

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE VAUGHN R. WALKER

KRISTIN M. PERRY,)
SANDRA B. STIER, PAUL T. KATAMI,)
and JEFFREY J. ZARRILLO,)
)
Plaintiffs,)

VS.) NO. C 09-2292-VRW

ARNOLD SCHWARZENEGGER, in his)
official capacity as Governor of)
California; EDMUND G. BROWN, JR.,)
in his official capacity as)
Attorney General of California;)
MARK B. HORTON, in his official)
capacity as Director of the)
California Department of Public)
Health and State Registrar of)
Vital Statistics; LINETTE SCOTT,)
in her official capacity as Deputy)
Director of Health Information &)
Strategic Planning for the)
California Department of Public)
Health; PATRICK O'CONNELL, in his)
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,)

) San Francisco, California
) Defendants.) Thursday
) January 21, 2010

TRANSCRIPT OF PROCEEDINGS

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Official Reporters - U.S. District Court

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P R O C E E D I N G S

JANUARY 21, 2010

8:39 A.M.

THE COURT: Very well. Good morning, counsel.

(Counsel greet the Court.)

THE COURT: Any matters to take up?

MR. BOUTROUS: None here.

GARY SEGURA,

called as a witness for the Plaintiffs herein, having been previously duly sworn, was examined and testified as follows:

THE COURT: Very well. Mr. Thompson, you may continue your cross-examination.

Let me remind Professor Segura, you are still under oath.

THE WITNESS: Yes, Your Honor.

THE COURT: You understand the oath you took yesterday applies to this testimony, as well?

THE WITNESS: Yes, Your Honor.

THE COURT: Very well.

MR. THOMPSON: Your Honor, may I approach the witness?

THE COURT: Four binders, uhm?

MR. THOMPSON: Just one, Your Honor.

CROSS-EXAMINATION RESUMED

1
2 **BY MR. THOMPSON:**

3 **Q.** And, Professor Segura, I'd like to now talk a bit about
4 and ask you questions about the political assets available to
5 the LGBT community in the Prop 8 campaign.

6 And let me start by asking, Senator Diane Feinstein
7 publicly advocated the defeat of Proposition 8; is that right?

8 **A.** It was my understanding that she was opposed to it, yes.

9 **Q.** And she's popular in California. Is that correct?

10 **A.** That waxes and wanes, but I think she won comfortably in
11 her last bid for reelection.

12 **Q.** And it was a political asset for the LGBT community to
13 have her willing to speak on its behalf. Is that correct?

14 **A.** Yes.

15 **Q.** And Senator Barbara Boxer opposed Proposition 8, correct?

16 **A.** That's my understand.

17 **Q.** Governor Schwarzenegger opposed Proposition 8, correct?

18 **A.** That's my understanding, but with the footnote that the
19 governor also twice vetoed same-sex marriage. So there are
20 other actions to consider.

21 **Q.** He vetoed it on the ground that it would be illegal under
22 Prop 22?

23 **A.** I don't know what his justification was in so doing.

24 **Q.** Attorney General Brown opposed Proposition 8, correct?

25 **A.** I'm not sure of that because I don't recall and I wasn't

1 that aware of what the elected officials were doing. But that
2 strikes me as consistent with his positions.

3 **Q.** Can you identify any statewide official who advocated on
4 behalf of passage of Proposition 8?

5 **A.** Again, there may have been one or more. I don't know.
6 But I don't have any off the top of my head.

7 **Q.** President Obama opposed Proposition 8, correct?

8 **A.** That's correct, but with an important footnote.

9 So, the President during his campaign repeatedly
10 stated that he believed marriage was between one man and one
11 woman. And his voice was used in contacting and messaging
12 around that -- that idea. So -- and I would also say that his
13 opposition to Prop 8 was not particularly vociferously
14 repeated. Nevertheless, I think it is his position that he is
15 opposed to the proposition.

16 **Q.** Do you think the use of President Obama's words -- the
17 speech you're referring to was at Saddleback Church, with
18 Rick Warren, where he said marriage is between a man and a
19 woman?

20 **A.** I'm not sure where -- where the snippet was captured. He
21 said it on more than one occasion. But what -- what's the
22 question?

23 **Q.** The question then is, wherever he said it, his words were
24 used by the Yes On 8 campaign, correct?

25 **A.** I think they were used by someone engaged in mobilization

1 around the issue. I don't know if it was coordinated with the
2 Yes On 8 campaign or not.

3 **Q.** Do you think that was an effective political strategy to
4 use President Obama's words in that way?

5 **A.** I do think that would be an effective strategy, because it
6 would serve to send a misleading signal that perhaps the then
7 candidate was in favor of the proposition, or to at the very
8 least confuse the issue.

9 **Q.** Now, President Bill Clinton advocated publicly for the
10 defeat of Proposition 8, correct?

11 **A.** That's my understanding.

12 **Q.** And he's a popular political figure in California?

13 **A.** I'm not sure that that's still true, but I think that was
14 probably true at the time of the campaign.

15 **Q.** And were there any former presidents who advocated the
16 passage of Proposition 8?

17 **A.** I'm sorry, I don't know.

18 **Q.** Now, I'd like you to turn to tab 54 in your binder. And
19 this is a press release dated September 26, 2008, produced to
20 us by the Equality California.

21 And it is entitled "Levi Strauss & Co. joins PG&E as
22 Co-Chair of No On Prop 8 Equality Business Council." And the
23 first paragraph says:

24 "Levi Strauss & Co., one of the oldest and
25 most prestigious clothing and apparel

1 companies in the world today joined PG&E as
2 co-chair of the No On 8 Campaign Equality
3 Business Council."

4 Do you know how much Levi Strauss donated to the
5 campaign?

6 **A.** I don't.

7 **MR. THOMPSON:** Your Honor, we'd move the admission of
8 DIX2500.

9 **MR. BOUTROUS:** No objection, Your Honor.

10 **THE COURT:** DIX2500 is admitted.

11 (Defendants' Exhibit 2500 received in evidence.)

12 **BY MR. THOMPSON:**

13 **Q.** Turning your attention, Professor Segura, to the next tab,
14 55. This is a press release from Equality California, dated
15 July 29, 2009. And the first sentence reads:

16 "Our efforts to protect the fundamental
17 freedom to marry received a power boost from
18 Pacific Gas & Electric Company, to the tune
19 of \$250,000."

20 Do you know of any contribution of like size to the
21 Yes On 8 campaign from a corporation?

22 **A.** From a corporation, no.

23 **MR. THOMPSON:** Your Honor, we would move the
24 admission of DIX2472.

25 **MR. BOUTROUS:** No objection, Your Honor.

1 **THE COURT:** Very well. 2472 is admitted.

2 (Defendants' Exhibit 2472 received in evidence.)

3 **BY MR. THOMPSON:**

4 **Q.** And was this a political asset for the LGBT community, to
5 have major corporations like Levi Strauss and PG&E supporting
6 the No On 8 campaign?

7 **A.** I would agree that the dollars were a political asset. I
8 am less moved by the notion that Pacific Gas & Electric sways
9 many voters.

10 **Q.** Now, in terms of celebrities, they can sway voters,
11 correct?

12 **A.** That remains an open question, but I think there is
13 certainly an argument to be made on that behalf.

14 **Q.** Okay. And many celebrities opposed Proposition 8,
15 correct?

16 **A.** I would say that's a fair statement.

17 **Q.** Ellen DeGeneres opposed Proposition 8, correct?

18 **A.** Ellen DeGeneres did oppose Proposition 8. But, of course,
19 it's well-known to most of the people in the courtroom that
20 she's also an affected party. So you could conceivably think
21 that she was opposing it on the basis of her membership in the
22 class that's affected.

23 **Q.** And Brad Pitt opposed Proposition 8?

24 **A.** Again, I -- I don't know the details of that. But if you
25 present that to me, I have no reason to doubt that.

1 Q. Do you know of any celebrities who supported the passage
2 of Proposition 8?

3 A. I don't, off the top of my head. So I'll begin with that.

4 But there are a number of celebrities in this society
5 who have fairly conservative social and political beliefs. And
6 it would not surprise me that one or more celebrities did favor
7 the passage of the Prop 8. But to draw a name upon, I'm afraid
8 I can't at this moment of instant recall.

9 Q. And you don't know of any celebrity who publicly went out
10 and campaigned for Proposition 8, correct?

11 A. Same answer. I don't know.

12 Q. Now, let's switch gears and talk a little bit about the
13 political opportunity structure.

14 You testified yesterday about analyzing the forces
15 arrayed against a group. And we talked about religious
16 organizations yesterday. And so I want to now ask you some
17 questions about progressive religious organizations.

18 And there were a number of religious organizations
19 that have expressed support for the lesbian and gay cause of
20 marriage equality, correct?

21 A. That is correct. There are a number of smaller
22 denominations who do hold a more positive view of lesbians and
23 gays.

24 Q. And I'd like to turn your attention to tab 56. This is an
25 amicus brief filed in the In Re Marriage Cases in the

1 California Supreme Court.

2 And if you'd look -- turn to page 53 of the brief,
3 which is the last page that has numbers. And then flip one
4 more beyond that, to the table which is entitled "List of Amici
5 Curie."

6 Do you see that, Professor?

7 And isn't it true that there were literally hundreds
8 of communities of faith, churches, temples, synagogues, and
9 religious leaders who supported the right of same-sex marriage,
10 correct?

11 **A.** As I expressed in my rebuttal report to
12 Professor Nathanson's deposition, Mr. Thompson, there's a bit
13 of intellectual dishonesty in presenting the summation of
14 hundreds of communities of faith.

15 What we have to do, in order to evaluate the
16 distribution of religious beliefs and religious sects on the
17 question of whether or not they supported or opposed same-sex
18 marriage or Proposition 8 is to look at the relative size of
19 those groups.

20 So, for example, the individuals who filed the amicus
21 curie brief included the -- the individual organizations,
22 included the Unitarian Universalists, the United Church of
23 Christ, the Metropolitan Community Church, and Reformed
24 Congregations of Judaism. Collectively, they represent
25 approximately 2 percent of the American public.

1 And, by contrast, the Roman Catholic Church, the
2 Church of Jesus Christ of Latter-day Saints, the Southern
3 Baptists, and several of the others, collectively represent
4 over a third of the American population.

5 So when we say that there are hundreds of
6 congregations that would have supported same-sex marriage or
7 opposed Proposition 8, that is true. But it needs to be
8 arrayed against the literally thousands of congregations who
9 opposed.

10 **Q.** And there were Lutheran churches that opposed, correct?

11 **A.** I'm sure there were some.

12 **Q.** And Episcopal churches that opposed?

13 **A.** The Episcopal churches, my understanding, they took no
14 formal position on --

15 **Q.** The six bishops took a position; did they not?

16 **A.** The bishops may have stated. But the church, I think,
17 formally does not adopt public positions.

18 **Q.** And there were certainly Episcopal parishes that supported
19 the right of same-sex marriage, correct?

20 **A.** Just as there are Episcopal parishes who have threatened
21 to leave the Episcopal Church over the ordination of
22 homosexuals.

23 (Reporter interrupts.)

24 Just as there are Episcopal churches who have
25 threatened to leave the Episcopal communion over the ordination

1 of homosexuals.

2 **Q.** What percentage of the American public are members of the
3 Church of Jesus Christ of Latter-day Saints?

4 **A.** It's very small. Approximately 2 or 3 percent.

5 **Q.** Okay. Now, I'd like to direct your attention to tab 57.

6 And this is a document from the Council of Churches Santa Clara
7 County. And it's DIX366. And in the first paragraph it says:

8 "The Council is proud to call your attention
9 to the ad running in the San Jose Mercury
10 News, signed by 25 local churches."

11 And it's true, Professor Segura, that there was
12 religious opposition to Prop 8 that took the form of ads in
13 newspapers, correct?

14 **A.** Yes.

15 **MR. THOMPSON:** Your Honor, we would move the
16 admission of DIX366.

17 **MR. BOUTROUS:** No objection, Your Honor.

18 **THE COURT:** Very well.

19 (Defendants' Exhibit 366 received in evidence.)

20 **BY MR. THOMPSON:**

21 **Q.** And turning your attention to the next tab in your binder,
22 58, which is DIX312, this is a document from the Neighborhood
23 Unitarian Universalist Church of Pasadena. And on the first
24 page, the second bullet point says, "No on Prop 8 rally today."
25 And it describes a rally that was going to be held.

1 And it's true that there were rallies by religious
2 organizations that opposed Proposition 8, correct?

3 **A.** That is true. Again -- again, I would want to consider
4 the rallies in favor of Proposition 8, and the relative size of
5 the crowds at each.

6 **MR. THOMPSON:** And, Your Honor, we would move the
7 admission of DIX312.

8 **THE COURT:** Very well. I assume there was no
9 objection.

10 **MR. BOUTROUS:** No objection.

11 (Defendants' Exhibit 312 received in evidence.)

12 **BY MR. THOMPSON:**

13 **Q.** Turning your attention to the next tab in your binder, 59.
14 This is entitled "UCC Church Takes a Stand Against California's
15 Proposition 8." And it relates to the First Congregational
16 Church of Berkeley. It's DIX417.

17 And in the first page in the third paragraph, it
18 states:

19 "In addition to formally voting to oppose the
20 initiative, FCCB" -- which is First
21 Congregational Church of Berkeley -- "has
22 been actively working to defeat Proposition 8
23 for several months. The church formed a
24 marriage equality ministry team and now hosts
25 weekly phone banks to reach out to undecided

1 voters and to deliver the message of fairness
2 and equality to all our neighbors."

3 And it's true that religious opposition to Prop 8
4 took the form of phone banking in some instances, correct?

5 **A.** In some instances. I would, again, assume that that's
6 true, and have no reason to doubt the veracity of the United
7 Church of Christ's claim.

8 I would, once again, want to elaborate that the
9 United Church of Christ is only approximately -- well, it's
10 even less than 1 percent of the American population.

11 And that a church in Berkeley was opposed to
12 Proposition 8, well, the mind reels. But I'm not terribly
13 surprised.

14 **MR. THOMPSON:** All right. Your Honor, we would move
15 the admission of DIX417.

16 **MR. BOUTROUS:** No objection.

17 **THE COURT:** Very well.

18 (Defendants' Exhibit 417 received in evidence.)

19 **BY MR. THOMPSON:**

20 **Q.** Turning to tab 60, this is a newsletter from the St.
21 Francis Lutheran church. It's DIX388.

22 And turning your attention to page 5 on this
23 document, right underneath the photo it says:

24 "St. Francis accepting donations to No On 8
25 campaign."

1 And it says:

2 "Church council met last Tuesday and agreed
3 to accept donations on behalf of No On 8."

4 So there were efforts to raise money through churches
5 for the No On 8 campaign, correct?

6 **A.** Again, with my aforementioned qualification, yes.

7 **MR. THOMPSON:** Your Honor, we move the admission of
8 DIX388.

9 **MR. BOUTROUS:** No objection.

10 **THE COURT:** 388 is admitted.

11 (Defendants' Exhibit 388 received in evidence.)

12 **MR. THOMPSON:** Thank you, Your Honor.

13 **BY MR. THOMPSON:**

14 **Q.** Turning your attention, Professor Segura, to tab 61, which
15 is DIX325, this is the Annual Meeting of the Unitarian
16 Universalist Church. And I would like to direct your attention
17 to page 52.

18 And in the second paragraph it makes reference to the
19 UULM, which is Unitarian Universalist Legislative Ministry.

20 And it starts:

21 "The UULM Action Network PAC stepped forward
22 to manage the statewide interfaith organizing
23 to defeat Proposition 8 - raising funds from
24 UUs, Lutherans, and Congregationalists,
25 hiring interfaith organizers, and

1 coordinating the mobilization of people of
2 faith throughout California."

3 So there was an effort by churches who opposed
4 Proposition 8, to manage a statewide organization, correct?

5 **A.** I can agree that what's represented in this paragraph
6 suggests that there was an effort of coordination among the
7 small churches who were supportive of same-sex marriage rights.

8 The paragraph actually doesn't provide me with
9 sufficient evidence to evaluate the strength or organizational
10 complexity. I just don't know.

11 **MR. THOMPSON:** Your Honor, we would move the
12 admission of DIX325.

13 **MR. BOUTROUS:** No objection.

14 **THE COURT:** Very well. 325 is admitted.

15 (Defendants' Exhibit 325 received in evidence.)

16 **BY MR. THOMPSON:**

17 **Q.** Turning your attention to the next tab in your binder, 62.
18 This is DIX343. It's a press release from the United Methodist
19 Church. And it's entitled "Faith Leaders from Across State To
20 Speak out Against Proposition 8." It's dated October 8th,
21 2008.

22 And if we look at the first page -- it may be easier
23 if you just flip one, since the sticker was covering some of
24 the language. So, it says:

25 "Clergy and faith leaders from across

1 California will hold interfaith gatherings
2 this weekend to stand against Proposition 8.
3 People of faith are coming together and
4 speaking out."

5 Then a couple of sentences down it adds:

6 "Events will be held on Saturday in
7 Los Angeles, Long Beach, San Diego, Redlands,
8 Sacramento and San Francisco. On Sunday
9 interfaith services will be held in Costa
10 Mesa, Santa Rosa, and San Jose."

11 So there was a widespread geographic effort to have
12 interfaith services to oppose Proposition 8, correct?

13 **A.** Once again, I can't speak to the attendance at these, or
14 to the relative size vis-a-vis the rallies and services on the
15 opposing side. But, yes, there were services held in broad
16 geographic distribution.

17 **MR. THOMPSON:** Your Honor, we would move the
18 admission of DIX343.

19 **MR. BOUTROUS:** No objection.

20 **THE COURT:** Very well.

21 (Defendants' Exhibit 343 received in evidence.)

22 **THE COURT:** Any way to kind of move this along,
23 Mr. Thompson?

24 **MR. THOMPSON:** We are moving, Your Honor, as quickly
25 as I can.

1 **THE COURT:** All right. It does seem a tad
2 repetitive.

3 **MR. THOMPSON:** We're almost done with this subject,
4 Your Honor.

5 **THE COURT:** All right.

6 **MR. THOMPSON:** I think I have one more document.

7 **BY MR. THOMPSON:**

8 **Q.** And this is the -- tab 63 is DIX428. This is a document
9 from the National Gay and Lesbian Task Force.

10 And directing your attention to the first page, which
11 is the fourth page of the exhibit, but it has a page 1 at the
12 bottom. And on the left-hand column, last paragraph, it says:

13 "... some of the most groundbreaking support
14 of pro-LGBTQQIA equality is among people of
15 faith. Religious figures such as Bishop Gene
16 Robinson, Revs. Phil and James Lawson, Bishop
17 Yvette Flunder, the majority of the
18 rabbinical leadership in California, all of
19 the Episcopal Bishops of California, and
20 countless other religious leaders spoke
21 publicly on behalf of the LGBTQQIA community
22 and received media coverage for it."

23 And that's a true statement, to the best of your
24 knowledge, correct?

25 **A.** Mr. Thompson, I have no reason to suspect that that

1 statement is not true. Nor would I suspect that the statements
2 directly above that one, in the exact same column are not true.

3 Quoting:

4 "In particular, analyzing the role of the
5 pro-LGBTQQIA religious organizing has become
6 critical, given that weekly religious
7 participation was significantly correlated
8 with support for Proposition 8. Stated
9 another way, the pro-LGBTQQIA movement has a
10 problem with religion."

11 So I want to make sure that we read these documents
12 in their entirety, and understand their true meaning.

13 Q. Now --

14 MR. THOMPSON: And, Your Honor, we would move the
15 admission of DIX428.

16 MR. BOUTROUS: No objection.

17 THE COURT: Very well. 428 is admitted.

18 (Defendants' Exhibit 428 received in evidence.)

19 BY MR. THOMPSON:

20 Q. All right. Now, let's move on to another subject.

21 You talked about, Professor, one aspect of the
22 political opportunity structure is the degree of dislike for a
23 group, correct?

24 A. That's correct.

25 Q. None of the warmth readings, temperature readings that

1 you referenced during direct related to California, correct?

2 **A.** They related to the national electorate.

3 **Q.** Yes. And there are more gays and lesbians in California
4 than in any other state, correct?

5 **A.** There's more of everything in California than in every
6 other state.

7 (Laughter)

8 **Q.** That's true.

9 **A.** One out of every eight Americans lives in California.

10 **Q.** But there's a higher concentration on a per capita basis.
11 It's not just an absolute. It's a relative.

12 The highest percentage of people in any state that
13 are gay and lesbian reside in California, correct?

14 **A.** Those numbers fluctuate. So I don't know for an absolute
15 certainty that that is true. But it's certainly plausible and,
16 in fact, even likely.

17 **Q.** All right. Now, as a practical matter, part of the
18 explanation for that is, some gays and lesbians move to
19 California because it is a hospitable climate for gays and
20 lesbians, correct?

21 **A.** I would say it is a more hospitable climate for gays and
22 lesbians than the one they left.

23 **Q.** And there are more civil rights protections in California
24 for gays and lesbians than in any other state, correct?

25 **A.** That would appear to be the case. The absence of civil

1 rights protections in many states remains a problem for gays
2 and lesbians.

3 **Q.** Now, one of those protections is the domestic partnership
4 law.

5 Is it reasonable to conclude that many gays and
6 lesbians in California supported domestic partnership laws in
7 2005?

8 **A.** Uhm, supported them as opposed to no option? Then I would
9 say the answer would be yes.

10 I would, perhaps, not be willing to say that that was
11 their first preference for outcome. But what the option was,
12 no state recognition or domestic partnership, I think it would
13 be fair to say that most gays and lesbians would support such a
14 thing.

15 **Q.** Now, let's skip ahead in your binder, to tab 69. And this
16 is DIX1068. It's a press release from Equality California.

17 And if you turn to the second paragraph, the last
18 sentence is a quote from Geoffrey Kors, Executive Director of
19 Equality California. And he's talking about AB205, the
20 domestic partnership law. And he says, quote:

21 "By signing this bill, Governor Gray Davis
22 honored all California families and
23 reinforced the message that intolerance stops
24 at the California border."

25 So there -- it's true that there were those in the

1 LGBT community who viewed AB205 as honoring all families,
2 correct?

3 **A.** Uhm, as opposed to the preexisting status, then, yes, it
4 was an increase in the affirmation in state protections
5 afforded them.

6 **MR. THOMPSON:** Your Honor, we would move the
7 admission of DIX1068.

8 **MR. BOUTROUS:** No objection, Your Honor.

9 **THE COURT:** 1068 is admitted.

10 (Defendants' Exhibit 1068 received in evidence.)

11 **BY MR. THOMPSON:**

12 **Q.** And turning your attention to the next tab, which is tab
13 69A. This is DIX1453. It's a press release from the National
14 Center for Lesbian Rights, again pertaining to AB205. And it
15 says, in the first sentence:

16 "The National Center for Lesbian Rights
17 hailed today's historic signing by Governor
18 Davis of AB205, a groundbreaking bill that
19 would grant same-sex couples most of the
20 rights, benefits, and responsibilities
21 granted to spouses under state law."

22 So there were prominent members of the LGBT community
23 who hailed the passage of AB205, correct?

24 **A.** That certainly seems to be the case, yes.

25 **MR. THOMPSON:** Your Honor, we would move the

1 admission of DIX1453.

2 **MR. BOUTROUS:** No objection.

3 **THE COURT:** Very well.

4 (Defendants' Exhibit 1453 received in evidence.)

5 **BY MR. THOMPSON:**

6 **Q.** Now, you also --

7 **MR. THOMPSON:** Thank you, Your Honor.

