the final version of all the e-mails it sent out about
16 Proposition 8 (along with all the other material it publicly disseminated), the ACLU employees
17 communicated internally about the content of the e-mails, who they should be sent to, etc.

18 9. In all these three instances, there may have been many communications
19 between the ACLU employees and Equality for All participants, regional activists, or other ACLU
20 employees that did not involve the formulation of campaign strategy and messaging. Indeed, having
21 worked on the campaign, I can say that a significant percentage of the e-mail I sent and received
22 involved logistics (such as: who is bringing No on 8 signs to the rally). But the only way to
23 determine whether a particular communication between an ACLU employee and one of many other
24 individuals who worked to defeat Proposition 8 reflects non-public campaign strategy information
25 that we believe is privileged under the First Amendment is to review the communication. Given the
26 nature of the Equality for All campaign, as well as the way the ACLU employees worked to defeat
27 Proposition 8, it would not be possible to pre-select a number of individuals with whom the ACLU
28 employees communicated and then limit a determination of privilege to those individuals.

1 10. In describing the formulation of campaign strategy and messaging in these
2 different ways, I am not suggesting that the ACLU's communications even with targeted groups of
3 voters constitute the formulation of campaign strategy and messaging or are subject to any form of
4 First Amendment privilege. All of the persons with whom the ACLU employees formulated
5 campaign strategy and messaging were themselves working to defeat Proposition 8—as part of the
6 umbrella Equality for All campaign, as part of a regional group dedicated to the defeat of the
7 initiative, or as an ACLU employee, member, or volunteer. It was my experience in working to
8 defeat Proposition 8, however, that campaign strategy and messaging were not just handed down by a
9 high-level group in an organized campaign structure; rather, individuals and groups working all over
10 the state to defeat the measure were themselves strategizing as to how best to do so and how best to
11 get a “No on 8” message out to California voters.

12 11. If I and the other ACLU employees had not been able to engage in the open
13 and frank communication regarding campaign strategy and messaging with the many different types
14 of individuals identified above, it would seriously have hindered our ability to mount political
15 opposition to Proposition 8. In much of the work the ACLU employees did to defeat Proposition 8,
16 numerous plans were discarded before a final strategy was settled on, and numerous drafts of the
17 messaging that eventually went to voters was prepared. Individuals and groups working together
18 against Proposition 8 also exchanged honest communications about strategic and messaging
19 differences and concerns. Such robust exchange of ideas and free flow of information is necessary
20 both to reaching consensus among diverse individuals and groups working together and to achieving
21 the best, most polished final strategy and messaging.

22 12. Were it the case that communications about campaign strategy and messaging
23 were accessible through litigation, it would also deter the ACLU from participating in other, similar
24 political activity. Almost every year, the ACLU of Northern California works against or in support
25 of one or more California ballot initiatives that affect civil rights. In 2008 alone, the ACLU of
26 Northern California took an official position on five ballot initiatives: we advocated “no” on four (4,
27 8, 6, and 9) and “yes” on one (5). The ACLU of Northern California also actively participated in
28 campaigns to defeat the four initiatives we advocated against. This participation would not be