8 **BY MR. THOMPSON:**

9 **Q.** You also testified, Professor, about initiatives. And you
10 mentioned you had some statistics about the percentages of
11 initiatives that had targeted gays and lesbians, and how many
12 had passed and not.

13 And do you know how many of those initiatives were
14 held in California?

15 **A.** Several. I don't -- I don't know the exact number.

16 **Q.** Do you know the percentage of initiatives pertaining to
17 gays and lesbians that were held in California, that targeted
18 the gay and lesbian community and that passed?

19 **A.** No. Since I don't know the exact number in California, I
20 can't compute the percentage.

21 **Q.** Okay. I didn't know whether you knew the percentage or
22 not.

23 All right. Now, let's turn to PX -- the next tab in
24 your binder, which is tab 70. And it's called "Lose, Win, or
25 Draw? A Reexamination of Direct Democracy and Minority

1 Rights."

2 And this is PX839. And this is a document you
3 considered in reaching your opinions in this case, correct?

4 **A.** It is.

5 **Q.** And if we look behind the -- the tab B, which is behind
6 here, is that the supplemental appendix to this article?

7 **A.** It appears to be.

8 **Q.** Have you made any attempt to analyze whether the gay and
9 lesbian community in California has done better in recent
10 initiatives than it did, say, in the '70s or '80s?

11 **A.** No. I didn't disaggregate the initiatives over time.

12 **MR. THOMPSON:** Your Honor, we would move the
13 admission of PX839, with the supplementation of the appendix.

14 The version of the exhibit that plaintiffs created
15 did not have the actual data of the referenda that were
16 included and underlay the analysis. So we would request leave
17 to supplement this PX839 with the appendix.

18 **MR. BOUTROUS:** No objection, Your Honor.

19 **THE COURT:** Very well. As supplemented, 839 is
20 admitted.

21 (Plaintiffs' Exhibit 839 received in evidence.)

22 **BY MR. THOMPSON:**

23 **Q.** Now, I would like to turn your attention to tab 71A. And
24 this is an excerpt from *A Preface to Democratic Theory*, by
25 Robert Dahl.

1 And that's the same Dahl to whom you referred
2 yesterday, correct?

3 **A.** It is.

4 **Q.** All right. And if we turn to page 30, which is the second
5 page of the exhibit, he says, in the first full paragraph:

6 "Because majorities are likely to be unstable
7 and transitory in a large and pluralistic
8 society, they are likely to be politically
9 ineffective. And herein lies the basic
10 protection against their exploitation of
11 minorities. This conclusion is of course
12 scarcely compatible with the preoccupation
13 with majority tyranny that is the hallmark of
14 the Madisonian style of thought."

15 And don't we see this principle at work in places
16 like New Hampshire and Vermont, where the legislature is
17 passing same-sex marriage laws precisely because the
18 heterosexual community is not monolithically opposed to
19 same-sex marriage rights?

20 **A.** I note, Mr. Thompson, that the state of Maine didn't enter
21 your description of states that passed it legislatively. And I
22 think it's illustrative.

23 So the paragraph, the one paragraph out of the book
24 that you're reading, suggests that there is -- that majorities
25 are inherently unstable, and that majorities come and go.

1 And, indeed, one of the central principles of
2 Madisonian protectionism, one of the arguments Dahl makes in
3 favor of pluralism, is that majorities are momentary and that
4 they'll fade.

5 And, indeed, one of the critiques of pluralism by
6 scholars in minority politics -- not just in gay and lesbian
7 politics, but of African American politics, and, indeed, any
8 other minority group -- is that on some issues majorities can
9 be quite stable.

10 So, for example, as I indicated, on a national level,
11 it is still the case that more than half of all Americans find
12 the defining characteristic of gays and lesbians, which is same
13 sex sexual attraction and expression, to be always wrong.

14 Now, you pointed out that that number has actually
15 declined over time. But it is still a majority. I think it's
16 safe to assume that that majority has been in place for an
17 exceedingly long time.

18 The same is true on behalf of African Americans.
19 Whites have been a majority of the population and have held
20 power for a very long period of time.

21 So one of the critiques of Dahl's pluralist theory
22 and one of the critiques of his defense of sort of
23 Madisonianism is that there are some majorities that do not
24 fade. There are some majorities that endure for very long
25 periods of time. That breaks down rotation in office. And

1 rotation in office is what's supposed to temper or constrain
2 the bad behavior of the majority who might find themselves in
3 the minority at some near future time.

4 So I think this paragraph is completely out of
5 context.

6 **Q.** All right. Now, let's turn to -- back one tab, to 71.
7 This is called "Gay Rights in the States: Public Opinion and
8 Policy Responsiveness." It's DIX1105.

9 And this is a document you relied on in reaching your
10 opinions in this case; is that right?

11 **A.** It is.

12 **Q.** All right. And let's turn to page 383. And directing
13 your attention to the right-hand column, the first full
14 paragraph, and the third sentence. It says:

15 "It is also true that gay and lesbian rights
16 are not particularly disadvantaged in states
17 with majoritarian institutions. Having
18 elected courts or direct democracy does not
19 significantly affect the adoption of gay
20 rights policies one way or the other."

21 And you relied on this article in reaching your
22 conclusions in this case. Yes or no?

23 **A.** It is. I did.

24 And what Lax and Phillips are speaking of there is
25 their question, which is: Are legislatures more or less likely

1 to adopt the policy?

2 This is not an analysis of whether or not the policy
3 endures.

4 **MR. THOMPSON:** And, Your Honor, we would move the
5 admission of DIX1105.

6 **MR. BOUTROUS:** No objection.

7 **THE COURT:** Very well. 1105 is admitted.

8 (Defendants' Exhibit 1105 received in evidence.)

9 **BY MR. THOMPSON:**

10 **Q.** Now, many times the gay and lesbian community is
11 successful in keeping measures off the ballot, correct?

12 **A.** That implies an agency which I'm not familiar with.

13 So, many times, measures that would disadvantage gays
14 and lesbians remain off the ballot. Gays and lesbians may have
15 and likely did play some role in that process. I don't -- it
16 would depend on the specifics of the process and the question
17 in hand.

18 **Q.** Now, again going back to the political opportunity
19 structure that you described.

20 Was the adoption of Proposition 8 a manifestation of
21 the political obstacles confronted by gays and lesbians in
22 California, in your opinion?

23 **A.** I would say it's certainly a manifestation. It would be
24 one of the results of political powerlessness.

25 Again, as I indicated in the answer to His Honor's

1 question yesterday, a single election result is -- or a single
2 piece of legislation should not be considered to be the basis
3 for a conclusion. It's a piece of evidence.

4 **Q.** All right. And one of the obstacles that gays and
5 lesbians face in California to realizing same-sex marriage
6 rights is religiously-inspired opposition, correct?

7 **A.** I would think that that's a national issue. That the
8 religions -- quoting the document that you submitted into
9 evidence, that gay and lesbian advocacy organizations think
10 they have a religion problem.

11 **Q.** Right. And there are some individuals who voted for
12 Proposition 8 because of Old Testament Biblical prohibitions
13 against same sex sexual contact, correct?

14 **A.** I think that that's a fair assumption.

15 **Q.** And there are some numbers of individuals who might have
16 voted for Proposition 8 because they believe their churches
17 were going to be compelled to bless same-sex marriages,
18 correct?

19 **A.** I believe that they had been led to believe that. So I
20 think that there is some evidence that that could be true, yes.

21 **Q.** And it's possible, in your opinion, that some people voted
22 in favor of Proposition 8 because of the negative reaction to
23 the perception of activist judges, correct?

24 **A.** I would think that that's possible, but less likely.

25 So, scholars of American public opinion regularly

1 bemoan the low levels of information that many voters have.

2 It is certainly an argument that has been used by one
3 side of the political spectrum to decry what they see as a form
4 of judicial activism and to make the judiciary a scapegoat for
5 their views.

6 I'm not sure the degree to which that penetrates into
7 the general public. I think many Americans don't fully
8 understand the judicial process or even the judicial
9 appointment process.

10 I am sure that it is the case that somewhere in
11 California someone probably voted on the basis of not liking
12 those darn judges. But I can't really speak to what percentage
13 that might be.

14 **Q.** All right. Now in your rebuttal report that you put in in
15 this case, you talked about the role of religion and how it may
16 or may not inform views on same-sex marriage, correct?

17 **A.** I did. I was responding to the expert report that had
18 been put in by --

19 **Q.** And we have decades of research on abortion opinion,
20 social welfare, death penalty, to suggest that people's
21 religious convictions shape their views of public policy,
22 correct?

23 **A.** I think that's a fair conclusion.

24 **Q.** Various measures of religion are a fairly robust predictor
25 of lots of forms of political behavior, correct?

1 **A.** That's correct.

2 **Q.** Most scholars of political behavior would suggest that,
3 when analyzing not only views about public policy matters but
4 also partisan identification and candidate preference, that
5 religion is regularly identified as an important factor shaping
6 people's attitudes, correct?

7 **A.** That's correct.

8 **Q.** Everything we know about religious belief and identity,
9 and its role in public policy attitude formation, suggests that
10 the plausible interpretation is that religious people vote on
11 religious beliefs, correct?

12 **A.** Mr. Thompson, have you switched sides? Yes, I think
13 that's correct.

14 (Laughter)

15 **Q.** The notion that deeply-religious people do not rely on
16 those religious beliefs when formulating attitudes about the
17 world strikes you as deeply unlikely and unreasonable, correct?

18 **A.** Uhm, yes. But I would -- I want to put that in the
19 context in which it was written.

20 So the expert report to which I was replying
21 suggested that an alternative -- there was an alternative
22 explanation, which was that increasingly -- increasing levels
23 of religion or religious observance was connected to a
24 nonreligious reason for voting for the proposition. And no
25 evidence was presented.

1 And my response was that I found that logic kind of
2 wanting. That if we show that people with higher levels of
3 religious observance or more orthodox levels of religious
4 belief are more likely to disfavor same-sex marriage, then we
5 might logically conclude that those religious beliefs affected
6 their vote on election day, as opposed to some third
7 intervening reason, which would be secular.

8 **Q.** Now, if you were asked to identify the percentage of those
9 who voted in favor of Proposition 8 because of their religious
10 convictions, it would be difficult to arrive at a specific
11 scientific estimate, correct?

12 **A.** Well, of course, there are -- there's always uncertainty
13 around estimates of social phenomenon.

14 There would be a variety of ways to go about doing it
15 as a social scientist, including the use of polling, survey
16 experiments, lab experiments. We could look at sort of
17 campaign messaging. There are discourse theorists who would
18 look at the language that people used.

19 So there's a variety of scientific methodologies that
20 we could use to determine the distribution of votes if we had,
21 you know, sufficient time and resources to conduct that study.

22 **Q.** But you don't have an opinion as to whether a majority of
23 those who voted in favor of Proposition 8 did so because of
24 their religious conviction, correct?

25 **A.** Uhm, I -- I don't know that I could make a numerical point

1 estimation. I just don't have the basis to make that claim.

2 **Q.** But -- you don't even have an opinion -- forgetting
3 whether it's a specific numerical point, you don't know whether
4 it's greater than 50 percent, correct?

5 **A.** I -- I just -- I don't have a basis to -- to make an
6 estimate, which I would need to do to decide if it's greater
7 than, less than, or equal to 50.

8 **Q.** Now, members of some religious denominations voted
9 strongly in favor of Proposition 8, correct?

10 **A.** That appears to be the case.

11 **Q.** Members of the Mormon faith voted in favor of
12 Proposition 8, correct?

13 **A.** That sounds plausible.

14 **Q.** And a large majority of evangelical Christians opposed
15 same-sex marriage, correct?

16 **A.** I believe that's true, yes.

17 **Q.** And you believe that the correlation between religious
18 denomination and attitudes about same-sex marriage is
19 sufficiently high that it's reasonable to assume that religion
20 is a motivating force for many voters, correct?

21 **A.** So, actually, I looked at a variety of religious factors.
22 So, there are differences across religious identification.
23 There's also differences across the frequency of participation.
24 So church attendance.

25 There's also differences across the importance

1 someone attaches to religion in their everyday life and beliefs
2 about whether or not The Bible is the literal word of God.

3 So there are a variety of religious dimensions that
4 we could look at to assess religiosity, for lack of a better
5 term.

6 And across all of those dimensions, the ones that I
7 identified in my report, there is a positive association with
8 religiosity and unhappiness with or opposition to same-sex
9 marriage.

10 On the sectarian issue, I illustrated that there were
11 different distributions for different sectarian
12 identifications. And some sects are more vehemently opposed,
13 and some sects are more mixed. And in some sects it's not an
14 issue at all.

15 **Q.** All right. Now, let's turn your attention to your
16 rebuttal report. It had been tab 2, but I moved it after tab
17 72, so that we wouldn't have to flip back. So should be right
18 there after tab 72.

19 Do you see it, sir?

20 **A.** I'm sorry, under tab 72?

21 **Q.** Keep going. One more.

22 **A.** 72A.

23 **Q.** Yes. Okay. And do you see your rebuttal report?

24 **A.** I do.

25 **Q.** Okay. And this is PX827. And turning your attention to

1 page 13 of the rebuttal report.

2 This is a chart that shows -- actually, we need to
3 look, I guess, first, at page 12, where we can see what the
4 columns mean. Column 1 is support for no recognition of
5 same-sex relationships. Column 2 is support for civil unions.
6 And column 3 is support for same-sex marriage, correct?

7 **A.** That's correct.

8 **Q.** And then it's broken down by religious denomination; is
9 that correct?

10 **A.** It is.

11 **Q.** And if we turn to the next page, we can see that zero
12 percent of the Muslim community supported same-sex marriage,
13 correct?

14 **A.** That's correct. But there are only five observations in
15 the data set.

16 **Q.** Now, this is the data set you selected, correct?

17 **A.** Yes. It's the National Election Study. So we examined --
18 in 2008, there were approximately 2350 complete interviews.
19 And Muslims are a very small percentage of the United States.

20 So, as you get to smaller and smaller denominations,
21 the distributions will be less reliable. Indicative, but with
22 a very large confidence interval around them.

23 **Q.** Is it reasonable to assume that there is a connection
24 between the Muslim faith and opposition to same-sex marriage?

25 **A.** I think it would be fair to say that it -- same-sex

1 marriage would be inconsistent with observant Muslim belief.

2 **Q.** And turning your attention to the table in your report, it
3 shows zero percent of Hindus support same-sex marriage,
4 correct?

5 **A.** That's correct.

6 **Q.** And is it reasonable to assume that there's a connection
7 between the faith of the Hindu community and their opposition
8 to same-sex marriage?

9 **A.** Again, the number of observations is approximately six in
10 the data set. But I would think that that's a reasonable
11 supposition; again, with a very large confidence interval
12 around the estimates.

13 **Q.** All right. If we look up to the top of the page, we see
14 that the Quakers, a hundred percent of them supported same-sex
15 marriage, correct?

16 **A.** All three of them supported same-sex marriage, yes.

17 (Laughter)

18 **Q.** It's your data set. Do you know of any better data?

19 **A.** On this?

20 **Q.** Yes.

21 **A.** No. No.

22 **Q.** You used the best data that's available. According to the
23 best data available, a hundred percent of the Quakers supported
24 same-sex marriage, correct?

25 **A.** Yes, they did.

1 Q. All right. And is it reasonable to assume that there is a
2 correlation between their religious faith and their position on
3 same-sex marriage?

4 A. Uhm, among that very small subsection of the population it
5 would seem to be the case that their religiosity leads them to
6 a different conclusion, yes.

7 Q. And then if we look back to page 11, to the table there,
8 which lists Protestant, Catholic, Jewish, and other, if we look
9 at the Jewish community, 80 percent of the Jewish community
10 support same-sex marriage, correct?

11 A. That's correct.

12 Q. So it's reasonable to assume that some members of the
13 Jewish faith support same-sex marriage because of their
14 religious conviction, correct?

15 A. That's a little bit harder to determine, because I would
16 want to look at the question of the other measures of
17 religiosity. So, frequency of religious attendance, literal
18 interpretation of the Bible, with regard to that community.

19 I believe that, certainly, among reformed Jewish
20 communities their religion is, as I understand it, silent on
21 the question of same-sex relationships. Now, I'm not an expert
22 on the internal religious beliefs of various Jewish
23 denominations.

24 Q. Is it conceivable that some number of religious people in
25 California honestly believed that Proposition 8 prioritized the

1 rights of children over the competing rights of gay people?

2 And I'd like a yes or no answer.

3 **A.** Yes.

4 **Q.** Okay. And let's look at religious resources.

5 Do you know how much money members of the Roman
6 Catholic Church donated to Proposition 8?

7 **A.** I don't have an exact estimate. Some of the documents
8 that we went through in yesterday's testimony made reference to
9 very large donations by the Knights of Columbus and by the
10 Catholic community.

11 I believe the summary comment from the Protect
12 Marriage organizers were that the Catholic community had really
13 stepped up. But the exact number associated with the total, I
14 don't know. I know the Knights of Columbus donation was \$1.15
15 million.

16 **Q.** Now, you haven't been able to examine any of the internal
17 documents of the Episcopal Church in this case, have you?

18 **A.** I have not.

19 **Q.** So you don't know how much money Episcopalians donated to
20 defeat Proposition 8 correct?

21 **A.** No.

22 **Q.** With respect to the Mormon faith, you don't have a rough
23 sense as to how many organizers there were of the Mormon faith
24 who supported Proposition 8, correct?

25 **A.** How many organizers?

1 Q. Yes.

2 A. Could you define "organizer"? At what level?

3 Q. Well, we talked about the organizational structure.

4 Why don't I ask it this way. You don't know
5 approximately how many members of the Mormon faith campaigned
6 in support of Proposition 8, correct?

7 A. The document I read into evidence yesterday suggests that
8 the Mormon church itself believed it had 20,000 volunteers on
9 several weekends. I have no reason to doubt them.

10 Q. Now, have you seen any internal documents relating to the
11 Episcopal Church on how many volunteers they had?

12 A. I have not.

13 Q. Okay. And you don't know how many members of the Catholic
14 faith campaigned in support of Proposition 8, correct?

15 A. I don't.

16 Q. And you don't know how many members of the Jewish faith
17 campaigned against Proposition 8, correct?

18 A. I have no idea.

19 Q. Okay. And have you made any attempt to consider the size
20 of the religious events held in opposition to Proposition 8?

21 A. Uhm, I raised that issue in my rebuttal report to
22 Professor Nathanson, because he identifies a list of events
23 that took place in opposition to Proposition 8, without
24 considering the events in favor.

25 I don't know the size of the events in opposition or

1 the events in favor; though, I'm told that the event in the
2 Qualcomm stadium was quite large. But, again, I don't know the
3 exact numbers.

4 Q. Now, let's look at your rebuttal report, and page 15.

5 A. Back on what tab, again?

6 Q. So this is tab 72A.

7 A. Page 15? In the tables?

8 Q. In the tables, yes, sir.

9 A. Okay.

10 Q. Okay. And we can see that for those who never attend
11 religious -- religious service, 48 percent of them oppose
12 same-sex marriage, correct?

13 A. That's correct.

14 Q. And so there are reasons wholly apart from religious
15 conviction that some people voted in favor of Proposition 8,
16 correct?

17 A. I would not dispute that.

18 Q. And, conceivably, there are some individuals who
19 themselves are not religious, but who believe marriage is a
20 religious and only a religious institution, correct?

21 A. That's conceivable.

22 Q. Okay. Now, I'd like to switch topics.

23 **THE COURT:** Perhaps we can get the witness to explain
24 this table. I, frankly, don't understand it.

25 **MR. THOMPSON:** Okay.

1 **THE COURT:** There are a bunch of numbers here. And
2 if we are going to have these tables referred to in evidence,
3 it would be helpful for the finder of fact to try to understand
4 them.

5 **MR. THOMPSON:** Yes, Your Honor.

6 **BY MR. THOMPSON:**

7 **Q.** Professor, would you please explain for the record how
8 each of these four tables -- what the methodology was, and what
9 they purport to represent.

10 **A.** Okay. So turning back to table 1, Your Honor, on page 11.

11 **THE COURT:** Yes, sir.

12 **THE WITNESS:** The American National Election Study
13 asks religion in two consecutive questions. The first is, they
14 asked a broad identification question, what you see reported in
15 table 1. Protestant, Catholic, Jewish, and all others.

16 And then among the groups, they then probe about
17 individual sectarian identity. So the others are asked: Well,
18 which other? And the Protestants are asked: Which Protestant
19 faith?

20 And so as we move from the first table to the second
21 table, we just become more specific.

22 The question that -- that --

23 **THE COURT:** Well, let's go back to table 1.

24 **THE WITNESS:** Okay.

25 **THE COURT:** We have columns 1, 2, and 3.

1 **THE WITNESS:** That's correct.

2 **THE COURT:** They are labeled "no recognition," "Civil
3 Unions," "marriage."

4 **THE WITNESS:** That's right. So the --

5 **THE COURT:** How do I read that?

6 **THE WITNESS:** So the respondents were asked: When
7 confronting the question of government recognition of same-sex
8 unions do you favor full marriage equality, a civil union
9 institution which has some of the responsibilities and rights
10 of marriage, or no legal recognition?

11 I can't tell you that that's a verbatim repeat of the
12 question, Your Honor, but it's pretty close.

13 And so each respondent is allowed to say, Well, I'm
14 opposed to all government recognition; I favor civil unions,
15 but not marriage; or, I favor full marriage equality.

16 So what the percentages are in each of those columns
17 are the percentage of respondents who fell into each of those
18 categories across that row.

19 The first number in each cell is the number of
20 respondents. And the reason that number is fractional is
21 because sample weighting is applied, to make sure that the
22 sample is representative. The numbers, if they were not
23 weighted, would be very similar, but would be rounded off to
24 full persons, obviously.

25 **THE COURT:** So I read that first table, table 1,

1 column 3, row 1, to mean that 24 percent of Protestants favor
2 recognition of same-sex marriage.

3 **THE WITNESS:** That's correct.

4 **THE COURT:** 28 percent favor civil unions. 47-plus
5 percent no recognition at all.

6 **THE WITNESS:** That's correct, Your Honor. And so
7 forth through that table on the second table.

8 **THE COURT:** All right. Then what about the third
9 table?

10 **THE WITNESS:** Table 3 asks the question about: How
11 important is religion in your daily life? And the response
12 options available are: Very much, quite a bit, somewhat, or
13 not at all.

14 So what I'm trying to do there is look at the
15 respondents' self-attributed religiosity. So how much does
16 religion affect my life? And across the top is the same three
17 response possibility.

18 So for people for whom religion is not important in
19 their daily life, about 60-and-a-half percent favor marriage
20 rights. So that's the first row, the third column, 60.4.

21 Among people for whom religion is a very important
22 part of their daily life, the comparable number is 21.64.

23 So as we move from religion being unimportant to
24 religion being very important, support for same-sex marriage
25 drops by approximately 40 points.

1 Is Your Honor happy with that table?

2 **THE COURT:** Well, it's not a question of making me
3 happy.

4 (Laughter)

5 **THE WITNESS:** With the understanding -- my apologies,
6 with the understanding of that table?

7 **THE COURT:** I think I understand it.

8 And table 4?

9 **THE WITNESS:** Uhm, so political scientists some time
10 ago started to revise their review of -- their view of
11 religion, in part because the role of religion in public life
12 had become more prominent over the last 20 years, 30 years, or
13 so.

14 And so we started asking an additional question,
15 which is the question of Biblical literalism. So folks who
16 study religion in politics find that measures of orthodoxy are
17 closely associated with political views.

18 And a key measure of orthodoxy is captured in this
19 question on Biblical literalism. So respondents are asked: Do
20 you believe the Bible is the actual word of God, the word of
21 God but not literally, or that the Bible was written by men?

22 And "written by men" would be a less orthodox
23 position, and the "actual word of God" would be the most
24 orthodox position.

25 So, again, the same three categories across the top.

1 So for individuals who believe that the Bible was written by
2 men, 68-and-a-half percent of them favor same-sex marriage.
3 And for people who believe that the Bible is the actual word of
4 God, 19.4 percent of them favor same-sex marriage.

5 So the drop there is approximately 50 points, from
6 the least to the most orthodox interpretation of the Bible.

7 **THE COURT:** Does your study show what percentage of
8 the respondents believed the Bible was written by men, was the
9 word of God, but not literal, and was the actual word of God?

10 Break that down.

11 **THE WITNESS:** It does, Your Honor. It's not reported
12 here. A little simple mathematics.

13 So the actual word of God, there are 801 --
14 approximately 811 cases out of the 2171. So --

15 **THE COURT:** I see.

16 **THE WITNESS:** Roughly speaking, that's about
17 39 percent or so. About 42 percent, or so, in the word of God,
18 but not literal. And then the 380 -- I'm sorry, my
19 math-in-the-head skills are --

20 **THE COURT:** All right.

21 **THE WITNESS:** And then the final table is "Opinion on
22 Marriage by Frequency of Church Attendance." I apologize for
23 the pagination.

24 So this is a simple frequency of religious
25 observance, which political scientists and sociologists have

1 found to be quite telling.

2 And, so, it goes from a high value of more than once
3 weekly -- so these are individuals who attend Saturday or
4 Sunday service as well as, perhaps, a prayer meeting or Bible
5 study, or some form of religious meeting -- all the way down to
6 never.

7 And so for people who never go to work -- to church,
8 as Mr. Thompson has illustrated, a bare majority, 52.2 percent,
9 favor same-sex unions. And for people --

10 **THE COURT:** Same-sex unions or --

11 **THE WITNESS:** Same-sex marriage. I'm sorry.

12 And for people who only go a few times per year,
13 again, a bare majority, 51.18 percent, favor same-sex marriage.

14 When we go up to people who go to church more than
15 once weekly, the percentage in favor of same-sex marriage is
16 11.9 percent.

17 So you have a drop, again, of about 40 percentage
18 points, from never going, to going more than once a week.

19 **THE COURT:** Very well. Thank you very much.

20 Do you want to follow up, Mr. Thompson?

21 **THE WITNESS:** You're welcome, Your Honor.

22 **MR. THOMPSON:** No, Your Honor. But I would like to
23 move these tables from PX827 into evidence.

24 **MR. BOUTROUS:** No objection, Your Honor. I believe
25 they are already admitted as Plaintiffs' Exhibit 2582. But I

1 have no objection to them going in again, for convenience.

2 **THE COURT:** Very well.

3 (Plaintiffs' Exhibit 827 received in evidence.)

4 **MR. THOMPSON:** Thank you, Your Honor.

5 **BY MR. THOMPSON:**

6 **Q.** I would like to switch topics, Professor, and ask you some
7 questions about some of the violence and vandalism and
8 harassment that took place during the Proposition 8 campaign.

9 And I'd like to direct your attention to tab 73,
10 which is an article written, "The Price of Prop 8." And it's
11 DIX458.

12 And this is a document that collects a variety of
13 sources showing vandalism against supporters of Prop 8,
14 correct?

15 **A.** Uhm, that's what it purports to be, yes.

16 **Q.** And it also collects a variety of publicly-reported
17 incidents of violence against supporters of Proposition 8,
18 correct?

19 **A.** Again, I'm just paging through the document. I've seen it
20 once before, but that seems to be what it's claiming to do,
21 yes.

22 **MR. THOMPSON:** Your Honor, we would move the
23 admission of DIX458.

24 **MR. BOUTROUS:** Your Honor, I object on grounds that
25 it's beyond the scope of this witness's testimony, and that

1 it's a hearsay document, and that the events explained in it or
2 reported in it should not be admitted for the truth of the
3 matter asserted.

4 **THE COURT:** Didn't the witness testify, or at least
5 touch upon in his testimony, the effect of acts of vandalism or
6 violence in connection with political campaigns? Didn't he
7 touch on that subject?

8 **MR. BOUTROUS:** Yes, Your Honor. And on hate crimes.

9 **THE COURT:** Hate crimes.

10 **MR. THOMPSON:** And, Your Honor, he specifically
11 addressed the fact that the Civil Rights Act of 1964 was
12 attributable in large fact -- point to the fact that CBS
13 broadcast the attack on the Selma Bridge. And he testified to
14 hate crimes.

15 And we will submit that some of the materials we're
16 about to walk through fit his definition of a hate crime as
17 intended to intimidate people who supported Prop 8. And it
18 goes to his conception of political opportunity structure.

19 He testified how in the civil rights community one of
20 the tactics you can have is to appeal to a norm of fairness.
21 But he said the moment you resort to violence, your ability to
22 appeal to a norm of fairness dissipates.

23 So this evidence relates to that testimony, too.

24 **THE COURT:** I understand. It's still hearsay, but I
25 think it's probably appropriate, given that he is offering

1 opinion testimony. And, therefore, the objection will be
2 overruled. And 458 will be admitted.

3 (Defendants' Exhibit 458 received in evidence.)

4 **MR. THOMPSON:** Thank you, Your Honor. We would now
5 like permission to publish on the screen DIX2616.

6 **THE WITNESS:** Mr. Thompson, is there a tab associated
7 with that?

8 **MR. THOMPSON:** No. It's something we want to put on
9 the screen.

10 **THE COURT:** Is it already in evidence?

11 **MR. THOMPSON:** No, Your Honor. We thought it might
12 be well to play it, and then if there is an objection, so that
13 they can see --

14 **THE COURT:** What are we about to watch?

15 **MR. THOMPSON:** It is a short minute-and-24-second
16 news story that recounts some of the violent activities that
17 took place in connection with Proposition 8, and relates to the
18 subject matters that were just -- that are covered in the
19 Heritage Foundation report.

20 **MR. BOUTROUS:** I would lodge the same objection on
21 hearsay grounds, Your Honor. I'm not sure what is about to be
22 played. But happy to see it and let the Court make its
23 decision.

24 **THE COURT:** Well, if you're happy, that seems to be
25 the standard.

1 **MR. BOUTROUS:** Happiness, yes.

2 (Video played in open court.)

3 **BY MR. THOMPSON:**

4 **Q.** Now, when people see a video with an elderly lady with a
5 bandage over her eye because she put a Yes On 8 sign on her
6 front yard, does that have the potential to diminish support
7 for the political goals of the LGBT community?

8 **A.** Well, it is certainly an inflammatory image. It is
9 certainly not an image that would be desirable by the -- by
10 anyone associated with the campaign.

11 I'm a little taken aback because the report suggests
12 that these are neighbors with long -- long-standing problems.
13 And so I don't know the specifics of the case. I don't know if
14 the person was convicted of any crime. We didn't hear the
15 other person's story.

16 So I can't attribute any veracity to the incident.
17 But I can tell you that that particular news story would not
18 have been favorable to the opponents of Proposition 8.

19 **MR. THOMPSON:** Your Honor, we would move the
20 admission of DIX2616.

21 **MR. BOUTROUS:** I object to its admission, Your Honor.
22 Irrelevant and hearsay.

23 The reporter noted -- the individual who's being
24 interviewed said he thought it was because the other guy put up
25 a Prop 8 sign, and he had a Prop 8 sign. Didn't seem to me

1 that there was a foundation laid, even by the reporter, for
2 what prompted this altercation between two neighbors who had
3 had fights before, in any event. I find it difficult to
4 conceive of how it's relevant to the issues in this case.

5 **THE COURT:** Well, we're not here adjudicating what
6 happened in San Diego at this particular time.

7 The witness's testimony is about the impact,
8 politically, of reports of this kind. And so for that purpose,
9 I think the video is admissible.

10 And, once again, it's DIX?

11 **MR. THOMPSON:** 2616.

12 **THE COURT:** 2616. Very well. It will be admitted.

13 (Defendants' Exhibit 2616 received in evidence.)

14 **MR. THOMPSON:** Thank you, Your Honor.

15 **BY MR. THOMPSON:**

16 **Q.** Now, Professor, I'd like to turn your attention to tab 74
17 in your binder. And this is a story that comes from the
18 sandiego6.com website. It's dated November 4, 2008. And
19 here's what it says:

20 "Disputes over Proposition 8 campaign signs
21 in Carlsbad left one man behind bars on
22 suspicion of assault, and at least one other
23 alleged assailant at large Tuesday,
24 authorities reported.

25 "The latter of the two scuffles over the

1 ballot measure which would ban same-sex
2 marriage in California, occurred about 10
3 a.m. when a jogger spotted two men removing
4 Yes On 8 signs in the area of Aviara Parkway
5 and Cormorant Drive, police spokeswoman Lynn
6 Diamond said.

7 "When the witness confronted the thieves, one
8 of them pulled off the witness' hat and
9 smashed his eyeglasses on the ground. The
10 attacker's large black-and-tan dog then bit
11 the victim in his upper leg, causing deep
12 puncture wounds, according to Diamond.

13 "At that point, the assailant -- a man who
14 appeared to be in his late 30s or early 40s,
15 wearing shorts and a polo shirt -- ran off
16 along with his companion, who was also
17 leading a dog."

18 Is this the sort of incident that when people read
19 about this on the Internet would have the potential to diminish
20 political support for the LGBT community?

21 **MR. BOUTROUS:** Objection, Your Honor. Vague,
22 ambiguous question.

23 **THE COURT:** Objection overruled.

24 **THE WITNESS:** Once again, not speaking to the
25 specifics of the report, any adverse publicity associated with

1 one side or the other would be detrimental to their cause; and
2 apparently, in this case, detrimental to Carlsbad.

3 **MR. THOMPSON:** Your Honor, we would move the
4 admission of DIX1725.

5 **MR. BOUTROUS:** Same objections as to relevance and
6 hearsay, Your Honor.

7 **THE COURT:** Very well. I'll admit it.

8 (Defendants' Exhibit 1725 received in evidence.)

9 **BY MR. THOMPSON:**

10 **Q.** Turning to tab 75, this is a story from October 13, from
11 the *International Business Times*. And in the -- and it's
12 entitled "Prop 8 Supporter Violently Attacked for Distributing
13 Lawn Signs."

14 And in the second paragraph it says:

15 "Prop 8 supporter, Jose Nunez, 37, was

16 brutally assaulted while waiting to

17 distribute yard signs to other supporters of

18 the initiative after church services at the

19 Saint Stanislas Parish in Modesto.

20 "The assailant grabbed about 75 signs and

21 yelled at Nunez accusingly, 'What do you have

22 against gays!' Although Nunez replied that

23 he had nothing against gays, he was attacked

24 anyway. The assailant punched Nunez in the

25 left eye and ran off with the signs."

1 And is this, again, the sort of story that would have
2 the potential to diminish support for the gay and lesbian
3 political movement?

4 **MR. BOUTROUS:** Objection, Your Honor. Irrelevant,
5 hearsay, cumulative.

6 **THE COURT:** Objection overruled.

7 **THE WITNESS:** Potentially. Though, I don't know what
8 the readership of the *International Business Times* is in the
9 California electorate. I'm not familiar with the publication.

10 And the source of the story is ProtectMarriage.com.
11 It's sourced on the bottom of the press release.

12 **MR. THOMPSON:** Now, I'd like to play one more -- one
13 last video, Your Honor, on this subject. And it is --

14 **THE COURT:** Where do you see --

15 **MR. THOMPSON:** I'm sorry. We're not there yet.

16 **THE COURT:** Where do you see the source being
17 ProtectMarriage.com?

18 **THE WITNESS:** Three lines from the bottom, on the
19 back page, Your Honor.

20 **THE COURT:** I'm sorry. I was looking at the wrong
21 exhibit. This is Exhibit --

22 **MR. THOMPSON:** DIX1609, Your Honor.

23 **THE COURT:** Oh, I see. All right. You may proceed.

24 **BY MR. THOMPSON:**

25 **Q.** All right. Now, turning your attention to the next tab in

1 your binder, which is tab 76, this is a story from the *San Jose*
2 *Mercury News* that's dated October 28th, 2008. And it states:

3 "The homeowners, Tom and Kelly Byrne and
4 Frank and Evalina Ybarra, had Yes On 8,
5 Protect Marriage signs posted on their front
6 lawns on Southgate Court for about a week.
7 The Byrnes and Ybarras, friends who live
8 across from each other on the small
9 cul-de-sac, had their garage doors
10 spray-painted in large letters with the words
11 'No On 8.'

12 "The 'No On 8' slogan refers to the hotly
13 contested Proposition 8 ballot measure in
14 next week's election that would ban same-sex
15 marriage in California.

16 "The rear window of the Byrnes' minivan was
17 also hit with red spray paint."

18 Does this sort of vandalism have the potential to
19 diminish support for the political goals of the LGBT community?

20 **A.** Uhm, it does, Mr. Thompson; with the qualifying statement
21 that three paragraphs from the bottom in the story it reads:

22 "The No On 8 Proposition campaign issued a
23 statement saying it, quote, condemns
24 vandalism and activities of this kind that
25 are in no way connected to the No On Prop 8

1 campaign."

2 So it is clearly activities that the No On 8 campaign
3 disavowed. And that disavowal would certainly have an
4 ameliorative effect on the story.

5 **Q.** And the reason they disavowed it, in part, aside from
6 basic decency and fairness, would be politically it's
7 kryptonite, correct?

8 **A.** It's politically not advantageous. But as to the motives
9 of why the campaign disavowed it, I have no reason other than
10 to believe their statement.

11 **MR. THOMPSON:** Yeah.

12 Your Honor, we would move the admission of DIX1792.

13 **THE COURT:** Very well. 1792 will be admitted.

14 (Defendants' Exhibit 1792 received in evidence.)

15 **BY MR. THOMPSON:**

16 **Q.** Turning to the next tab in your binders, which is tab
17 77 --

18 **THE COURT:** When you get to the end of this line,
19 let's take a break.

20 **MR. THOMPSON:** Okay. And, in fact, at this point, we
21 would like to publish another video. This would be DIX1673.

22 **MR. BOUTROUS:** Your Honor, if Counsel could just lay
23 a foundation or explain what we're about to see, that would be
24 helpful.

25 **MR. THOMPSON:** This is a video entitled "Vandals

1 Target Downtown Fresno Church."

2 **THE COURT:** "Downtown Fresno Church"?

3 **MR. THOMPSON:** Yes, Your Honor.

4 **MR. BOUTROUS:** And I make the same objections;
5 relevance, cumulativeness, and hearsay.

6 **THE COURT:** Well, let's see it. See what it --

7 (Video played in open court.)

8 **BY MR. THOMPSON:**

9 **Q.** Now, and are you aware of the fact that the mayor of
10 Fresno received death threats?

11 **A.** I have no knowledge of that.

12 **Q.** Were you aware that pastors received death threats in
13 connection with their support for Prop 8?

14 **A.** Once again, I have no knowledge, no direct knowledge of
15 that.

16 **Q.** If that were true, would that tend to diminish the ability
17 of the LGBT community to appeal to norms of fairness?

18 **A.** That it would diminish the ability, I would say yes. But
19 because I don't know the origin of the death threats or even
20 if, perhaps, the threats were staged as part of the Yes On 8
21 campaign, or people who were sympathetic to that, I cannot
22 attribute the motive of the individuals involved.

23 From a public relations standpoint, certainly, that
24 is not helpful.

25 **MR. THOMPSON:** And, Your Honor, we have come to a

1 convenient stopping point.

2 **THE COURT:** Very well.

3 Well, before we take our break -- and counsel in this
4 matter can step aside for a moment. We have another matter to
5 attend to; a somewhat happy one.

6 (Pause in proceedings.)

7 **THE COURT:** Counsel, why don't we take until ten
8 minutes after the hour. Then we will resume -- how much longer
9 do you have with this witness, Mr. Thompson?

10 **MR. THOMPSON:** I apologize. It's going a little
11 slower than I anticipated.

12 **THE COURT:** Yes, it is.

13 **MR. THOMPSON:** But I don't know. Perhaps maybe
14 another hour.

15 **THE COURT:** Maybe you can streamline things.

16 **MR. THOMPSON:** I will do my best, Your Honor.

17 **THE COURT:** All right. Fine.

18 (Recess taken from 9:56 to 10:14 a.m.)

19 **THE COURT:** Very well, Mr. Thompson. Carry on.

20 **MR. THOMPSON:** Thank you. I'm ripping out pages of
21 my script, your Honor.

22 **THE COURT:** Then maybe I shouldn't interrupt you.

23 **MR. THOMPSON:** Indeed.

24 **BY MR. THOMPSON:**

25 **Q.** All right, Professor. I would like to switch gears a

1 little bit and talk about the aftermath of Prop 8 and some of
2 the conduct of supporters of the LGBT community and what, if
3 anything, the relationship is to the political power of gays
4 and lesbians in California today.

5 And in particular, I would like to direct your
6 attention to tab 79. This is an article in the *New York Times*.
7 It's dated February 8th, 2009, and it starts:

8 "For backers of Proposition 8, the state
9 ballot measure to stop single-sex couples
10 from marrying in California, victory has been
11 soured by the ugly specter of intimidation.
12 Some donors to groups supporting the measure
13 have received death threats and envelopes
14 containing a powdery white substance and
15 their businesses have been boycotted."

16 Professor, when the general public reads in the *New*
17 *York Times* about the ugly specter of intimidation and death
18 threats and envelopes containing a white powdery substance,
19 does that dissipate the ability for the LGBT community to
20 appeal to the norm of fairness?

21 **A.** Within limits that might be the case. So if your
22 suggestion, Mr. Thompson, is that the already weak political
23 position of gays and lesbians has gotten weaker, I may be
24 inclined to agree.

25 That said, I think we have to take into consideration

1 the role of things like boycotts. So I would not equate
2 boycotts with death threats and intimidation.

3 There are a host of extra -- extra electoral or
4 non-electoral forms of political participation which have
5 regularly been turned to by people who are excluded from the
6 political system, and boycotts is one of them.

7 So, for example, it's difficult to imagine the civil
8 rights movement in the 1950's and the 1960's without the
9 Montgomery bus boycott or the boycott of white-owned businesses
10 in certain southern towns.

11 Indeed, we can go all the way back to the late 1760's
12 and the early 1770's when women of Boston arranged a boycott of
13 English tea.

14 So I would not group boycotts of businesses in with
15 violence and intimidation. Of course, I don't know the details
16 of this article, but to the extent that isolated acts of
17 inappropriate behavior have diminished the political power of
18 gays and lesbians, that may well be true.

19 **MR. THOMPSON:** Your Honor, we would move the
20 admission of DIX-2525.

21 **MR. BOUTROUS:** Same objections as to the other
22 exhibits, your Honor. Relevance, hearsay and cumulativeness.

23 **THE COURT:** Very well.

24 **MR. BOUTROUS:** And one more on this one, your Honor.
25 This is after the election.

1 **THE COURT:** The witness has been examined with
2 respect to the contents of this document and it's being
3 admitted with that purpose in mind, and so I think it's
4 appropriate.

5 But why don't -- do you have any more questions on
6 this line?

7 **MR. THOMPSON:** On this line, I do. But feel free,
8 your Honor.

9 **THE COURT:** Well, it just occurred to me, since Mr.
10 Thompson is exploring them subject, Professor, have you
11 considered what the effect was on the political support for the
12 civil rights enactments of the 1960's of the riots and
13 vandalism and other acts of illegal and inappropriate behavior
14 that occurred at that time that was associated with, if not the
15 civil rights movement, nevertheless, associated frequently with
16 African-Americans in that particular period?

17 Have you considered the effect of those events on the
18 political climate and the subjects that you are opining about?

19 **THE WITNESS:** Not specifically, your Honor. In part,
20 because I was asked to evaluate the relative power or
21 powerlessness of gays and lesbians, so --

22 **THE COURT:** I realize that you haven't considered
23 that in connection with your expert report here, your expert
24 testimony here.

25 But have you considered that in the course of your

1 professional endeavors?

2 **THE WITNESS:** Yes, your Honor.

3 As a general rule of thumb, any forms of organized
4 violence, or even just broad disorderly behavior, certainly has
5 a negative impact on the public opinion surrounding the plight
6 of the individuals engaged in it.

7 There is -- in addition to it being a somewhat
8 historical effective tactic, non-violent protests also plays
9 much better as a P.R. item.

10 However, I think we would be wrong to discount
11 entirely whether or not these acts, which are usually quite
12 spontaneous may not, in fact, serve the long-term interests of
13 the group.

14 So, for example, I'm thinking of the riots in
15 Los Angeles following the verdict of the Rodney King debacle.
16 Those riots set into motion a process called Rebuild L.A.,
17 where there was substantial investment in really blighted and
18 underserved and underutilized communities in Los Angeles city
19 and county that may have, in fact, not come about were there
20 not this spontaneous uprising.

21 I'm certainly not defending the actions, your Honor.
22 I think that that's in the long run less likely to be
23 productive than more likely.

24 But there are moments where those sorts of acts are
25 interpreted by some portions of the perceiving public as a cry

1 for help, or an expression of frustration, or maybe sort of the
2 ultimate expression of powerlessness.

3 **THE COURT:** Well, and is there a possibility that the
4 acts that Mr. Thompson has been referring to in his
5 cross-examination might have the same effect in connection with
6 the issues that we are discussing here?

7 **THE WITNESS:** So, I'm a little concerned about making
8 that leap for a couple of reasons.

9 So, the first is that the most recent act Mr.
10 Thompson talked about took place after the election. So we
11 have to differentiate effects on the election outcome versus
12 effects on the relative power or powerlessness of gays and
13 lesbians.

14 The second thing is, we would want to weigh those
15 incidents against the converse. So we have sworn testimony in
16 this courtroom by Mayor Sanders about his house being
17 vandalized; by Ms. Zia about her being subject to harassment.

18 In fact, the Heritage Foundation report, which was
19 introduced into evidence, makes no attempt to gather evidence
20 of intimidation, vandalism, hostility; violence in the opposite
21 direction.

22 So the Heritage Foundation Report I frankly find a
23 little bit intellectually dishonest.

24 We also know from the Hate Crimes Reports that there
25 were more than 100 acts of violence against gays and lesbians

1 in 2007. I don't know the number for 2008.

2 We know that nationwide gays and lesbians are more
3 likely to be targeted for violent attack, rape and murder than
4 any other American on the basis of their identity. Certainly,
5 that would also be weighed in the evaluation of whether or not
6 the public perceives the group sympathetically or hostilely,
7 and we would want to consider both of those things.

8 **THE COURT:** Very well.

9 All right, Mr. Thompson. If you wish to follow up,
10 you may certainly do so.

11 **BY MR. THOMPSON:**

12 **Q.** Well, and let's followup by looking at the next tab 81 in
13 your binder.

14 This is an *L.A. Times* story, and it recounts what
15 appears to a boycott against a restaurant in Los Angeles,
16 El Coyote; but if we look at the third paragraph under the
17 picture box, it's the one that starts:

18 "A boycott was organized on the internet with
19 activists trashing El Coyote on restaurant
20 review sites. Then came throngs of
21 protesters, some of them shouting 'Shame on
22 you' at customers. The police arrived in
23 riot gear one night to quell the angry mob."

24 Now, when the police are called to quell an angry
25 mob, would you agree that that's taking a boycott too far and

1 that that sort of conduct could have negative effects for the
2 political power of the group you are trying to support?

3 **A.** Certainly, as it's represented in this *L.A. Times* story,
4 Mr. Lopez appears to have a flourish for expression. I don't
5 know how angry the mob was, how mob-like their behavior was, or
6 whether or not any arrests were made.

7 As far as -- there is no -- I have no basis to judge
8 what the actual actions were in front of the restaurant. I
9 just know that, you know, a bunch of people showed up, maybe
10 yelled, and the police were called, which might have been a
11 perfectly reasonable thing to do to calm passions. So I
12 can't -- I can't conclude about whether or not there was
13 activity that went, quote, unquote, too far.

14 I have to tell you, I actually don't have a
15 particular problem with a boycott of a business managed by
16 someone who contributed to an act that disadvantaged a
17 significant share of his or her own customer base. That
18 seems -- well, in some of the same language you are using to
19 ask about gays and lesbians, it seems sort of counterproductive
20 to the cause of the business's success.

21 So I actually don't have a problem with the
22 underlying boycott. Clearly, if people behaved
23 inappropriately, if the police made arrests for violence or
24 whatever, that was inappropriate and not helpful to the cause
25 of gay and lesbian political interests.

1 Q. And let's turn to --

2 MR. THOMPSON: Well, your Honor, we would move the
3 admission of DIX-2528.

4 THE COURT: Very well. 2528 is admitted.

5 (Defendants' Exhibit 2528 received in evidence.)

6 BY MR. THOMPSON:

7 Q. And let's skip a few tabs and go to tab 84. This is,
8 again, a story in the *Los Angeles Times* dated February 16,
9 2009. And it states:

10 "A classroom dispute at Los Angeles City
11 College in the emotional aftermath of
12 Proposition 8 has given rise to a lawsuit,
13 testing the balance between First Amendment
14 rights and school codes on offensive speech.
15 "Student Jonathan Lopez says his professor
16 called him a 'fascist bastard' and refused to
17 let him finish his speech against same-sex
18 marriage during a public speaking class last
19 November, weeks after California voters
20 approved the ban on such unions.

21 "When Lopez tried to find out his mark for
22 the speech, the professor, John Matteson,
23 allegedly told him to 'ask God what your
24 grade is,' the suit says."

25 Now, I'm not asking you whether any of this is true

1 or not, but when people read this type of story in the *Los*
2 *Angeles Times*, would you agree that it has the tendency and the
3 potential to diminish support for gay and lesbian political
4 power?

5 **A.** As I -- once again, Mr. Thompson, without speaking to the
6 veracity of the recount of the incident, adverse publicity is
7 negative to the interests of the group to whom it pertains.

8 **MR. THOMPSON:** Your Honor, we would move the
9 admission of DIX-2533.

10 **THE COURT:** Very well.

11 (Defendants' Exhibit 2533 received in evidence.)

12 **BY MR. THOMPSON:**

13 **Q.** Now, you talked a bit about hate crimes yesterday. What
14 makes the bias crime distinct from a traditional assault is
15 that it is the person's membership in a particular group that
16 is the reason for his or her selection as a victim, correct?

17 **A.** That's correct.

18 **Q.** And it is that group membership and that group that is the
19 actual target of the crime, correct?

20 **A.** That's correct.

21 **Q.** The assailant is trying to create within that community a
22 sense of fear that engaging in a normal discourse of human
23 activity is not available to them at that location, correct?

24 **A.** That's correct.

25 **MR. THOMPSON:** Your Honor, we would like to at this

1 point to publish on the screen DIX-2544. It's a short
2 interview that Bill O'Reilly conducted with someone who went to
3 the Castro after Prop 8 and was assaulted.

4 **THE COURT:** Very well.

5 (Videotape played in open court.)

6 **MR. BOUTROUS:** Your Honor, may I just object? A
7 number of Mr. O'Reilly's questions were leading.

8 (Laughter.)

9 **BY MR. THOMPSON:**

10 **Q.** Professor, does that incident, if true -- and I'm not
11 asking you to opine on whether it's true or not, but would that
12 fit your definition of a hate crime in that it was -- it was a
13 targeted crime that was meant to send a signal that a certain
14 type of person wasn't welcome in a certain location?

15 **A.** It may actually fit my definition of a hate crime. I'm a
16 little bit hesitant because there is the -- there is the danger
17 of yelling "Fire" in a crowded theater.

18 So, you know, provocative acts are problematic. You
19 can imagine in a racial and ethnic environment for example,
20 if -- if an African-American approached an Anglo and said, "You
21 racist bastard, you are evil," or whatever, and then the person
22 attacked him, that African-American would not be able to say
23 that that was a hate crime because there was a provocation
24 involved. And so, I guess, I'm a little reluctant.

25 The entire incident strikes me as sort of -- I'm not

1 even sure how to comment on it, given that it's not a news
2 report. The police didn't witness it. I just don't know what
3 to make of that.

4 **MR. THOMPSON:** Your Honor, we would move the
5 admission of DIX-2544.

6 **THE COURT:** Very well.

7 (Defendants' Exhibit 2544 received in evidence)

8 **THE COURT:** And can we move on, Mr. Thompson?

9 **MR. THOMPSON:** Yes, your Honor. I just have one more
10 document on this line of questions.

11 **BY MR. THOMPSON:**

12 **Q.** And that's -- we'll skip to tab 89.

13 And, Professor Segura, this is a document from *Time*
14 magazine entitled -- it's November 15, 2008 -- "What Happens If
15 You're on Gay Rights' 'Enemies List'?"

16 And it says in the second paragraph:

17 "The Mormon Church is not the only group
18 being singled out for criticism.

19 African-Americans, 70 percent of whom voted
20 yes on Prop 8 according to a CNN exit poll,

21 have become a target. According to eye

22 witness reports published on the internet,

23 racial epithets have been used against

24 African-Americans at protests in California

25 with some even directed at blacks who are

1 fighting to repeal Proposition 8."

2 Would you agree that when people read this sort of
3 story in *Time* magazine, it reduces the ability of the gay and
4 lesbian community to appeal to the norm of fairness?

5 **A.** As I have repeatedly testified, Mr. Thompson, any time
6 there is adverse publicity surrounding a group, it will
7 diminish their abilities to make claims in the public.

8 **MR. THOMPSON:** Your Honor, we would move the
9 admission of DIX-2531.

10 **THE COURT:** All right. Very well. And you are
11 moving on, are you?

12 **MR. THOMPSON:** Yes, your Honor.

13 (Defendants' Exhibit 2531 received in evidence)

14 **BY MR. THOMPSON:**

15 **Q.** A new topic, Professor.

16 We've talked a lot about California now and I want to
17 switch gears and talk more about the national political scene
18 and ask you a few questions about that. And let's skip ahead,
19 if you have no objection, over many tabs, to 96-D.

20 And this is a story from 1993 from the *Los Angeles*
21 *Times*. It's DIX-2587. And I would like to turn your attention
22 to the bottom of page two, where it says at the bottom of the
23 page:

24 "'In 1992, the big story was that it was the
25 Year of the Woman,' says Duane Garrett,

1 chairman of Dianne Feinstein's Senate
2 Campaign. 'But in California politics, I
3 think the emergence of strong, public,
4 widespread gay and lesbian support was a
5 critical difference in close races. I don't
6 believe that any politician seeking statewide
7 support in either party would be foolish
8 enough to ignore the potential support of the
9 gay community. I think the days are gone
10 when you can run, even for a nomination for
11 the Republican Party, bashing gays and gay
12 lifestyles.'" "

13 And was that an accurate statement in 1993, do you
14 believe?

15 **A.** I believe that it was inaccurate in 1993 and it is even
16 more inaccurate today.

17 **MR. THOMPSON:** Your Honor, we would move the
18 admission of DIX-2587.

19 **MR. BOUTROUS:** No objection, your Honor.

20 **THE COURT:** Very well.

21 (Defendants' Exhibit 2587 received in evidence.)

22 **BY MR. THOMPSON:**

23 **Q.** And then turning to the next tab, which is tab E, this is
24 an article by Howard Fineman. He is a respected journalist for
25 *Newsweek*, is that right?

1 **A.** He is a journalist for *Newsweek*. I assume his level of
2 respect is high.

3 **Q.** Okay. And turning to the bottom of page one it says:

4 "In Springfield and Washington -- not to
5 mention New York, Chicago, Atlanta,
6 San Francisco and especially Los Angeles --
7 homosexuals are a powerful and increasingly
8 savvy bloc."

9 And would you agree that the homosexual political
10 movement is savvy?

11 **A.** I'm sorry. I don't see where you are speaking, Mr.
12 Thompson.

13 **Q.** It's the bottom of page one behind tab E. Do you see
14 the --

15 **A.** Can you tell me what the paragraph begins with?

16 **Q.** It starts with:

17 "Gay power is going traditional at lightning
18 speed."

19 And, sorry, I was reading the very last sentence,
20 which was a carryover.

21 **A.** I believe that that is a journalistic sort of anecdotal
22 take, I think. I would not have agreed with this take in 1993
23 and I would not agree with it today.

24 **Q.** Well, let me direct your attention down to the -- on page
25 two to the second full paragraph, second sentence from the end

1 where it says:

2 "Gays and lesbians, in fact, have become a
3 key source of new funds for sympathetic
4 Democratic candidates nationwide."

5 And do you agree with that statement?

6 **A.** I don't. I think that gays and lesbians are donors to
7 Democratic candidates in certain parts of the country.

8 I would be shocked if there were substantial gay
9 donations, for example, to Democratic candidates in most of the
10 great plains, most parts of the deep south.

11 So I -- I don't know what basis this reporter is
12 making this claim, but I would not be willing to make a similar
13 claim.

14 **MR. THOMPSON:** Your Honor, we would move the
15 admission of DIX-2586.

16 **MR. BOUTROUS:** Your Honor, I object in terms of
17 relevance. We are back in the early 90's.

18 **THE COURT:** Very well. 2586 is admitted. Objection
19 overruled.

20 (Defendants' Exhibit 2586 received in evidence.)

21 **BY MR. THOMPSON:**

22 **Q.** Let's skip on to tab G and it's called -- this is a story
23 in *Time* magazine called "The Gay Mafia That's Redefining
24 Liberal Politics." And it's dated Friday, October 31, 2008.

25 And it talks about -- if you turn to page two, the

1 third full paragraph reads in part:

2 "Among gay activists the Cabinet --"

3 And it's referring to this group of wealthy donors.

4 Have you ever heard of the "Cabinet"?

5 **A.** That's a new one on me. I'm sorry.

6 **Q.** (As read)

7 "(Continuing) -- is revered as kind of a
8 secret gay Super Friends, a homosexual
9 justice league that can quietly swoop in
10 wherever anti-gay candidates are threatening
11 and finance victories for the good guys.
12 Rumors abound in gay political circles about
13 the group's recondite influence; some of the
14 rumors are even true. For instance, the
15 Cabinet met in California last year with two
16 sitting governors, Brian Schweitzer of
17 Montana and Kathleen Sebelius of Kansas, both
18 Democrats."

19 Isn't it true that wealthy gay donors are able get --
20 attract the attention of lawmakers nationwide?

21 **MR. BOUTROUS:** I object on the basis of the phrase
22 "attract the attention of lawmakers." I'm not sure what that
23 means.

24 **MR. THOMPSON:** Have meetings with high-ranking
25 officials throughout the country.

1 **A.** I think it would be fair to say that when there is money
2 to be given, there are politicians to come accept it.

3 (Laughter.)

4 **BY MR. THOMPSON:**

5 **Q.** That's one thing we can agree on.

6 **MR. THOMPSON:** And-- I would move the admission of
7 DIX-2590.

8 **THE COURT:** Very well. 2590 is at admitted.

9 (Defendants' Exhibit 2590 received in evidence)

10 **BY MR. THOMPSON:**

11 **Q.** All right. Now, let's move on. At the national level you
12 would agree that political opportunity structure is better than
13 it was five years ago, correct?

14 **A.** I would say that the opportunity structure is probably
15 marginally better because of the distribution of controls in
16 the chambers of the legislature and the presidency.

17 **Q.** All right. Now, let's turn to tab 99. And my question
18 is: Is HIV funding an important political priority for the gay
19 and lesbian community?

20 **A.** It is, yes.

21 **Q.** All right. And then turning to pages 12 and 13 of this
22 document, which is DIX-1337, it's a Congressional Research
23 Service report for Congress.

24 And you can see on page 12, it shows the level of
25 funding, which started in 1982 at \$8 million, is well over

1 20 billion today.

2 And isn't it true that this reflects a measure of
3 success that the gay and lesbian community has had in having
4 funds allocated to HIV?

5 **A.** Mr. Thompson, you are going to have to forgive me, but I'm
6 deeply troubled by the notion that this constitutes a success.
7 It could just as clearly be evidence of the number of
8 individuals infected with a life-threatening disease.

9 Because the number has continued to climb, both in
10 the United States and worldwide, the level of funds that the
11 U.S. government has dedicated to fighting and treating the
12 disease or preventing it has it has gone up.

13 Perhaps gay and lesbian political interests advocated
14 for this -- I would assume that they did -- but in the absence
15 of knowing what the monies are spent on, and in the absence of
16 knowing what other interests might have played a role in
17 securing them, some of this money could be going to foreign
18 aid, to Southeast Asia and sub-Sahara and Africa where HIV
19 infections are high.

20 I just -- I don't know what the money is being spent
21 on, so I can't draw political conclusions on the basis of the
22 table.

23 **MR. THOMPSON:** All right. Your Honor, we would
24 request the admission of DIX-1337.

25 **MR. BOUTROUS:** No objection, your Honor.

1 **THE COURT:** 1337 is admitted.

2 (Defendants' Exhibit 1337 received in evidence.)

3 **BY MR. THOMPSON:**

4 **Q.** Let's talk about adoption. Adoption is a right that a
5 majority or even a super majority of gays and lesbians believe
6 they should be afforded, correct?

7 **A.** I think that's correct.

8 **Q.** And in the vast majority of states, gays and lesbians have
9 won that political battle and are able to adopt children,
10 correct?

11 **A.** I think that actually misrepresents the political reality.

12 So a substantial number of states, their state laws
13 regarding adoption are silent on the question of whether or not
14 unmarried persons could adopt or whether gay persons could
15 adopt.

16 Some states, for example, prohibit second-party
17 adoption; meaning that if there is a male in place as a father
18 of a child, that a second male could not petition for adoption
19 without abrogating the parental rights of the first male,
20 because the state only recognizes one male parent per child,
21 one female parent per child.

22 But many of those laws predate even the emergence of
23 the gay and lesbian political movement and had to do with split
24 families and stepchildren and whether or not there could be
25 more than one father legally responsible for a child.

1 So the history of the adoption regime in the United
2 States is a history of largely silence on the matter, on the
3 specific matter of whether gays and lesbians or unmarried
4 persons could adopt.

5 Some number of states in recent years have taken
6 affirmative steps to prevent gays and lesbians from adopting,
7 or from serving as foster parents, or some vague legislative
8 combination of that general issue.

9 Those states would include Florida, Mississippi,
10 Oklahoma, I believe Missouri has considered it, Utah. And most
11 recently in 2008 the State of Arkansas adopted a statewide
12 ballot initiative banning adoption by unmarried persons, which
13 had the effect of banning adoption by gays and lesbians.

14 **Q.** But in more than 40 states today gays and lesbians can
15 adopt children, correct?

16 **A.** That's correct. I -- I made a prediction some years ago
17 that as the anti-same-sex marriage initiative process peaked,
18 as the number of states with that initiative process available
19 left to contest the same-sex marriage issue diminished to zero,
20 that the new front line would be gay and lesbian adoption.

21 Arkansas inconveniently affirmed my prediction. I
22 don't know if those things are pending in other states, but I
23 would not be surprised to see anti-adoption initiatives
24 appearing in the near future.

25 **Q.** All right. Now, let's turn to tab 100. This is -- you

1 testified about hate crimes, correct?

2 **A.** I did testify about hate crimes.

3 **Q.** Okay. And this is the 2008 hate crime statistics from the
4 FBI's website.

5 And we can see that there were 1,297 incidents of
6 hate crimes against -- on the basis of sexual orientation,
7 correct?

8 **A.** That's correct. So the FBI, they count hate crimes
9 multiple ways. They count the number of actual events. They
10 count the number of offenses that took place, which could be
11 more or less -- it's more than -- it could be more than the
12 number of events because multiple offenses could take place.

13 They count the number of victims involved, because
14 sometimes hate crimes are perpetrated on more than one person.
15 And they count the number of offenders. So some hate crimes
16 are performed individually and some are performed by groups.

17 So those numbers aren't always the same, but,
18 obviously, they correlate very, very closely.

19 **Q.** Okay. So if we're looking at the first column, we're
20 looking at incidents.

21 Now, if we go -- and that sexual orientation number
22 includes hate crimes against transgender individuals, correct?

23 **A.** I don't -- I don't know actually. I don't see that in
24 this table.

25 If you represent to me that in other documents it

1 does, I have no reason to dispute that.

2 **Q.** Just to be clear, I'm not representing. It was a
3 question. I didn't know if you knew.

4 **A.** Umm, in this particular table it doesn't specifically
5 suggest that.

6 **Q.** Now, this category includes bisexuals, correct?

7 **A.** It does. They represent a very small percentage of the
8 total, but yes.

9 **Q.** Okay. And now if we go up a few columns, we can see that
10 the anti-Jewish hate crime incidents is 1,013, correct?

11 **A.** That's correct.

12 **Q.** And if you go to the next tab in your binder, this is an
13 abstract and it shows from the U.S. Census Bureau that the
14 Jewish community is 2.2 percent of the population in the United
15 States. That's in the fourth column.

16 Do you have any reason to dispute that?

17 **A.** I do.

18 **Q.** You think that -- what is the percentage of the U.S.
19 population that is Jewish?

20 **A.** The percentage of the U.S. population that is Jewish, as I
21 understand it, is between four and four-and-a-half percent.

22 The difficulty you are having is that this table that
23 you presented under this next tab is actually a percentage of
24 adherence, congregational members.

25 So it has to do with religious observance, not the

1 number of people who could be ethnically or socially identified
2 as Jewish.

3 **Q.** All right. Well, let's take your definition of four to
4 four-and-a-half percent. You would agree that there's a higher
5 incidence of hate crimes against the Jewish community in the
6 United States than against lesbians and gays since lesbians and
7 gays are four to seven percent of the population, according to
8 you, and the Jewish community is four to four-and-a-half
9 percent of the population, correct?

10 **A.** Depending on whether -- you know, whose population
11 estimates you would use, that would be plausible.

12 **Q.** And notwithstanding the regrettable incidents of hate
13 crimes against the Jewish community, the Jewish community is
14 politically powerful. It has a meaningful degree of political
15 power, correct?

16 **A.** Umm, in my view it has a fair amount of political power in
17 the U.S. system.

18 **Q.** Okay. Now, let's turn to your comparison of
19 African-Americans as opposed to -- you know, prior to the Civil
20 Rights Act of 1964 and the political power they had, as opposed
21 to gays and lesbians.

22 Do you have an opinion on whether gays and lesbians
23 in 2009 in California are better off than African-Americans
24 were before the Civil Rights Act of 1964?

25 **A.** The term "better off" is the rub in your question, Mr.

1 Thompson. So my argument would be that from an economic
2 perspective and from a social perspective it is quite likely
3 the case that gays and lesbians in California in 2010 are
4 better off than many, perhaps even most African-Americans prior
5 to the passage of civil rights legislation.

6 **Q.** All right. And turning to tab -- it's where it's tab two.
7 We are starting with new numbers.

8 African-American members of the United States
9 Congress -- and we have listed here the numbers in the U.S.
10 House of Representatives. From 1939 to 1945 there was one, and
11 from 1945 to 1955 there were two.

12 Do you have any reason to doubt those numbers?

13 **A.** I have no reason to doubt your numbers.

14 **Q.** And the African-American community was about 10 percent of
15 the population in the 1950's, is that right?

16 **A.** That's correct.

17 **Q.** All right. And let's, then, look at the comparison.

18 And turning to the next tab, we can see that women
19 until Congress, if we focus on the first half of the 1970's,
20 they had between 10 and 16 members of the House of
21 Representatives.

22 Do you have any reason to doubt those numbers?

23 **A.** I don't.

24 **Q.** And in the Senate there were -- there was one senator for
25 a couple of years, two female senators from '71 to '73, and

1 zero senators, female senators, from 1973 to 1975.

2 Do you have any reason to doubt those numbers?

3 **A.** I do not.

4 **Q.** And women in the 1970's were less politically cohesive
5 than gays and lesbians are today, correct?

6 **A.** I would have to actually go back and do analysis on that.
7 I think that's probably the case. I think the partisan
8 division among women would be much more even than it is among
9 gays and lesbians in the -- if we went back to that period of
10 time.

11 But, again, without data in front of me I'm reluctant
12 to draw conclusions.

13 **Q.** Now, you talked about politicians who make disparaging
14 comments against gays and lesbians. I believe you referred to
15 Senator Tom Coburn, do you recall that?

16 **A.** I do recall Senator Coburn.

17 **Q.** When was the last time a statewide official from
18 California made a disparaging remark about gays or lesbians?

19 **A.** Because I do not have an encyclopedic knowledge of all
20 comments made by all statewide elected officials, I couldn't
21 possibly say.

22 **Q.** Can you identify one?

23 **A.** Once again, I couldn't possibly say. I don't know.

24 **Q.** Just so the record is clear, you can't identify a single
25 anti-gay remark made by a statewide California official in the

1 last quarter century, correct?

2 **A.** In the last quarter century?

3 **Q.** Right.

4 **A.** Well, give me a minute.

5 (Brief pause.)

6 **A.** Again, I would want to be able to go and look at some of
7 the statements that were made by various members of the
8 political system during the statewide ballot contest on
9 quarantining those infected with HIV and comments made in the
10 mid-80's.

11 I just -- I would be shocked if there were zero, but,
12 again, I just don't have an encyclopedic knowledge of
13 everything anyone has ever said for 25 years.

14 **Q.** You would agree that it is unlikely that an openly
15 anti-gay politician could win the governorship of California,
16 correct?

17 **A.** I'm not sure I agree with that at all.

18 **Q.** Well, wait a minute. Let's look at your -- back to binder
19 one, your deposition, and page 240 of your deposition, and line
20 three.

21 Do you recall when I asked you on -- here is the
22 colloquy:

23 **"QUESTION:** Do you think that in the next
24 gubernatorial election in California, that an
25 anti- -- an openly anti-gay politician could

1 win the governorship of California?

2 "MR. GOLDMAN: Objection. Incomplete
3 hypothetical. Calls for speculation.

4 "ANSWER: No, largely because of the
5 political distributions in the state. So
6 this state has an electorate that is pretty
7 significantly Democratic."

8 And you gave that testimony, correct?

9 A. Yeah, I did.

10 MR. BOUTROUS: Your Honor, I object.

11 The question that counsel asked today was whether an
12 open anti-gay politician could ever be elected.

13 The question that was asked in deposition talked
14 about the next election, so I think it's...

15 THE COURT: Sustained.

16 MR. BOUTROUS: Thank you, your Honor.

17 BY MR. THOMPSON:

18 Q. Well, in the next election would you agree that an openly
19 anti-gay politician could not win the governorship of
20 California?

21 A. In the next election I would consider that to be unlikely.

22 Q. All right. Now, let's look to trends. Looking to the
23 general public, young people tend to be more supportive of gay
24 and lesbians rights than old people, all other things being
25 equal, correct?

1 **A.** All other things being equal, I would say that that's
2 correct; but I would say that at a national level, there's
3 pretty good evidence for substantial regional variation in
4 that, but -- in terms of degree. But as a general principle,
5 younger people tend to be more accepting of gays and lesbians
6 than older people.

7 **Q.** All right. And let's turn to tab -- the next -- tab five.
8 This is a January 18th, 2010 article in the *New Yorker*,
9 entitled "A Risky Proposal - Is it too soon to petition the
10 Supreme Court on gay marriage?"

11 And turning to page three of this document in the --

12 **THE COURT:** Why do we need this, Mr. Thompson?

13 **MR. THOMPSON:** Your Honor, I just -- I will be done
14 in five minutes, your Honor.

15 **THE COURT:** This is rather personally directed to
16 your opposing counsel, and I think it's certainly at the edge
17 of the pale.

18 **MR. THOMPSON:** Your Honor, if I may, I just want to
19 ask him about polling data in it. That's the only question I
20 had, and I'm not going to seek to move this in.

21 But if the Court would prefer that I move on, I'm
22 happy to do so.

23 **BY MR. THOMPSON:**

24 **Q.** Let me ask it this way. Leaving aside this document,
25 would you agree that 58 -- that the polling data you have seen,

1 that 58 percent of Americans between the ages of 18 and 29
2 support gay marriage, but that older Americans over 65, only
3 22 percent agree?

4 **A.** That reports Pew Charitable Trust Data. I have no reason
5 to dispute it. I haven't looked at the data set directly.

6 **Q.** But leaving aside that particular data set, would you
7 agree that as a general matter, younger Americans are much more
8 supportive of gay marriage on average than older Americans?

9 **A.** I would agree that if we took a snapshot in time and did a
10 cross-sectional examination, that younger members of the
11 citizenry would be more supportive of same-sex marriage.

12 I'm reluctant to then conclude that as the maturation
13 process takes place and cohorts leave the electorate and new
14 cohorts come into as electorate, that there's an automatic
15 supposition that we are on our way to majority support. It may
16 well be likely, actually, but these data don't necessarily
17 demonstrate that.

18 **Q.** All right. One last set of questions on one last
19 document, and it's behind tab nine. And this is an article
20 that you wrote entitled "From Radical to Conservative. Civil
21 Unions, Same-Sex Marriage, and the Structure of Public
22 Attitudes."

23 Do you see that?

24 **A.** I do.

25 **Q.** Okay. And let's turn to page 13. And it says in the

1 first full paragraph:

2 "Where does the public stand today on
3 same-sex marriages and civil unions?"

4 And let me pause to ask you, Professor, when did you
5 write this?

6 **A.** To be honest with you, I don't recall. It was several
7 years ago. It was presented at a 2005 meeting. So in all
8 likelihood, in the summer of 2005, give or take.

9 **Q.** Okay. Okay.

10 "Table 2 the results from three polls taken
11 just after Massachusetts began issuing
12 marriage licenses in the summer of 2004. As
13 is immediately apparent, support for both
14 same-sex marriages and civil unions has
15 climbed. To compare these results with those
16 reported in Table 1, we make the simplifying
17 assumption that supporters of marriage rights
18 would support, rather than oppose, unions in
19 a binary choice. Comparing these results to
20 yearly ones, the shift in opinion is frankly
21 astounding."

22 When you wrote that, was that accurate? "Yes" or
23 "no."

24 **A.** Excuse me just a second. I would like to finish reading
25 the paragraph.

1 (Brief pause.)

2 **A.** I did write that. And if you would continue reading, it
3 would be clear that --

4 **Q.** I'm going to read the rest of the paragraph, sir.

5 **A.** Okey-dokey.

6 **Q.** I just wanted to focus on that part. Although the portion
7 I read thus far, was that accurate at the time you wrote it?

8 **A.** Yes.

9 **Q.** Now I'll continue.

10 "Though support for unions topped at
11 49 percent in Gallup's May 2003 poll, by the
12 summer of 2004, after the event in
13 Massachusetts, San Francisco, Canada and
14 elsewhere, support for at least civil unions
15 climbed to between 61 and 68 percent in the
16 three polls reported in Table 2. Moreover,
17 outright opposition to all legal recognition
18 dropped from 49 percent in 2003 (and 67
19 percent in 1996) to a scant 27 percent by
20 November 2004, a month in which the president
21 was reelected in part on an anti-gay marriage
22 platform. This represents a shift of 20
23 percentage points in four years, and as many
24 as 40 points in an eight-year time span.
25 While question wording, sample frame and

1 other factors make the results not strictly
2 comparable, the evidence of rapid, massive
3 opinion change is substantial."

4 And when you wrote that, that was accurate, correct?

5 **A.** With respect to the subject matter that I was describing,
6 it was accurate.

7 **MR. THOMPSON:** We have no further questions, your
8 Honor.

9 **THE COURT:** Very well, Mr. Boutrous. You may
10 redirect.

11 **MR. BOUTROUS:** Thank you, your Honor.

12 **REDIRECT EXAMINATION**

13 **BY MR. BOUTROUS:**

14 **Q.** Professor, why don't we start with the article that Mr.
15 Thompson was just referring to.

16 And perhaps you can explain your views relating to
17 the -- what was that article about?

18 **A.** Thank you, Mr. Boutrous.

19 The article was an attempt to understand change in
20 opinion on civil unions. So the subject matter of the article
21 was about civil unions. And specifically I looked into the
22 public opinion literature to examine the impact of what happens
23 when an issue of public concern has three, rather than two,
24 policy choices available to it.

25 Because when we normally think of contestation over

1 public policy issues, it's usually a pro or con position. But
2 the gay union issue is made more complex by the presence of
3 three alternatives.

4 And so what the article was about was that once
5 Massachusetts adopted or had a Court-ordered adoption of gay
6 and lesbian same-sex marriage rights, that support for civil
7 unions climbed. And in the paper I speculated that, in part,
8 it climbed as a strategic behavior, that people opposed to
9 same-sex marriage might support civil unions in a sense to
10 undermine the compelling nature of the case for marriage
11 equality.

12 So I think, you know, if you read the entire piece,
13 what's astounding is the shift in support for civil unions.

14 Now that notwithstanding, I'm perfectly happy to say
15 that there has been a substantial increase in the public's
16 level of support for all forms of government recognition of gay
17 and lesbian couples; but that when the word "astounding" was
18 put in there, it was in reference to the growth and support for
19 civil unions.

20 **Q.** Do the views that you expressed in that article concerning
21 civil unions affect your view today regarding the political
22 powerlessness of gay men and lesbians in the United States?

23 **A.** Well, they were certainly something I would consider. So
24 if it were the case that the level of hostility to gays and
25 lesbians or the level of opposition to any form of union was

1 much, much higher, that would have a negative effect on my
2 assessment of power.

3 The fact that it's trending in a positive direction
4 certainly speaks well for what the future might be for gays and
5 lesbians in American society.

6 But as I indicated, I believe, during the first day
7 of my testimony, when opinions change, there are sometimes
8 ceiling and floor effects, and there's no reason necessarily to
9 assume it's always monotonic. It doesn't have to move in one
10 direction.

11 **Q.** When you talk about civil unions, that's roughly the
12 equivalent of domestic partnerships in California?

13 **A.** It's roughly the equivalent of the enhanced domestic
14 partnership that was adopted in California, not the original
15 version.

16 **Q.** Now, one of the documents that Mr. Thompson showed you was
17 a press release touting the fact that Gray Davis had signed
18 into law domestic partnership legislation?

19 **A.** I recall.

20 **Q.** And what ultimately happened to Gray Davis in terms of his
21 political career in California?

22 **A.** Gray Davis was recalled from office.

23 **Q.** I want to turn now to the subject of boycotting.

24 Mr. Thompson asked you some questions about boycotts
25 relating to those who are opposed to same-sex marriage in

1 California.

2 Have boycotts traditionally been a tool used by
3 oppressed minorities in the United States' political history?

4 **A.** Sure. The issue at stake is if people are peripheralized
5 by the existing political processes, the tools that other
6 groups would use to sort of push their case forward in the
7 political system are substituted for tools that are more
8 available to peripheral groups.

9 As I indicated in Mr. Thompson's cross, there are
10 examples of boycotts going back even into the pre-Revolution
11 end period in the United States, where individuals who felt
12 like they didn't have a voice in the political system could
13 achieve their goals through this.

14 When you teach a course on American Political Theory,
15 for example, David -- Thoreau's "On The Duty of Civil
16 Disobedience "is regularly on the part of reading list because
17 this is along and deep tradition in American politics and it
18 continues even until this day.

19 The African-American community used boycotts, as I
20 mentioned in my answer extensively.

21 The Latino community, particularly in this state, the
22 United Farmworkers Union used a nationwide grape boycott to
23 good ends in order to achieve a grape contract -- a union
24 contract with the grape growers in the Central Valley and the
25 Coachella Valley of California.

1 So boycotts have a long and deep tradition in
2 American political life.

3 **Q.** Mr. Thompson also raised some questions about the civil
4 rights movement involving African-Americans, and Chief Judge
5 Walker asked you a question relating to that.

6 In the civil rights movement economic boycotts were
7 used as a means for African-Americans to seek to achieve
8 equality; is that correct?

9 **A.** That's correct. And there is some great work documenting
10 the use of boycotts by African-Americans.

11 Boycotts are difficult to sustain. In gain theoretic
12 terms we refer to them as "all or nothing goods;" that they
13 work only if there is wide-scale adherence to the boycott.

14 One of the strategies used by white citizens in the
15 south to try to resist boycotts would be to essentially insist
16 that their domestic help go and shop at a store on behalf of
17 their employer during the day and the store might have been
18 subject to a boycott, and so that would create the illusion
19 that the boycott was failing because African-Americans were
20 walking into the store.

21 And one of the ways that the African-Americans
22 resisted that was that the domestics would wear maid's
23 uniforms -- these are including women who had never worn a
24 uniform in their role as a domestic -- would put on a uniform
25 so that when they were walking into the store, other members of

1 their community could see that they were not breaking the
2 boycott, but they were shopping on behalf of their employer.

3 So these are difficult things to sustain, but they
4 can be used effectively by groups who have less avenues open to
5 them in the normal political process.

6 **Q.** During the 1960's, did civil rights groups encourage
7 economic boycotts of white merchants who were discriminating?

8 **A.** They did.

9 **Q.** Was that in the south?

10 **A.** That was in the south, yes.

11 **Q.** And Martin Luther King preached a philosophy, articulated
12 a philosophy that focused on non-violent demonstrations in
13 order to get the message across on behalf of African-Americans
14 in civil rights, correct?

15 **A.** That's correct.

16 **Q.** Were there times during the civil rights movement led by
17 Martin Luther King and others where, despite those efforts to
18 have non-violent economic and other protests, that certain
19 members of the African-American community and those supporting
20 that community engaged in conduct that went over into more
21 violent activity?

22 **A.** Sure. I'd answer that in sort of two ways. The first is
23 that it's important to remember that Martin Luther King's
24 prominence in the civil rights movement was the result of a
25 boycott; that the Montgomery bus boycott, which was begun with

1 the famous Rosa Parks incident, served as the basis for the
2 creation of the Montgomery Improvement Association and a local
3 minister named Martin Luther King became the chair of that.

4 So participating in a boycott was the basis of his
5 rise to prominence and he, certainly, didn't see boycotts as
6 inconsistent with his view of non-violent collective action.

7 That notwithstanding, there were certainly moments --
8 there were certainly moments when confronted with unspeakable,
9 you know, violence or provocation or harassment that someone in
10 the black community in the south would lash out, and I don't
11 think we would find that particularly surprising.

12 Did it help the cause? It certainly did not. Did
13 it, you know, have a negative impact on public relations? Of
14 course, it did. And you try to weigh that against the other
15 visual images that went into people's homes during that period
16 of time.

17 **Q.** And the fact that during the civil rights movement
18 African-Americans and their supporters were engaging in
19 economic boycotts, does that suggest to you that they were
20 politically powerful?

21 **A.** Well, I mean, as you know, even in the 1960's
22 African-Americans had at least the constitutional imprimatur of
23 equality, even though it wasn't enforced.

24 But as a general rule of thumb, boycotts, protests,
25 picketing are strategies used by people who are less powerful

1 in the political systems, for whom traditional means of
2 political action are less productive.

3 **Q.** Are those sorts of activities -- boycotts, picketing,
4 demonstrating -- firmly entrenched in our political and
5 democratic government?

6 **A.** Firmly entrenched and deeply rooted in our history.
7 People recall that, you know, the first shots fired in the
8 Revolutionary War were at the Boston massacre; but, in fact,
9 the Boston massacre was English troops opening fire on a
10 protest mob of Americans who were unhappy with their governance
11 by the Crown.

12 **Q.** Are you familiar with a decision by the Supreme Court
13 called *NAACP v Claiborne Hardware*?

14 **A.** I am.

15 **Q.** I would like to display demonstrative number nine, please.

16 (Document displayed)

17 **Q.** And the *Claiborne Hardware* case was an instance where the
18 NAACP had promoted boycotting; is that your understanding?

19 **A.** That's my understanding, yes.

20 **Q.** Perhaps you could read into the record this quote that I
21 have displayed from the *Claiborne Hardware* case?

22 **A.** (As read)

23 "The boycott of white merchants at issue in
24 this case took many forms. The boycott was
25 launched at a meeting of a local branch of

1 the NAACP attended by several hundred
2 persons. Its acknowledged purpose was to
3 secure compliance by both civic and business
4 leaders with a lengthy list of demands for
5 equality and racial justice. The boycott was
6 supported by speeches and non-violent
7 picketing. Participants repeatedly
8 encouraged others to join in its cause."

9 Q. Now, let's go to demonstrative number 10, which is another
10 quote from *Claiborne Hardware*.

11 (Document displayed)

12 Q. If you could read that into the record, please, sir?

13 A. Sure.

14 "Speech itself also was used to further the
15 aims of the boycott. Non-participants
16 repeatedly were urged to joint the common
17 cause, both through public address and
18 through personal solicitation. These
19 elements of the boycott involve speech in its
20 most direct form.

21 "In addition, names of boycott violaters were
22 read aloud at meetings at the First Baptist
23 Church and published in a local black
24 newspaper.

25 "Petitioners admittedly sought to persuade

1 others to join the boycott through social
2 pressure and the 'threat' of social
3 ostracism. Speech does not lose its
4 protected character, however, simply because
5 it may embarrass others or coerce them into
6 action."

7 **Q.** Is it your understanding that the Supreme Court found that
8 those boycotting activities referenced in those quotes you
9 mentioned were protected by the First Amendment?

10 **A.** That's my understanding.

11 **Q.** Now, this was a lawsuit, and the white merchants who were
12 being boycotted sued the NAACP, correct?

13 **A.** That's correct.

14 **Q.** They essentially argued -- they asserted that they were
15 the victims because certain members of the boycotting group
16 had -- their conduct had crossed over into violence, correct?

17 **A.** That's my understanding.

18 **Q.** And the Supreme Court, nonetheless, found that the speech
19 activities and the non-violent activity was protected by the
20 First Amendment?

21 **A.** That's correct.

22 **Q.** Do you see any parallels between the white merchants suing
23 the NAACP and claiming that they were the victims of civil
24 rights activity by the African-Americans and their supporters
25 and what you heard Mr. Thompson asking you about today, the

1 claims that people throwing eggs at a window or tearing down a
2 lawn sign, made the Proposition 8 proponents the victims in
3 this matter?

4 **A.** I mean, the parallels are fairly obvious; that, you know,
5 acts of violence and vandalism are regrettable and
6 inappropriate, and we begin with that stipulation.

7 It is not clear to me that those acts of violence are
8 necessarily associated with the protected and, indeed,
9 applauded normal political practice of interests seeking
10 redress through the legislative or electoral process.

11 And I don't think that we could fairly condemn or
12 even implicate the leaders of the No On 8 campaign or the
13 associated organizations with these acts; that individuals
14 sometimes behave badly. And individuals whose motions run
15 high, frequently behave badly. But I don't think that that
16 necessarily is an inditement of the entire position or the
17 entire group.

18 **Q.** Are you aware of any literature whatsoever, political
19 science or otherwise, that has suggested that the results of
20 the Proposition 8 campaign, which resulted in the enactment
21 into law of Proposition 8, were caused by the news reports that
22 Mr. Thompson cited to you or other news reports regarding
23 sporadic allegations of violence or tearing down of lawn signs
24 and the like by Proposition 8 opponents?

25 **A.** I don't know of any journalistic suggestions that that

1 determined the outcome, and I don't know of any academic
2 suggestions that it would simply because the notion at some
3 level is implausible.

4 That some number of individuals might have been
5 motivated by reading or seeing some of these news stories is
6 possible, in fact, even likely.

7 That the number of individuals that that would be
8 true of would come close to the margin of victory for the
9 proposition would be doubtful in the extreme.

10 Moreover, it also -- when you think about it in terms
11 of process, it suggests that someone who was previously
12 disposed not to take away marriage rights from gays and
13 lesbians, changed his or her mind and decided to take away
14 marriage rights from gays and lesbians because of an act of
15 vandalism in Carlsbad or Fresno or wherever.

16 So it just -- it defies credulity; that one or two
17 individuals or even, you know, 100 or 200 individuals might
18 have done this, maybe. I just can't imagine that it affected
19 the outcome.

20 **Q.** Mr. Thompson also showed you Defendant's Exhibit 458,
21 which was that Heritage Foundation backgrounder?

22 **A.** That's correct.

23 **Q.** Do you recall that?

24 **A.** Uh-huh.

25 **Q.** Are you familiar with the Heritage Foundation?

1 **A.** I am.

2 **Q.** Can you briefly describe your understanding of what the
3 Heritage Foundation is?

4 **A.** I think the Heritage Foundation is fairly identified as an
5 extremely conservative think tank.

6 **Q.** And you reviewed that article, or the -- its called a
7 backgrounder in the Heritage Foundation, correct?

8 **A.** I did.

9 **Q.** Were you familiar with the author of the article?

10 **A.** I -- I wasn't when I first picked it up, but then I went
11 and kind of Googled him. I guess Google is a verb. But I
12 don't know him directly.

13 **Q.** Is he someone known to be an expert in political science?

14 **A.** I'm not familiar with his name, so -- I know many, many
15 political scientists and, as you know, I'm president of the
16 second largest professional association, but I don't know him.

17 **Q.** And you sit on several editorial boards you testified
18 yesterday, political science journals and the like, correct?

19 **A.** I do.

20 **Q.** In that capacity, do you conduct peer review of articles
21 submitted for consideration in publication?

22 **A.** I do.

23 **Q.** Does that Heritage Foundation backgrounder meet the
24 standards that would qualify it for publication in a peer
25 review journal?

1 **A.** It does not. And, in fact, most journal editors would not
2 even submit it for review and would return it to the author
3 with a suggestion that it does not conform to social scientific
4 standards and even provide some guidance as to how to go about
5 fixing it.

6 **Q.** Could you give me a couple of reasons why it would not
7 conform to those standards?

8 **A.** Well, for starters, in a social scientific journal we
9 would want to be looking for the evidence gathering techniques,
10 the degree to which the evidence represented an accurate sample
11 of the acts that took place.

12 There is a flaw in empirical logic called selecting
13 on the dependent variable when, as you are setting out to
14 observe a particular instance and you only study cases where
15 the instance occurred, you can't possibly know the causal
16 structure because you only have the presence of a phenomenon,
17 not the absence.

18 So taking it into a different area to avoid getting
19 people unhappy, imagine if we were doing a study of war and we
20 wanted to know the causes of war. If the political scientists
21 only looked at wars and didn't look at cases where war didn't
22 start, we couldn't possibly know what factors lead to war or
23 don't lead to war.

24 **Q.** In the local news reports that Mr. Thompson showed you
25 concerning claims by individuals that they had been somehow

1 harassed by Proposition 8 opponents, in your view, do you think
2 that those news reports reached enough viewers to have swung
3 the election in favor of Proposition 8?

4 **A.** Again, I find the notion implausible.

5 **Q.** Now, the Heritage Foundation report -- and, in fact, Mr.
6 Thompson's examination and the materials he submitted to you --
7 did not contain any examples of violence or harassing activity
8 by Proposition 8 -- against Proposition 8 opponents, is that
9 correct?

10 **A.** That's correct.

11 **Q.** I would like to just put up on the screen demonstrative
12 number 14, which is an excerpt of Ms. Zia's testimony from
13 earlier in this case.

14 Have you -- were you here for Ms. Zia's testimony?

15 **A.** I was not.

16 **Q.** Did you review her testimony at all?

17 **A.** I did review the trial transcript.

18 **Q.** This is already in the record, so I won't have you read
19 it.

20 But this is evidence in the record that I would like
21 you to explain in terms of its relevance to analyzing this
22 question that Mr. Thompson was putting on the table; whether
23 the allegations on one side and looking at those alone could
24 somehow have any bearing whatsoever on the question of
25 political power of gay men and lesbians?

1 **A.** Once again, we would want to look at the sum total of acts
2 of violence, intimidation and poor behavior in both directions.
3 I just -- even for people who are deeply committed to their
4 beliefs in one direction or another, I'm just sort of taken
5 aback.

6 It takes your breath away to imagine someone walking
7 up to another human being and say, you know, out loud on a
8 public street, "You're going to die and burn in hell." "Have a
9 nice day?" What's the right follow-up to that? I can't
10 imagine saying such a thing.

11 **Q.** That's what Ms. Zia testified, among other things, people
12 said to her when she was out electioneering against Proposition
13 8, correct?

14 **A.** That's correct.

15 **Q.** I would like to turn to demonstrative number 13, which is
16 an excerpt from Mayor Sander's testimony.

17 (Document displayed)

18 **Q.** And as you'll recall, Mayor Sanders is the mayor of San
19 Diego, where a number of the incidents that Mr. Thompson
20 pointed to allegedly occurred.

21 Were you here for Mayor Sanders' testimony?

22 **A.** I was.

23 **Q.** Since this is in the record, there is no need for you to
24 read it, but if you could generally summarize your
25 understanding of his testimony and explain how that factors

1 into any sort of professionally appropriate evaluation of this
2 violence factor that Mr. Thompson has raised.?

3 **A.** Well, obviously, this is evidence of another set of
4 examples of vandalism working in the opposite direction from
5 those that Mr. Thompson identified.

6 And, again, from a social scientific perspective if
7 you wanted to discern what the net effect of these was, you
8 would want to look at the volume in one direction and the
9 volume in the other, and the level of the public's awareness
10 about it, and the willingness of the public to change their
11 minds on the basis of it, and only then could you conclude that
12 it had any effect on the distribution of votes.

13 **Q.** Now, I would like to return us to Plaintiffs' Exhibit 834
14 at page nine, which I can -- to save you the effort of pulling
15 out another binder, I will have it displayed on the screen.

16 As a reminder, that exhibit is the L.A. Hate Crime
17 Reports.

18 **A.** Okay.

19 **Q.** And you testified earlier about that, and the fact that
20 the hate crime reports talked about Proposition 8.

21 If one were to try to evaluate in a fair,
22 professionally appropriate manner as a political scientist or
23 scholar, would the -- would these hate crime statistics
24 relating to harassment of Proposition 8 opponents be something
25 that one would have to consider?

1 If we go to page nine, please?

2 (Brief pause.)

3 **Q.** While we're doing that, you may answer the question if you
4 recall the statistics. Actually, I think I went to the wrong
5 page.

6 **A.** I think it's the next page.

7 **Q.** It may be the next page.

8 (Brief pause.)

9 **A.** No. Two more maybe.

10 **Q.** While we look for that... I'm sure my team can find it.

11 If you could give me your views as to whether --
12 would it be necessary to consider actual hate crime statistics
13 relating to Proposition 8 itself in an official government
14 report if one were trying to do a fair, professional study of
15 this topic?

16 **A.** You would definitely want to look at hate crime reports
17 that are specifically related to the proposition, as this
18 report has attempted to do.

19 I think you would also want to look at hate crimes
20 that took place simultaneously with the contestation of the
21 ballot measure, even if it wasn't specifically related to the
22 proposition.

23 And the reason I mention this is the literature in
24 political science and social psychology suggest that there is a
25 fairly close correlation between hate crimes on the one hand

1 and the salience of the community that's being targeted on the
2 other.

3 For example, the Southern Poverty Law Centers
4 documented during the immigration debates in 2005, 2006, early
5 2007, hate crimes against Latinos went up considerably, just
6 simply because Latino visibility went up.

7 So I think there is some evidence to suggest that
8 hate crimes against gays and lesbians went up during the
9 prosecution of Prop 8, even if Prop 8 was not mentioned during
10 the assault or during the vandalism or whatnot.

11 **Q.** And we have now found the section that talked about the
12 number of hate crimes, which included four violent crimes and
13 other acts of violence, that an official government report
14 specifically tied to Proposition 8.

15 Now, Chief Judge Walker asked you a question about
16 the effect of violence on the efforts of those in the civil
17 rights movement fighting for the rights of African-Americans.

18 There were several riots and acts of violence during
19 the civil rights movement in the 60's, correct?

20 **A.** There were, yes.

21 **Q.** Could you just describe a couple of examples of the types
22 of violent events where things crossed over into violence; not
23 something we are endorsing, but just a couple of examples from
24 that era?

25 **A.** Umm, well, they range from a simple, you know, fisticuffs

1 that might emerge in protest/counter protest, to some number
2 people in a highly confrontational situation not obeying the
3 non-violence plan and fighting back.

4 For example, we know that there was some resistance
5 offered by freedom riders when they were attacked in
6 Birmingham, Alabama. So they were getting off the bus and they
7 were attacked by an angry mob and, actually, the FBI was
8 present, but observed it from afar and didn't intervene. Some
9 of the bus riders, apparently, did fight back though. The
10 historical accounts of that are a little bit in dispute.
11 That's kind of at the more modest end.

12 At the more extreme end, we can think historically of
13 urban riots in Watts and in Detroit and other major cities.

14 **Q.** In the Watts riots, I think something like over -- I think
15 34 people died; does that sound about right?

16 **A.** I'm sorry. My historical recollection is just not that
17 precise. But if you represent that to me, I have no reason to
18 doubt that.

19 **Q.** Assume that 34 people died.

20 And let me ask you this: Was that a significant
21 event of violence that many Americans saw on television and
22 read about in the newspaper?

23 **A.** I think that's fair to say, yes.

24 **Q.** Notwithstanding that, notwithstanding that the public saw
25 that, African-Americans were able to, at some point through the

1 courts and other means, achieve advancements in fighting for
2 their civil rights?

3 **A.** Sure. So the 1968 Fair Housing Act was passed after most
4 of the urban riots took place.

5 And I think it would be fair to say that the American
6 public, while certainly not excited to see rioting, would sort
7 of juxtapose that rioting against the extraordinary poverty
8 faced by African-Americans, harassment by the police, denied
9 the right to vote in many southern states, et cetera; that we
10 don't -- we don't take single incidents and draw broad-based
11 conclusions about the relative social and political worth of an
12 entire class of people.

13 **Q.** In your expert opinion as a political scientist, is there
14 any basis whatsoever for concluding that the handful of
15 incidents that have been brought to your attention by Mr.
16 Thompson, have contributed in a material way to the lack of
17 political power of gay men and lesbians in the United States or
18 California?

19 **A.** I think that would strain credulity. I can't see any
20 basis to make that claim.

21 **Q.** Thank you. Now, Mr. Thompson also asked you a number of
22 questions about articles, and he showed you the Bill O'Reilly
23 tape and some other materials that post dated Proposition 8.

24 Do you recall that?

25 **A.** I do.

1 **MR. BOUTROUS:** And in that regard, your Honor, I
2 would like to publish and play a video. It's Plaintiffs'
3 Exhibit 350, which is the "Gathering Storm" video that counsel
4 on the other side objected to on the first day of trial because
5 it does post date Proposition 8.

6 But I think the door has been opened to show what
7 those on the other side of the marriage debate were doing after
8 Proposition 8 and disseminating publicly in order to undermine
9 the political power of gay men and lesbians.

10 **MR. THOMPSON:** Your Honor, this doesn't -- that video
11 doesn't in any way relate to the political power of gays and
12 lesbians.

13 So we would object that this is an effort to try to
14 smuggle this evidence in, even though it's been previously
15 rejected.

16 **THE COURT:** What does the video show?

17 **MR. BOUTROUS:** It's an advertisement that was put out
18 by supporters of Proposition 8, who were part of the broader
19 campaign, which was meant to talk about the gathering storm and
20 the threat to the public of marriage between individuals of the
21 same gender.

22 And it's at least as relevant to this case as the
23 Bill O'Reilly clip and the other materials that counsel played
24 because it shows -- to the extent counsel was arguing that
25 these statements and things that were happening after

1 Proposition 8 somehow could be attributed and deemed factors
2 relating to political power.

3 There's a war going on on the other side that is
4 meant to thwart the rights of gay men and lesbians as to
5 marriage specifically and this video, I think, is a prime
6 example of that.

7 **MR. THOMPSON:** And just so the record is clear, your
8 Honor, this was paid for and sponsored by the National
9 Organization For Marriage, not ProtectMarriage.com.

10 **THE COURT:** Well, I have certainly taken a welcoming
11 attitude with respect to evidence in this case, and I do think
12 that the subject matter was raised in Mr. Thompson's
13 cross-examination.

14 So if this is in response to the Bill O'Reilly video,
15 I think it is only appropriate, out of fairness to, allow this
16 video to be shown.

17 **MR. BOUTROUS:** Thank you, your Honor.

18 If we could play that video, please.

19 (Videotape played in open court.)

20 **MR. BOUTROUS:** Your Honor, I move admission of
21 Plaintiffs' Exhibit 350.

22 **THE COURT:** I did admit the O'Reilly tape, did I not?

23 **MR. BOUTROUS:** It's in.

24 **THE COURT:** How is this numbered?

25 **MR. BOUTROUS:** This is Plaintiffs' Exhibit 350.

1 **THE COURT:** 360?

2 **MR. BOUTROUS:** 350.

3 **THE COURT:** 350. 350 will be admitted.

4 (Plaintiffs' Exhibit 350 received in evidence.)

5 **MR. BOUTROUS:** Thank you, your Honor.

6 **BY MR. BOUTROUS:**

7 **Q.** Professor Segura, had you seen the Gathering Storm video
8 before today?

9 **A.** I had.

10 **Q.** And does that, that advertisement -- to your knowledge,
11 did it get wide distribution in the United States?

12 **A.** I read a lot about it and I saw it talked about it, so I
13 assume a lot of people have seen it.

14 I don't even recall exactly the circumstances under
15 which I first saw it, but it's become semi-famous.

16 **Q.** Is there -- in your view, the messages that were put out
17 in that video, do they relate to the balance of power on behalf
18 of gays and lesbians on the one hand and those who oppose
19 marriage amongst the people in those groups on the other hand?

20 **A.** It's hard not to look at the video and not conclude that
21 the message of the video is that gays and lesbians are deeply
22 threatening to individuals in American society; the ominous
23 music, the dark storm, one actor saying, "I'm afraid," suggest
24 that homosexuals are to be feared.

25 There is references to children. There's references

1 to taking your religious liberty away. There's references to
2 churches being discriminated against or facing some form of
3 government repression.

4 It really does present gays and lesbians as a very
5 serious threat to all sorts of aspects of American life.

6 **Q.** And is that -- that sort of public message something that,
7 in your opinion, undermines the political power of gay men and
8 lesbians?

9 **A.** I think it reinstantiates long-held prejudices about gays
10 and lesbians. It suggests that gay and lesbian social progress
11 comes at the expense of other individuals in American society
12 and other long-held organizations.

13 And it makes the hill steeper. It makes the sledding
14 rougher in terms of trying to enact legal protections or to
15 ward off legal sanctions.

16 **Q.** Mr. Thompson also asked you some questions about news
17 articles and analysis of things as they stood in 1993; do you
18 recall that?

19 **A.** I do.

20 **Q.** Can you tell us in your view what has happened since 1993
21 that, in your opinion, is relevant to evaluating the
22 powerlessness of gay men and lesbians?

23 **A.** It was interesting reading those quotes that Mr. Thompson
24 asked me to look at, because my recollection is that in 1990,
25 '91, and particularly after the election of 1992, I think a lot

1 of casual observers thought that there was going to be a lot of
2 really rapid period of progress for gays and lesbians, and some
3 of those statements seemed to convey that. They are on the
4 verge of really breaking through, et cetera.

5 I'm taken aback because, of course, at the time that
6 these statements were made, this predates the enactment of
7 "Don't ask, Don't tell." It predates the enactment of the
8 Defense of Marriage Act. It predates the enactment of
9 prohibitions against same-sex couples or gay individuals from
10 adopting in some of the states.

11 And, of course, at that time there wasn't a single
12 state constitution that had been amended to establish gays and
13 lesbians as excluded from a civil institution.

14 So in many respects I think this is -- it sort of
15 illustrates how a lot of optimism was dashed by the events that
16 have occurred in the last 16 or 17 years.

17 **Q.** I'm drawing a blank, but do you recall when Amendment 2 in
18 Colorado was enacted, that was the subject of *Romer versus*
19 *Evans* in the Supreme Court? Was that after 1993?

20 **A.** I think it was enacted either in the '92 or the '94
21 election, but I'm sorry, I don't recall the exact.

22 **Q.** So to your mind, the notion -- well, what is your view of
23 the assertion that in 1993 the rights of gay men and lesbians
24 were on the ascendancy and being protected?

25 **A.** I think they are mistaken claims. I think those are

1 optimistic articulations by advocates who truly believe that
2 the future was bright.

3 I think it is harder to look at the historical record
4 and to look at the statutory record then and now and conclude
5 that that was justified.

6 I think that your reference to Colorado's Amendment 2
7 and the subsequent decision by the Supreme Court is
8 interesting, because it lays bare a piece of information that's
9 kind of missing here, which is that Colorado's Amendment 2, as
10 I was asked about earlier, preempted local legislatures and the
11 state legislature from enacting protections from gays and
12 lesbians and added that to the state constitution, and it was
13 struck down by the United States Supreme Court.

14 So what we really can't observe is whether there
15 would have been other ballot initiatives consistent with
16 Colorado's Amendment 2 that did not occur because gays and
17 lesbians received that small part of judicial protection in
18 Justice Kennedy's decision in *Romer*.

19 So, in fact, the circumstances were -- as difficult
20 as the circumstances have been for gay and lesbian political
21 interests over the last 20 years in the absence of *Romer versus*
22 *Evans*, one would imagine that they would have been even worse.

23 **Q.** And at some point since 2000 have issues swirling around
24 the civil rights of gay men and lesbians been used as what is
25 known as a wedge issue in terms of political debate in

1 elections in the United States?

2 **A.** So the -- the question is a good one because it sort of
3 illustrates the problem that gay and lesbian advocates face.

4 So the short answer to your question is yes, that
5 there is at least one political party in the United States who
6 thinks that -- and an awful lot of politicians, I should say,
7 who think that there is electoral gain to be made from
8 targeting gays and lesbians for disadvantage.

9 So it's clear that in many parts of the country and
10 in many sub-electorates in all parts of the country, there is
11 gain to be made from saying that you don't like gays and
12 lesbians or you are adverse to their interests.

13 In addition, it also sort of illustrates that the
14 non-monotonicity -- sorry, that's a fancy academic term. That
15 progress for any social group doesn't necessarily have to be in
16 a straight line, that there's fits and starts and forward and
17 backward.

18 You'll recall in 2003 the Supreme Court in *Lawrence*
19 struck down state sodomy statutes making it for the first time
20 effectively legal to be gay in many parts of the United States
21 and the very next year, in 2004, 14 states adopted
22 anti-same-sex marriage ballot initiatives.

23 A lot of folks credit that with altering the turnout
24 dynamics in the 2004 presidential election and helping
25 President Bush to be reelected.

1 So it's very clear, to me anyway, and I think to a
2 lot of electoral studies scholars, that the wedge issue of gay
3 and lesbian identity and the issues that they care about is
4 likely to continue to be a fairly potent force in American
5 politics for the foreseeable future.

6 **Q.** And back to Mr. Thompson's questions about violence
7 against Proposition 8 supporters.

8 Have there been instances where rights are recognized
9 of gay men and lesbians and that has had an effect on the level
10 of violence directed at them?

11 **A.** Well, as I said, there's some evidence in the literature
12 to suggest that favorable decisions or even the raising of the
13 salience of the particular group is likely to attract more
14 hostility.

15 **MR. BOUTROUS:** Your Honor, may I approach the
16 witness? I would like to hand him an exhibit.

17 **THE COURT:** Very well.

18 **BY MR. BOUTROUS:**

19 **Q.** I'm handing the exhibit, Plaintiffs' Exhibit 398.

20 (Whereupon, document was tendered
21 to the witness.)

22 **MR. BOUTROUS:** Here is one for the Court.

23 (Whereupon, document was tendered
24 to the Court and counsel.)

25

1 **BY MR. BOUTROUS:**

2 **Q.** Professor Segura, have you seen this -- do you see what
3 this document -- can you tell me what it is?

4 **A.** It seems to be a recounting of the strategic -- of the
5 strategic approach used by Schubert Flint in the Prop 8
6 campaign that was published in *Politics* magazine.

7 **Q.** Are you familiar with *Politics* magazine?

8 **A.** I'm familiar with the name. I'm not a subscriber.

9 **Q.** Are you familiar with Frank Schubert and Jeff Flint, the
10 names?

11 **A.** I am.

12 **Q.** Who are they?

13 **A.** They are paid political consultants, as I understand.

14 **Q.** And to your knowledge, did they have anything to do with
15 the Proposition 8 campaign?

16 **A.** I believe they were retained in the management or the
17 implementation of the campaign.

18 **MR. BOUTROUS:** Your Honor, I move admission of
19 Plaintiffs' Exhibit 398.

20 **MR. THOMPSON:** No objection, your Honor.

21 **THE COURT:** 398 is admitted.

22 (Plaintiffs' Exhibit 398 received in evidence.)

23 **BY MR. BOUTROUS:**

24 **Q.** Now, Professor Segura, I would like you to just briefly
25 peruse this, but -- actually, before I do that, let's turn to

1 the -- if we could display that? Let's publish Plaintiffs'
2 Exhibit 398, and I would like to go to the last page.

3 While we are doing that -- which is page five of five
4 of this document.

5 (Document displayed)

6 **MR. BOUTROUS:** And if you could enlarge the very last
7 paragraph?

8 **BY MR. BOUTROUS:**

9 **Q.** And, Professor Segura, perhaps you could read it into the
10 record? Beginning in -- actually, not the last -- it's the
11 paragraph that begins "Members of the Mormon faith."

12 **A.** (As read)

13 "Members of the Mormon faith played an
14 important part of the Yes On 8 coalition, but
15 were only a part of our winning coalition.
16 We had the support of virtually the entire
17 faith community in California. Prop 8 didn't
18 win because of the Mormons. It won because
19 we created superior advertising that defined
20 the issues on our terms, because we built a
21 diverse coalition, and most importantly,
22 because we activated that coalition at the
23 grassroots level in a way that had never been
24 done before."

25 **Q.** I will represent to you, Professor Segura, that in this

1 article by Mr. Schubert, there is no mention, no suggestion
2 that the handful of alleged acts of violence against
3 Proposition 8 supporters that Mr. Thompson has alluded to
4 affected the outcome of the election. Does that surprise you?

5 **A.** No.

6 **Q.** Now, yesterday you gave testimony concerning the
7 broad-based coalition that supported Proposition 8. Do you
8 recall that?

9 **A.** I do.

10 **Q.** And you talked about some of the religious organizations,
11 including the Catholic church and the Mormon church and Focus
12 on the Family and other groups that had banded together.

13 **A.** I do recall.

14 **Q.** I would like you to assume that after we were done
15 yesterday, Mr. Pugno, one of the lawyers for the other side,
16 suggested that that line of testimony was somehow the product
17 of animosity and bigotry towards religion, and I would like to
18 you whether you agree with that?

19 **MR. THOMPSON:** Objection, your Honor. This seems
20 totally beyond the scope of cross. I didn't ask him about
21 the -- this subject at all.

22 **THE COURT:** You explored at some length the position
23 of these various religious organizations.

24 Objection overruled.

25 **A.** I'm sorry. I -- so the idea is that --

1 **BY MR. BOUTROUS:**

2 **Q.** Let me rephrase the question.

3 **A.** Okay.

4 **Q.** When you testified about the nature of the coalition that
5 supported Proposition 8, you weren't suggesting that there was
6 anything bad about the religious groups involved for
7 participating in the political process, were you?

8 **A.** Oh, no, no, no. So, you know, there is an old saying
9 that, you know, if you believe in democracy, you believe in the
10 willingness to defend the other guy's right to be wrong.

11 So whether it's the coalition in favor of Prop 8 or
12 the coalition in opposition of Prop 8, people in groups are
13 freely not just allowed, but encouraged, to participate in the
14 political process.

15 **Q.** And yesterday you said that that coalition, and some of
16 the documents that we -- you discussed, suggested an enviable
17 political operation; do you recall that?

18 **A.** I do.

19 **Q.** What did you mean by that?

20 **A.** So as we walked through the documents, a couple of things
21 became clear.

22 So the first is just the extraordinary number of
23 coordinating volunteers, many of whom were pastors, for
24 example, who participated in the conference call, or state
25 presidents who were instructed to identify volunteers in every

1 zip code; the claim that 20,000 members of the Latter Day
2 Saints Church walked precincts two Saturdays in a row, or
3 something to that effect.

4 I think that political consultants around the country
5 would love to have that level of grassroots buy-in and
6 activism.

7 **Q.** As a political scientist, is it your view that it is a --
8 well, let me start over.

9 In the field of political science, is it customary
10 for political scientists to analyze the degree of participation
11 of religious groups in political activity?

12 **A.** It's become a growing area of research. There are a
13 variety of experts who have become quite prominent in the
14 discipline through focusing on regional and politics.

15 **Q.** I would like to pull back up Plaintiffs' Exhibit 398 on
16 the screen, and go to page two of five.

17 (Document displayed)

18 **Q.** Have you turn to that, if you have it in front of you, and
19 go this down -- let's see, one, two, three -- down to the
20 paragraph, the sixth paragraph that begins, "Our ability."

21 Have you reviewed that: And if could you read that
22 into the record, that would be much appreciated?

23 **A.** (As read)

24 "Our ability to organize a massive volunteer
25 effort through religious denominations gave

1 us a huge advantage, and we set ambitious
2 goals: To conduct a statewide voter I.D.
3 canvass of every voter; to distribute
4 1.25 million yard signs and an equal number
5 of bumper stickers; to have our volunteers
6 recontact every undecided soft yes and soft
7 no voter; and to have 100,000 volunteers,
8 five per voting district, working on election
9 day to make sure every identified Yes On 8
10 voter would vote. All of these goals and
11 more were achieved."

12 **Q.** And is that consistent with the documents that you
13 reviewed yesterday in court and spoke about talking about the
14 broad-based coalition?

15 **A.** In my experience, it's breathtaking.

16 **Q.** Now, let's go to the next paragraph that begins, "We built
17 a campaign."

18 If you would review that and read the first -- the
19 first sentence into the record?

20 **A.** (As read)

21 "We built a campaign volunteer structure
22 around both time-honored campaign grassroots
23 tactics of organizing in churches with a
24 ground-up structure of church captains,
25 precinct captains, zip code supervisors and

1 area directors."

2 **Q.** Now, Mr. Thompson asked you questions about the unions and
3 their support, financial support of Proposition 8.

4 Based on your study of Proposition 8 and the
5 political activities of the unions in the Proposition 8
6 campaign, are you aware of any similar mobilization of troops
7 on the ground, boots on the ground, like is discussed here by
8 Mr. Schubert on behalf of those who were opposing Proposition 8
9 during the campaign?

10 **A.** I am aware of some activities by Unite Here and the SEIU,
11 but nothing on this -- even remotely on this magnitude.

12 **Q.** How about corporations, like PG&E and I think Levi
13 Strauss? Is there any public reports, any scholarly work that
14 suggests that those companies were able to mobilize their
15 employees to go out and campaign and work on behalf of
16 defeating Proposition 8 in a manner that compares with the
17 sorts of efforts we have seen in Mr. Schubert's article and the
18 documents that you talked about yesterday?

19 **A.** I'm not aware of any corporations mobilizing its own
20 employees. I would also wonder about the legality of such a
21 thing, given that workers have some basic rights to political
22 privacy with respect to their employer.

23 **Q.** Now, Mr. Thompson also asked you to look at the funding,
24 the official funding numbers for and against Proposition 8; do
25 you recall that?

1 **A.** I do.

2 **Q.** Why is it that those funding comparisons on each side that
3 he discussed with you, both in the sort of \$40 million range,
4 to your mind do not suggest that there was political power
5 parity between the sides in that election?

6 **A.** So campaigns have really two components to them: One is
7 the paid component, and the other is the volunteer or free
8 component. And that level of money saying offset a tremendous
9 amount of financial disadvantages as any grass roots politician
10 could attest.

11 So when I look at the rough parity of the financial
12 expenditures of the two campaigns, those financial reports, on
13 both sides frankly, don't include the volunteer hour time,
14 people who are on the paid -- on the payroll of other
15 organizations who were devoting all or part of their time to
16 the campaign; the rental of space, for example, for meetings
17 that were provided by coordinating organizations, et cetera.

18 And the evidence suggests to me that the vast volume
19 of volunteerism, space volunteering, that people on the payroll
20 of other organizations, et cetera, that a huge amount of that
21 favored the Yes On 8.

22 There was a lot of people working for someone else or
23 a lot of space controlled by someone else that was used to
24 organize the campaign, and none of that is accounted for in the
25 financial disclosures.

1 Q. In your opinion, is that illustrative of the picture in a
2 broader way in terms of the forces arrayed against the gay and
3 lesbian community in the political sphere?

4 A. Well, it certainly is indicative of the breadth of their
5 coalition. It's indicative of the resources, the manpower and
6 the net or the asset resources that they can bring without
7 necessarily even turning to the financial resources. These
8 are, in effect, in-kind contributions, but we don't govern them
9 that way.

10 But, you know, the Roman Catholic church or
11 Evangelical churches, or whatever, if you're using their
12 meeting space, if you're using their phones, if the pastors
13 are -- they are perfectly entitled to do that. That's part of
14 the American process. But it does suggest that there is a
15 great deal of resources against which gays and lesbians have to
16 work in order to achieve their political goals.

17 Q. Mr. Thompson also asked you a number of questions about
18 churches and religious organizations that opposed Proposition
19 8; do you recall that?

20 A. I do.

21 Q. You were here or you were in the overflow room yesterday
22 when the videotape of the proponents' withdrawn expert,
23 Dr. Nathanson, was played, is that correct?

24 A. I was.

25 Q. Do you recall Dr. Nathanson's testimony in response to

1 this question -- I'll just read the whole exchange, with the
2 Court's permission. This was on page 95 of his -- 96 of his
3 deposition. The question was:

4 **"QUESTION:** Now, is it true that the
5 religions that supported Proposition 8 that
6 sought to ban gay marriage were much larger
7 than the religions that supported gay
8 marriage?"

9 And Professor Nathanson:

10 **"ANSWER:** Yes."

11 Do you agree with him?

12 **A.** On that point, yes, I agree with Dr. Nathanson.

13 **Q.** And then on page 99, and this was played and entered into
14 evidence yesterday, Professor Nathanson was asked:

15 **"QUESTION:** And the religions that supported
16 Proposition 8 and opposed gay marriage
17 contributed many more volunteers to the
18 campaign effort than the religions that
19 supported gay marriage and opposed
20 Proposition 8, correct?"

21 And Professor Nathanson again answered:

22 **"ANSWER:** Yes."

23 Do you agree with him on that?

24 **A.** I do. I have no reason to believe otherwise and the
25 disparity in the demographics would suggest that it couldn't

1 possibly be otherwise.

2 Q. Now, in your work on this case you submitted a rebuttal
3 expert report to Professor Nathanson's report, correct?

4 A. I did.

5 Q. And that was -- if you could turn to tab 72-A in one of
6 Mr. Thompson's binders?

7 A. Oh, I'm sorry.

8 Q. It should be the rebuttal report.

9 A. I'm there.

10 Q. And if you could provide us with a brief overview? And,
11 in fact, if we turn to -- this is marked as -- well, let's see.
12 It's on page two. You provide an overview of the points that
13 you are addressing.

14 Could you give us an overview of what you opined in
15 response to Professor Nathanson's opinions in this case?

16 A. Okay. So I organized my rebuttal report pretty much as
17 Professor Nathanson organized his original report, for
18 organizational purposes to make it clear.

19 And he offers four of what -- claims that he calls
20 findings. And I summarize them up front, and I will give each
21 finding and tell you what I thought about it and what I wrote
22 about it.

23 So the first claim was that:

24 "Organized religion was not monolithic in its
25 support for Proposition 8 as evidenced by

1 opposing positions across sectarian lines."

2 And my response to him was that while an extreme
3 definition, meaning unanimity, that is true -- religious
4 persons were not unanimous in their support for Proposition
5 8 -- that the evidence he presented was actually sort of
6 holiness leading and silly.

7 So he lists four religious organizations in favor and
8 four religious organizations opposed without considering the
9 size. And we've just covered his response to the question when
10 he was asked in deposition.

11 The four organizations he considered in favor, I
12 report in my rebuttal, said -- comprise about 34 percent of the
13 national population, and the four religious denominations he
14 identifies as opposed total two percent of the national
15 population.

16 And in the data source I was using, one of the sects
17 he was identifying was the Metropolitan Community Church, which
18 is an identified gay and lesbian religious denomination, and
19 that denomination is so small as to actually escape measurement
20 in the report.

21 So there's -- it's comparing apples and oranges and I
22 thought that the claim was misleading.

23 **Q.** Before you go on to the other two points to briefly
24 summarize, were the organizations that Professor Nathanson
25 talked about and that you were discussing in this report,

1 basically the same group of organizations Mr. Thompson was
2 asking you about today, like the -- the churches that he
3 mentioned today in his questioning of you?

4 **A.** Well, we talked about a lot of religious organizations
5 today, but for clarification, it was the Catholic, the LDS, the
6 Baptist and Orthodox Judaism on the one hand; the Unitarian
7 Universalists, the United Church of Christ, Reformed Judaism,
8 and MCC on the other. Those were the sects he spoke
9 specifically about.

10 **Q.** On the other hand would be the groups that was opposing --

11 **A.** That's correct.

12 **Q.** (Continuing) -- supporting the opponents of Proposition 8.

13 And just briefly, what were your other principal
14 points in response to Dr. Nathanson's opinions?

15 **A.** So the second claim he offers is that individual sects
16 themselves were divided. And the evidence he uses for this is
17 the existence of dissenter groups within pro-Proposition 8
18 denominations. And so he identifies a dissenter group of
19 Catholics and a dissenter group of Mormons and a dissenter
20 group of Evangelicals, for example.

21 The problem I had with this claim was that he makes
22 no attempt to ascertain the size of these groups, and there is
23 pretty good evidence to suggest that they are very small and
24 that they have very little influence within their churches.

25 So, for example, Dignity, which is an organization of

1 gay Catholics was identified as a dissenter group; but, of
2 course, Dignity has actually faced exclusion from the church.
3 They are not allowed frequently to meet on church property in
4 some diocese, et cetera.

5 So, again, it was misleading to suggest that there
6 was a large dissenting organization and that the church was
7 deeply divided over the issue.

8 **Q.** And if you could just briefly summarize your last two
9 points in response to those claims relating to religion?

10 **A.** Okay. So the third was that gay and lesbian organizations
11 do not view organized religion as the enemy. And this was very
12 much akin to the piece of information that Mr. Thompson asked
13 me to review regarding the National Gay and Lesbian Task Force,
14 where it showed that the NGLTF was trying to engage religious
15 leaders.

16 And Professor Nathanson's claim was that clearly,
17 then, religion is not the enemy because the gay advocacy
18 organizations are talking to them. And that just struck me as
19 bizarre in the extreme.

20 As I responded when Mr. Thompson asked me, the NGLTF
21 is engaging them precisely because they see religious
22 organizations as the principal obstacle to their political
23 advancement, and I dealt with that in a little bit more detail.

24 And then the final point was that -- was, really, the
25 oddest one to deal with, which was Professor Nathanson's claim

1 that support for Prop 8 by religious persons could not be
2 fairly attributed to anti-gay animus.

3 This was a interesting aspect of his report because
4 he defines anti-gay animus in a very, very narrow way, which is
5 he says that:

6 "We would have evidence of anti-gay animus if
7 religious people acted in bad faith."

8 And that's just such an unusually narrow notion of
9 animus without consideration of prejudice or long health
10 stereotype that it's almost nonsensical to respond to, but I
11 made an effort.

12 **Q.** And in the interest of completeness, let me just read what
13 Professor Nathanson said in his deposition that was played
14 yesterday in response to couple of questions.

15 On page 99 -- actually 102, he was asked:

16 **"QUESTION:** Let me ask you a question about
17 hostility to gay people, and I will refer to
18 it as gay bashing. Do you believe that the
19 teaching of certain religions that homosexual
20 relations are a sin, an abomination,
21 contributes to gay bashing?"

22 And he answered:

23 **"ANSWER:** Yes."

24 Then on page 102, starting at line 24, he was asked
25 the following question:

1 **"QUESTION:** Is it your opinion that primary
2 cause of culturally propagated hostility is
3 religious teaching?"

4 And he answered:

5 **"ANSWER:** I -- that might be a complex
6 answer. Let me start by saying that in a
7 direct sense, yes, but I think that religious
8 hostility to homosexual behavior, in turn,
9 has its roots other than religion."

10 Do you recall that testimony?

11 **A.** I do.

12 **Q.** And in your -- your rebuttal report, the opinions you
13 stated in that report and that you stated today, is that -- do
14 you still hold those views? Is that your opinion today?

15 **A.** I still hold the views I submitted in the rebuttal report;
16 that by any reasonable standard when we look at the array of
17 views held by religious and non-religious people, and
18 specifically the association of religiosity with the views on
19 gay and lesbian issues, as we went through in the tables with
20 His Honor, the most plausible explanation for that is that
21 religious views are related to the actions of religious people.

22 **Q.** Now, Mr. Thompson also asked you a question about the Lax
23 and Phillips article that is at tab 71.

24 **MR. BOUTROUS:** And, your Honor, I just have a couple
25 more questions and I will be done.

1 **BY MR. BOUTROUS:**

2 **Q.** Tab 71, it's Defendant's Exhibit 1105. Do you recall
3 that?

4 **A.** I do.

5 **Q.** Is this is an article that you are familiar with?

6 **A.** It is.

7 **Q.** And if you will look on page 383, which is the page that
8 Mr. Thompson quoted, it's on the left-hand column right
9 above -- it's the paragraph that -- right above the paragraph
10 that begins, "Why might this be so," towards the bottom. The
11 last sentence that begins, "It may not be surprising."

12 Do you see that?

13 **A.** I do.

14 **Q.** Could you read that into the record, and then I will just
15 ask you a question for two?

16 **A.** (As read)

17 "It may not be surprising that minority
18 rights suffer when the majority is opposed to
19 them, but our results show that
20 representative institutions do a poor job
21 protecting minority rights even when the
22 public supports the pro-minority position."

23 **Q.** Is that statement by Lax and Phillips consistent with your
24 views concerning political power of gay men and lesbians?

25 **A.** It is, with the footnote that on a number of key issues

1 for gays and lesbians, they do not enjoy majority support; but,
2 yes, it's consistent.

3 **Q.** Let me ask you two more questions.

4 In light of the legislative measures that provide
5 some protection to gay men and lesbians in California and some
6 of the prominent politicians that Mr. Thompson pointed you to,
7 who have been allies in one way or another of gay men and
8 lesbians, do you believe that gay men and lesbians still lack
9 political power, as you have defined it?

10 **A.** I do. The -- the series of questions Mr. Thompson asked
11 me about the statutory enactments in California and the number
12 of politicians in California who have been supportive of the
13 gay community, I think serve as the basis of his skepticism
14 regarding the conclusion that I draw.

15 And I would want to respond to those in a couple of
16 ways. The first is which that, you know, I have repeatedly in
17 my testimony suggested that we need to look across levels of
18 government. We need to look across jurisdictions in order to
19 evaluate the political power of the group.

20 Protections afforded in -- that end at the county
21 line in a modern society are hardly protections at all. And
22 the same would be true at the state line. That we need to look
23 not just at the federal level or not just at a locality, we
24 need to look at all levels of government.

25 But more importantly, we look at a series of

1 statutory enactments, some of them pursuant to court decisions,
2 some of them overturned by ballot initiative in several states.
3 And when the skepticism is expressed, I do a mind experiment
4 that I do with my students frequently, which is I explore the
5 counter factual.

6 So imagine for a moment that I was going to write an
7 opinion that says gays and lesbians are powerful in the
8 political system. So I go and I survey the world and I survey
9 the literature and I say, Well, the FBI suggests that gays and
10 lesbians are experiencing increasing levels of violence and
11 represent 70 percent or more of the hate-inspired murders.

12 Could I see that and still conclude that the group is
13 powerful? Well, conceivably, because there are other factors.

14 Could I look at the circumstances around the country
15 and say, Well, in 29 states gays and lesbians could still be
16 dismissed without cause for their identity from their source of
17 employment, that they enjoy no protections. Could I observe
18 that and still conclude that the group was powerful? Well,
19 possibly.

20 Could I observe that even small statutory protections
21 designed to redress previous disadvantages have been challenged
22 at the ballot box over 150 times, and gays and lesbians lose
23 those more than 70 percent of the time, and still conclude that
24 the group is powerful? Presumably.

25 Could I look at the enactment of statutory -- excuse

1 me, constitutional exclusion and establishment as excluded from
2 a civil institution as a citizen that is separate -- that is
3 treated separately from all other citizens, and conclude that
4 the group is powerful?

5 I could conceivably observe one or maybe two of those
6 things and still decide that there's other evidence to suggest
7 that the group is powerful.

8 To observe all of those things and to conclude that
9 gays and lesbians have the political power to protect their
10 basic rights in the political system would be the political
11 science equivalent of malpractice. I -- I couldn't possibly
12 draw that conclusion.

13 **Q.** No further questions, your Honor.

14 **THE COURT:** Very well. Mr. Segura, thank you for
15 your testimony. You may step down.

16 (Witness excused.)

17 **THE COURT:** This would be a good time to take our
18 luncheon recess. Can we resume at 1:10?

19 And your next witness is going to be?

20 **MR. BOIES:** Mr. Tam, your Honor.

21 **THE COURT:** Mr. Tam, very well. I look forward to
22 seeing you at 1:10.

23 (Whereupon at 12:12 p.m. proceedings
24 were adjourned for noon recess.)

25

PROCEEDINGS1
2 JANUARY 21, 2010

1:16 P.M.

3
4 **THE COURT:** Very well. Mr. Boies, please call your
5 next witness.6 **MR. BOIES:** Thank you, Your Honor. We call
7 Dr. Hak-Shing William Tam.8 **MR. TERRY THOMPSON:** Your Honor, Terry Thompson
9 representing Bill Tam. I have one preliminary issue, if you
10 wouldn't mind that we talk about before we begin the
11 examination, before he's sworn in.12 On the 8th of January, I filed on behalf of Dr. Tam a
13 motion for withdrawal in his intervenor status. And opposition
14 papers and reply papers were received on the 13th. That was
15 about a week ago.16 And I haven't seen any order yet on that. And I
17 think it would be appropriate to know, before he begins his
18 testimony, whether his voluntary withdrawal as a
19 party-intervenor has been granted. Or -- he's here because of
20 a subpoena. What his status is, whether he's a third party or
21 whether he's a party-intervenor.22 **THE COURT:** Mr. Boies.23 **MR. BOIES:** Your Honor, as we indicated in our
24 papers, we think it's too late for him to withdraw. He brought
25 this case. He's now going to testify in this case.

1 **THE COURT:** Well, he didn't bring the case. But he
2 voluntarily --

3 **MR. BOIES:** He intervened.

4 **THE COURT:** -- joined the case.

5 **MR. BOIES:** Joined the case. He intervened. He
6 intervened in the case. And we think that you can't intervene,
7 litigate it, and then decide in the middle you want to get out
8 of it.

9 So, as we indicated in our papers, we don't think it
10 is appropriate for him to withdraw at this time.

11 **THE COURT:** Ordinarily, under these circumstances,
12 Mr. Thompson, a defendant seeking to withdraw after having
13 either brought a case, or in this case intervened in a case,
14 would accept a judgment.

15 Some of the difficulty I have with the situation that
16 you present is, it's hard for me to envision what kind of
17 judgment Mr. Tam could accept that would be a reasonable basis
18 for permitting him to withdraw at this juncture.

19 Do you have anything that you'd like to add for
20 further consideration in that regard?

21 **MR. TERRY THOMPSON:** Well, I think the basic -- basic
22 issue is, his intervention was purely voluntary. Even if the
23 case is -- it's to your benefit to intervene, you don't have to
24 intervene. And, by the same token, withdrawal is purely
25 voluntary.

1 And even the plaintiffs have stated in some of their
2 papers that if he didn't like the intrusive nature of the
3 discovery, he could withdraw. And they mention that several
4 times.

5 And so he's mentioned some compelling reasons for
6 withdrawing, which are in his declaration in my motion. But,
7 frankly, I don't believe he needs any. I couldn't find any --
8 any compelling or controlling legal authority that said that he
9 needed any -- any -- anything to withdraw, other than his
10 interest in withdrawing.

11 **THE COURT:** Well, there have to be some consequences
12 to a party joining a lawsuit and then putting the other side to
13 the expense and effort of litigating against that party and
14 then withdrawing.

15 Typically, in this situation it would be, as I said,
16 the acceptance of a judgment or some relief that would redress
17 what has been done to resist the party who has intervened. And
18 it's hard to imagine, in this circumstance, exactly what that
19 could be.

20 In addition, there are some testimonial reasons why
21 proceeding as a party may be somewhat different from proceeding
22 as a third-party witness. And because of the uncertainty as to
23 how those factors may play out, I thought this is not something
24 that I needed to address until after Mr. Tam testifies. And he
25 is going to testify one way or the other, either as a party or

1 a nonparty.

2 **MR. TERRY THOMPSON:** Yeah, that's right. He's here,
3 and he's been here several days.

4 **THE COURT:** Yes, I've noticed that. And you've been
5 very good about attending.

6 So that rather leaves me to think that the more
7 prudent course of action would be to hear Mr. Tam's testimony;
8 see what that amounts to; and then to consider what his status
9 should be going forward.

10 So my inclination would be to continue to defer the
11 matter until such time as his role in the case has been
12 completely clarified.

13 **MR. TERRY THOMPSON:** Just as far as his deposition,
14 if he were a third-party, then his deposition could be used to
15 impeach. But it wouldn't be allowed to be entered --

16 **THE COURT:** Yes. As a party -- as you I'm sure know,
17 a party's deposition can be used by the adverse party at any
18 time in the course of the trial, for any purpose.

19 **MR. TERRY THOMPSON:** Right.

20 **THE COURT:** And so that makes some difference.

21 And I don't know what prejudice there may be to the
22 plaintiffs in the event of a withdrawal. And perhaps after
23 Mr. Tam's testimony, plaintiffs may consent to the withdrawal.
24 Perhaps not.

25 So I've kind of thought the better course of action

1 would be just to see what his role is in the underlying facts,
2 what his role in the litigation is, and then to evaluate what
3 if any action to take on the motion to withdraw.

4 All right.

5 **MR. TERRY THOMPSON:** All right.

6 **THE COURT:** Thank you, Mr. Thompson.

7 **MR. BOIES:** Call Dr. Tam to the witness stand.

8 **THE CLERK:** Raise your right hand, please.

9 **HAK-SHING WILLIAM TAM,**

10 called as a witness for the Plaintiffs herein, having been
11 first duly sworn, was examined and testified as follows:

12 **THE WITNESS:** Yes.

13 **THE CLERK:** Please take a seat.

14 State your name, please.

15 **THE WITNESS:** Hak-Shing William Tam.

16 **THE CLERK:** How do I spell your last name?

17 **THE WITNESS:** T-a-m.

18 **THE CLERK:** And your first name?

19 **THE WITNESS:** H-a-k S-h-i-n-g.

20 **THE CLERK:** Thank you.

21 **DIRECT EXAMINATION**

22 **BY MR. BOIES:**

23 **Q.** Good afternoon, Dr. Tam. We haven't met, but my name is
24 David Boies, and I represent the plaintiffs.

25 You were an official proponent of Proposition 8,

1 correct?

2 **A.** Yes.

3 **Q.** And the way you got to be an official proponent of
4 Proposition 8 is, you were invited by ProtectMarriage.com to be
5 an official proponent, correct?

6 **A.** Yes.

7 **Q.** And in connection with the campaign for Proposition 8, you
8 worked with a number of people from ProtectMarriage.com,
9 correct?

10 **A.** Uh-huh, yes.

11 **Q.** And those people included Mr. Prentice, correct?

12 **A.** Yes.

13 **Q.** And Mr. Pugno, correct?

14 **A.** Yes.

15 **Q.** And Mr. Schubert, correct?

16 **A.** Yes.

17 **Q.** Were there any others from ProtectMarriage.com that you
18 recall that you worked with on the campaign?

19 **A.** Probably some clerical person that e-mailed me about like
20 a conference call or something like that.

21 **Q.** Okay.

22 **A.** Or somebody called me about going to a press meeting or
23 something.

24 **Q.** Okay. Thank you.

25 Now, in October of 2008, you supervised the

1 preparation of the language for Proposition 8, correct?

2 **A.** Uhm, I don't quite understand what -- what does

3 "supervise" mean?

4 **Q.** Well, sir, let me ask you to look at tab 1 of the binder
5 that's in front of you.

6 **A.** You mean PX0507?

7 **Q.** Yes.

8 **A.** Okay.

9 **Q.** And this is your declaration, correct?

10 **A.** Yes.

11 **Q.** That you declared under the penalty of perjury was true
12 and correct, correct?

13 **A.** Yes.

14 **Q.** And if you turn in this declaration to paragraph 6 --

15 **A.** All right.

16 **Q.** Do you see that you write there:

17 "In October 2008, I supervised the
18 preparation of the appropriate language for
19 Proposition 8"?

20 **A.** I don't quite remember what that particular document is.
21 If you can remind me.

22 **Q.** Which particular document are you talking about, sir?

23 **A.** The appropriate language of Proposition 8.

24 But I did -- if it is about the 14 words on
25 Proposition 8, that, I did agree to it. And, yeah, if in this

1 sense supervision, that if it is not the 14 words, I wouldn't
2 go along with it, then I agree that's supervision.

3 Q. This declaration that you have in front of you, that you
4 signed --

5 A. Yes.

6 Q. -- did you prepare this declaration?

7 A. No, I did not.

8 Q. Who prepared this declaration?

9 A. From Protect Marriage.

10 Q. ProtectMarriage.com --

11 A. ProtectMarriage.com.

12 Q. -- prepared this declaration for you?

13 A. Correct.

14 Q. Let me just understand what you're saying.

15 ProtectMarriage.com prepared this declaration that is
16 Plaintiffs' Exhibit 507, for you; and you signed it?

17 A. Yes, I signed it.

18 Q. So the language here that says that in October of 2008 you
19 supervised the preparation of the appropriate language for
20 Proposition 8, that was written by ProtectMarriage.com; is that
21 correct?

22 A. Yes.

23 Q. Did you invest substantial time, effort, and personal
24 resources in campaigning for Proposition 8?

25 A. Yes.

1 Q. And between January of 2008 and November of 2008, did you
2 dedicate the majority of your working hours towards qualifying
3 Proposition 8 for the ballot, and campaigning for its
4 enactment?

5 A. Yes.

6 Q. You organized several rallies in support of Proposition 8,
7 correct?

8 A. I helped, yes.

9 Q. And in doing so, you worked with people from
10 ProtectMarriage.com, correct?

11 A. No. I -- the rallies were not originated by
12 ProtectMarriage.com.

13 Q. You say "originated."

14 My question to you was whether or not in connection
15 with the rallies you worked with the people from
16 ProtectMarriage.com or not.

17 A. Uhm, no. Because those rallies were mainly Asian
18 Americans. And those are the people that I knew. And I only
19 invited ProtectMarriage.com's Ron Prentice to be present and to
20 be one of the speakers.

21 Q. You invited Mr. Prentice to be one of the speakers at your
22 rally?

23 A. Yes.

24 Q. And Mr. Prentice was the chief executive office of
25 ProtectMarriage.com, correct?

1 A. Right.

2 Q. And do you consider that working with ProtectMarriage.com
3 in connection with the rally?

4 A. Yes, I would say so.

5 Q. Okay. I would, too.

6 Now, in connection with Proposition 8, did you
7 personally take part in debates?

8 A. Yes, I did.

9 Q. And, for example, you had a debate on Channel 26, here in
10 San Francisco, correct?

11 A. I had a debate here in San Francisco. Not at Channel 26.
12 Channel 26 came and made a report on it that night. So that
13 debate was not originated by Channel 26.

14 Q. It was a debate that was covered by Channel 26. Is that
15 what you're saying?

16 A. Right, right.

17 Q. Now, this debate that was covered by Channel 26 was a
18 debate in which you were campaigning for Proposition 8,
19 correct?

20 A. Yes.

21 Q. And you were told by the people at ProtectMarriage.com to
22 participate in that debate, correct?

23 A. Yes.

24 Q. Now, the campaign for what became Proposition 8 began in
25 2007, correct?

1 **A.** Could you specify the -- at 2007, if the collection or the
2 preparation of the collection of signatures is considered as a
3 campaign, then, yes.

4 **Q.** And, for example, in October of 2006 --

5 **THE COURT:** 2006?

6 **BY MR. BOIES:**

7 **Q.** I'm sorry, 2007.

8 **A.** 2007, right.

9 **Q.** In October of 2007, you were waiting for instructions from
10 ProtectMarriage.com of when you would start collecting those
11 signatures, correct?

12 **A.** Yes.

13 **Q.** And, eventually, ProtectMarriage.com gave you instructions
14 as to when you should start collecting those signatures,
15 correct?

16 **A.** Yes.

17 **MR. TERRY THOMPSON:** Your Honor, I object to the
18 leading nature of most of these questions.

19 **THE COURT:** Well, Mr. Tam is an adverse witness.
20 He's a party on the other side of the case.

21 Objection overruled.

22 **BY MR. BOIES:**

23 **Q.** In January of 2008, you sent an e-mail to pastors and
24 church leaders on the instructions of ProtectMarriage.com,
25 correct?

1 **A.** Uhm, I don't know which one you are referring to.

2 **Q.** That's a fair point.

3 Over the course of January and February, and
4 subsequent months, you sent a number of e-mails to pastors and
5 church leaders on the instructions of ProtectMarriage.com,
6 correct?

7 **A.** What do you mean by on the instruction of Protect
8 Marriage?

9 **Q.** In cooperation, following discussions with
10 ProtectMarriage.com. You would talk with them, you would agree
11 what needed to be done, and then you would do it, correct?

12 **A.** In -- they sent out e-mails, right, to ask the church
13 leaders to collect signatures, yeah, after discussion with
14 ProtectMarriage.com.

15 **Q.** Okay.

16 **A.** That --

17 **MR. TERRY THOMPSON:** Objection, Your Honor.

18 **THE WITNESS:** -- that can be started, yeah.

19 **MR. TERRY THOMPSON:** These letters to the pastors and
20 church leaders were all attorneys' eyes only. So I would
21 respectfully request that if any of these are trying to be
22 introduced, that they are not introduced in court.

23 Also, while I'm up, if I could ask for a standing
24 objection similar to what you granted the proponents regarding
25 First Amendment privilege as questions get to Mr. Tam's

1 personal political views, motivation, and that sort of thing,
2 that I'd like to have an order to preserve standing objections
3 on First Amendment privilege grounds similar to what you
4 granted the proponents.

5 And I know that this was lost in the appeals court,
6 but I'd like to preserve that standing objection.

7 **THE COURT:** Fair enough. You can certainly reserve
8 that as a standing objection. And, therefore you don't have to
9 make an objection to every question that may implicate the
10 issue.

11 **MR. BOIES:** Your Honor, before proceeding, I would
12 offer Plaintiffs' Exhibit 507.

13 **THE COURT:** Hearing no objection, 507 is admitted.

14 (Plaintiffs' Exhibit 507 received in evidence.)

15 **BY MR. BOIES:**

16 **Q.** Dr. Tam, let me ask you to turn to tab 2, which is
17 Plaintiffs' Exhibit 2685. And is this --

18 **A.** What number again, please?

19 **Q.** Tab 2.

20 **A.** Right.

21 **Q.** And it's Exhibit -- Plaintiffs' Exhibit 2685. It's headed
22 ProtectMarriage.com coalition endorsements partial listing."
23 Do you see?

24 **A.** I'm sorry, I cannot find.

25 **Q.** Look at Plaintiffs' Exhibit 2685.

1 **MR. BOIES:** May I approach, Your Honor?

2 **THE COURT:** Yes, you may.

3 **THE WITNESS:** All right. Got it. Got it. Yeah.

4 **BY MR. BOIES:**

5 **Q.** Now, is Plaintiffs' Exhibit 2685 a partial listing of the
6 coalition of ProtectMarriage.com?

7 **A.** I believe so.

8 **MR. BOIES:** Your Honor, I would offer Plaintiffs'
9 Exhibit 2685.

10 **MS. MOSS:** Your Honor, we do object. Not to,
11 necessarily, to the exhibit itself coming in. But we don't
12 believe a foundation has been laid for this witness to testify
13 about what this document is and what it shows.

14 It is a ProtectMarriage.com website document. We
15 would stipulate to that.

16 But for him to be able to testify about what it
17 purports to show, the date of the document, it has not been
18 established. When this information was placed on the website,
19 for instance.

20 **THE COURT:** Do you wish to raise any -- to lay any
21 further foundation with this witness, Mr. Boies?

22 **MR. BOIES:** Let me just ask one more -- I was
23 actually only going to ask him one more question. Actually, I
24 think I may have already asked him this question.

25

1 **BY MR. BOIES:**

2 **Q.** Are the organizations and people that are listed here a
3 partial listing of the coalition that supported
4 ProtectMarriage.com in promoting Proposition 8?

5 **A.** I believe so, but I don't know because this is their
6 website. I don't know. I only see our organization's name on
7 it. That's all I know.

8 **Q.** Well, let me -- if necessary, I can take you through this
9 one by one.

10 The first organization there is Focus on the Family.
11 Do you see that?

12 **A.** Yes.

13 **Q.** And was that one of the organizations that was part of the
14 ProtectMarriage.com coalition supporting Proposition 8?

15 **A.** I believe so.

16 **Q.** The next organization is Family Research Council. Was
17 that one of the organizations that was part of the
18 ProtectMarriage.com coalition supporting Proposition 8?

19 **A.** Now, I -- I really don't know why they put these names on
20 there. You have to ask them, not me, because I have no
21 position of knowing which organization or person on this list
22 is their coalition. I really don't know.

23 **Q.** Dr. Tam, my question to you was whether the Family
24 Research Council was one of the organizations that was part of
25 the ProtectMarriage.com coalition supporting Proposition 8.

1 Yes, no, or I don't know?

2 **A.** I don't know.

3 **Q.** Do you know what the Family Research Council is?

4 **A.** I know what it is.

5 **Q.** And you worked with people from the Family Research

6 Council on Proposition 8; did you not, sir?

7 **A.** No.

8 **Q.** You didn't get e-mails that included them?

9 **A.** Oh, I got a lot of e-mails from different organization.

10 That doesn't mean I worked with them, right?

11 **Q.** Let me try to be clear. The Family Research Council was

12 one of the organizations that you got e-mails from and that

13 were listed as joint addressees with you and your organization

14 in connection with Proposition 8, correct?

15 **A.** Could be.

16 **Q.** Now, let me ask you to read to yourself the organizations

17 that are here, and tell me whether any of the organizations

18 listed here are organizations that you recognize and know were

19 part of the coalition working with ProtectMarriage.com to

20 support Proposition 8.

21 **A.** I must say that I don't know.

22 **Q.** You don't know any of them?

23 **A.** Well, I know some of them.

24 **Q.** Ah, yes.

25 **A.** Yeah.

1 Q. So that's what I'm asking you, the ones you know.

2 A. Oh, the ones I know, yeah, I know some. Do you want me to
3 read it?

4 Q. What I want you to do is, I want you to identify which of
5 the organizations on this list that you, from your own personal
6 knowledge, know were part of the coalition working with
7 ProtectMarriage.com in support of Proposition 8.

8 A. Okay. Focus on the Family. Family Research Council.
9 California Family Council. Values Advocacy Council.
10 Traditional Family Coalition. Those are the ones I recognize.

11 Q. And the Traditional Family Coalition that you just
12 mentioned, what is your relationship to the Traditional Family
13 Coalition?

14 A. I am the executive director of Traditional Family
15 Coalition.

16 Q. Let me ask you to look, next, at Plaintiffs' Exhibit 2620.

17 **THE COURT:** Moving in 2685, are you, Mr. Boies?

18 **MR. BOIES:** Yes, I'm offering that.

19 **THE COURT:** Beg your pardon?

20 **MR. BOIES:** I'm offering it.

21 **THE COURT:** 2685 is admitted. Objection overruled.

22 (Plaintiffs' Exhibit 2685 received in evidence.)

23 **THE COURT:** And this is 2620?

24 **MR. BOIES:** 2620.

25 **THE WITNESS:** Yeah, I'm there.

1 **BY MR. BOIES:**

2 **Q.** Now, this is a ProtectMarriage.com e-mail. And I have no
3 reason to believe that you actually saw this at or about the
4 time it was sent, which was July 2, 2000 [sic]. However, I do
5 want to ask you about a paragraph that is in the bottom third
6 of the page. It is a 1-sentence paragraph that reads:

7 "The Chinese coalition with Bill Tam remains
8 strong and he is one of the signatories."

9 Do you see that?

10 **A.** Yes.

11 **MR. TERRY THOMPSON:** Objection, Your Honor. Your
12 Honor, I object on the basis of relevance. This was written in
13 2007, before the Proposition 8 campaign started.

14 Bill Tam, as acknowledged by the plaintiffs, did not
15 see this. It seems like it's irrelevant.

16 **THE COURT:** Well, I'm not sure that it's irrelevant.
17 This appears to be a document generated in connection with the
18 gathering of signatures in connection with Proposition 8. I
19 think that establishes its relevance.

20 And Mr. Boies has indicated he does not believe that,
21 at least contemporaneously with the document, the witness saw
22 it, but he can certainly pursue a question with respect to it.

23 Objection overruled.

24 **BY MR. BOIES:**

25 **Q.** What is the Chinese coalition that is being referred to

1 here, if you know?

2 **A.** Chinese Evangelical Christians.

3 **Q.** And what was your relationship to the Chinese Evangelical
4 Christians coalition?

5 **A.** Well, I, because of my position at Traditional Family
6 Coalition, I know some Chinese churches.

7 **Q.** And would I be correct to infer from this that as of
8 July 2007, you were already working with ProtectMarriage.com in
9 connection with what became Proposition 8?

10 **A.** Yes, I think so. But my memory is not very good. I --
11 I -- I don't exactly remember what was really done in '07,
12 really.

13 **Q.** Does this document refresh your recollection that as of
14 July 2, 2007, you were working with ProtectMarriage.com in
15 connection with what became Proposition 8?

16 **A.** Yeah. I think the -- I was approached and I was informed
17 that some marriage amendment could be put onto the ballot. But
18 then we need signature gathering. So that's what this is.

19 **Q.** Let me --

20 **MR. BOIES:** Your Honor, I would offer Plaintiffs'
21 Exhibit 2620.

22 **THE COURT:** Hearing no objection, 2620 is admitted.
23 (Plaintiffs' Exhibit 2620 received in evidence.)

24 **BY MR. BOIES:**

25 **Q.** Dr. Tam, let me ask you to look next at Plaintiffs'

1 Exhibit 2476.

2 **A.** Okay.

3 **Q.** This is -- do you have it?

4 **A.** Yes.

5 **Q.** This is an e-mail that you sent on October 26 --
6 October 22nd, 2007, correct?

7 **A.** Uh-huh, '07, yeah.

8 **Q.** And you sent it to whom, sir?

9 **A.** Its address here is called "Dear friend of TFC." And
10 these are the members of TFC, which is Traditional Family
11 Coalition."

12 **Q.** Okay. In the first paragraph you say:

13 "I'm still waiting for HYPERLINK
14 <http://protectmarriage.com> for instructions
15 of when we would start the signature
16 collection for California's marriage
17 amendment initiative."

18 Do you see that?

19 **A.** Yes.

20 **Q.** And was that a true statement as of October 22, 2007?

21 **A.** Yes.

22 **MR. BOIES:** Your Honor, I would offer Plaintiffs'
23 Exhibit 2476.

24 **THE COURT:** Very well. 2476 is admitted.

25 (Plaintiffs' Exhibit 2476 received in evidence.)

1 **BY MR. BOIES:**

2 **Q.** As part of your work with ProtectMarriage.com, you
3 solicited contributions to ProtectMarriage.com, correct?

4 **A.** Yes.

5 **Q.** Let me ask you to turn to Plaintiffs' Exhibit 2612.

6 **A.** Okay.

7 **Q.** This is an e-mail that you sent on February 14th, 2008,
8 correct?

9 **A.** Yes.

10 **Q.** And this is a -- an e-mail that refers to the interview or
11 debate that you had that was broadcast on Channel 26, correct?

12 **THE COURT:** Did you say 2612?

13 **MR. BOIES:** I'm sorry, the exhibit number?

14 **THE COURT:** Yes.

15 **MR. BOIES:** 2472.

16 **THE COURT:** I'm sorry, 2472.

17 **MR. BOIES:** I apologize if I misspoke, Your Honor,
18 Your Honor, I did say 2612, but I -- it's 2472.

19 **THE COURT:** All right. 2472 it is.

20 Are you with that exhibit, Mr. Tam?

21 **THE WITNESS:** Yes, I'm there.

22 **BY MR. BOIES:**

23 **Q.** And this is an e-mail you sent on February 14th, 2008,
24 correct?

25 **A.** Yes.

1 Q. And you're talking about the opportunity that you have to
2 publicize what you refer to as, quote, our Protect Marriage
3 Amendment --

4 A. Yes.

5 Q. -- closed quote, on television, correct?

6 A. Uh-huh.

7 Q. Is that correct, sir?

8 A. Yes.

9 Q. And this was a debate that you participated in that was
10 going to be broadcast and was broadcast over Channel 26,
11 correct?

12 A. It's an interview. It's not a debate.

13 Q. Is this separate from the debate that you referred to
14 earlier? You said you participated in a debate that was
15 broadcast over Channel 26. Do you recall that?

16 A. Yeah. It's separate.

17 Q. Separate, okay.

18 A. Two separate events.

19 Q. Okay. So you both had a debate and a separate interview,
20 both of which were broadcast on Channel 26, and both of which
21 you were using to promote Proposition 8, correct?

22 A. Yes.

23 Q. Now, let me focus on the debate. And I asked you this
24 question, but I'm not sure that we got an answer.

25 That debate that you participated in that was

1 broadcast over Channel 26 --

2 **A.** Yes.

3 **Q.** -- that was a debate that you participated in because you
4 were told to participate by ProtectMarriage.com, correct?

5 **A.** Yes.

6 **Q.** Now let me go to Plaintiffs' Exhibit 2612.

7 Is this an e-mail that you sent on January 10, 2008?

8 **A.** Yes.

9 **Q.** And in that you talk about the fact that many Christian
10 groups are joining forces to launch Proposition 8, correct?

11 **A.** Yes.

12 **Q.** And those forces included your organization of TFC, and
13 included ProtectMarriage.com, correct?

14 **A.** Yes.

15 **Q.** And California Family Council, correct?

16 **A.** Yes.

17 **Q.** And Concerned Women of America, correct?

18 **A.** Yes.

19 **Q.** And the Values Advocacy Council, correct?

20 **A.** Yes.

21 **Q.** And then others that you do not list, correct?

22 **A.** Right.

23 **MR. BOIES:** Your Honor, I would offer Plaintiffs'
24 Exhibit 2612.

25 **THE COURT:** 2612 is admitted.

1 (Plaintiffs' Exhibit 2612 received in evidence.)

2 **BY MR. BOIES:**

3 **Q.** Let me ask you to turn next to Plaintiffs' Exhibit 2640.

4 **A.** Okay.

5 **Q.** And this is an e-mail chain that includes both you and
6 Mr. Pugno, correct?

7 **A.** What I see here is my name on it, and Pugno's name on it.
8 I don't know whether it's a chain or not.

9 **Q.** Well, sir, if you -- if you begin --

10 **MR. TERRY THOMPSON:** Your Honor, I'd object on
11 attorney-client privilege. I think, at that point, Mr. Pugno
12 was serving as Mr. Tam's attorney.

13 **THE COURT:** Attorney-client privilege?

14 **MR. BOIES:** It was produced to us in discovery, Your
15 Honor. There was no claim of privilege at the time, that I'm
16 aware of.

17 **MS. MOSS:** Your Honor --

18 **MR. BOIES:** I'm also not sure, just looking --

19 **THE COURT:** Beg your pardon?

20 **MR. BOIES:** I also believe, just looking at the
21 substance of the document --

22 **THE COURT:** It does not appear to be relating legal
23 advice.

24 **MS. MOSS:** And I just wanted to clarify, we had
25 produced the documents. We had gathered them and produced

1 them. And we were not asserting attorney-client,
2 defendant-intervenors, Protect Marriage was not.

3 **THE COURT:** Very well. 2640 is admitted.

4 (Plaintiffs' Exhibit 2640 received in evidence.)

5 **BY MR. BOIES:**

6 **Q.** And this includes both e-mails from Mr. Pugno to you, and
7 e-mails from you to Mr. Pugno, correct?

8 **A.** Yes.

9 **Q.** And what was the purpose of the e-mails that you sent to
10 Mr. Pugno? What were you trying to tell him?

11 **A.** I was asking anything I shouldn't say or disclose in case
12 of question from Chinese press.

13 **Q.** Let me ask you to look next at Plaintiffs' Exhibit 2651.
14 And while you're doing that ...

15 **MR. BOIES:** Your Honor, I think I may not have
16 offered Plaintiffs' Exhibit 2472. And I would offer that at
17 this time.

18 **THE COURT:** Very well. 2472 is admitted.

19 (Plaintiffs' Exhibit 2472 received in evidence.)

20 **BY MR. BOIES:**

21 **Q.** Do you have Plaintiffs' Exhibit 2651, Dr. Tam?

22 **A.** Yes.

23 **Q.** And this includes both e-mails from Lynne Fishel to you,
24 and e-mails from you to Lynne Fishel, correct?

25 **A.** Yes.

1 Q. Who is Lynne Fishel?

2 A. Someone who works for California Family Council.

3 Q. And this e-mail that went to you is directed to the
4 ProtectMarriage.com leadership, correct?

5 A. That's what it says here.

6 Q. And that's what it said when you received it in March of
7 2008, correct, sir?

8 A. Yes.

9 Q. And you were part of the ProtectMarriage.com leadership,
10 correct, sir?

11 A. I think she's just being nice to call me one of the
12 ProtectMarriage.com leadership. I don't believe I am.

13 Q. Well, at the time, you didn't tell her that you didn't
14 think you were part of the leadership, did you, sir?

15 A. I didn't think that was -- you know, when somebody say
16 something nice to you, should you say that, "Hey, don't say it;
17 I'm not as good"? You know, that's common sense.

18 In fact, at that time, I don't really care what --
19 what they call me. But, frankly, I don't believe I am
20 ProtectMarriage.com, within their core group. I'm not.

21 Q. You're not in their core group?

22 A. No.

23 Q. What do you mean by "core group"?

24 A. I don't know. You have been talking about. I was sitting
25 there. I listen to all your different comments about core

1 group. And I know I'm not.

2 **Q.** So the term "core group" is something you sort of picked
3 up in this litigation, correct?

4 **A.** Right, right.

5 **Q.** Yes.

6 **A.** Right.

7 **Q.** Yes. Let me ask you to look at 2609. And while you're
8 doing that ...

9 **MR. BOIES:** I would offer Plaintiffs' Exhibit 2651.

10 **THE COURT:** Very well. 2651 is admitted.

11 (Plaintiffs' Exhibit 2651 received in evidence.)

12 **THE COURT:** And this is 2649, is it?

13 **MR. BOIES:** 2609.

14 **THE COURT:** 2609. I'm sorry.

15 **THE WITNESS:** Okay.

16 **BY MR. BOIES:**

17 **Q.** Now, Plaintiffs' Exhibit 2609 is an e-mail that you sent
18 April 15th, 2008, correct?

19 **A.** Yes.

20 **Q.** And do you remember telling me just a moment ago that you
21 thought that Lynne Fishel was just being nice to you when she
22 described you as part of the ProtectMarriage.com leadership?

23 **A.** Uh-huh.

24 **Q.** Remember telling me that?

25 **A.** Yes.

1 **MR. TERRY THOMPSON:** Objection, Your Honor. This is
2 another document that's on the highly confidential, attorneys'
3 eyes only. This is to pastors and church leaders. It's a
4 private -- private e-mail. So I would object to any -- any
5 open court discussion of this document.

6 And this is not -- not from -- not from the
7 ProtectMarriage.com. It's an internal memo from Bill to his
8 group.

9 **THE COURT:** This is a memorandum or e-mail sent by
10 the witness, correct?

11 **MR. TERRY THOMPSON:** Sent by the witness, yes.

12 **THE COURT:** Objection overruled.

13 **BY MR. BOIES:**

14 **Q.** Now, Dr. Tam, let me direct your attention to the second
15 paragraph.

16 **A.** Okay.

17 **Q.** Do you see where you write: "This year, TFC" -- and
18 that's you, sir, correct?

19 **A.** Yes.

20 **Q.** -- "is playing a major role to put 1-man-1-woman marriage
21 into California's constitution"?

22 Do you see that?

23 **A.** Yes.

24 **Q.** Was that a true statement in April of 2008?

25 **A.** Yes.

1 Q. And you then go on to say that you served as one of the
2 proponents of this initiative and worked closely with
3 ProtectMarriage.com to collect 1,050,000 signatures.

4 Do you see that?

5 A. Yes.

6 Q. And was that a true statement, also?

7 A. Yes, in the sense that now this is April of 2008. At that
8 stage, it was during the signature petition phase.

9 So, yeah, I was playing a major role. I spent a lot
10 of time sending out petitions and collecting them, and worked
11 closely with all the mechanics, with Protect Marriage, to, you
12 know, get the petitions off to the Chinese churches.

13 So those are true statements, yeah, working closely
14 with them. But that's at April.

15 Q. When you say "working closely with them," you mean you
16 were working closely with ProtectMarriage.com, correct?

17 A. Yes.

18 MR. BOIES: Your Honor, I would offer Plaintiffs'
19 Exhibit 2609.

20 THE COURT: Very well.

21 (Plaintiffs' Exhibit 2609 received in evidence.)

22 THE WITNESS: Now, this document -- I'm sorry. This
23 document contain a lot of sensitive numbers that I would not
24 like to disclose to the public.

25 MR. TERRY THOMPSON: I'd object also, Your Honor.

1 This is one that we did designate attorneys' eyes only. And
2 some of the major reasons is they're very, very sensitive
3 numbers in here. And this is not something that should be
4 available for public to see. Has salary numbers, budget
5 numbers, information about Dr. Tam's family. So it falls -- I
6 think it falls strictly under the attorneys' eyes only
7 protection.

8 **THE WITNESS:** This document is my letter to the
9 pastors and church leaders. Most of the things are talking
10 about my personal information, and I would be very offended if
11 this is put into public eye.

12 **MR. BOIES:** Your Honor, we'll be prepared to redact
13 the balance of the paragraph after the two sentences that I
14 read. The two sentences that I read are really the key points
15 for us.

16 I'm not sure I agree with Dr. Tam and his counsel,
17 but in the spirit of trying to be cooperative, we'll redact
18 those.

19 **THE COURT:** Very well. That should take care of the
20 problem. 2609 as redacted will be admitted.

21 (Plaintiffs' Exhibit 2609 received in evidence.)

22 **BY MR. BOIES:**

23 **Q.** Let me ask you to look next at Plaintiffs' Exhibit 2650.

24 **A.** All right.

25 **Q.** Now, at the bottom of the first page there is an e-mail

1 from you to Lynne Fishel, correct?

2 **A.** Yes.

3 **Q.** And you're responding to an earlier e-mail that she had
4 sent you, correct?

5 **A.** Uhm, yeah.

6 **Q.** And one of the things you are asking her is:

7 "Who is Brian Brown?" And "Why is he
8 speaking for us?"

9 Do you see that?

10 **A.** Yes.

11 **Q.** And who is the "us" there?

12 **A.** Those people who are -- who are within the -- I would say
13 the ProtectMarriage.com.

14 **Q.** And that included you and TFC, correct, sir?

15 **A.** Yes, to a certain extent, yes.

16 **MR. BOIES:** Your Honor, I would offer Plaintiffs'
17 Exhibit 2650.

18 **THE COURT:** 2650 is admitted.

19 (Plaintiffs' Exhibit 2650 received in evidence.)

20 **BY MR. BOIES:**

21 **Q.** Let me ask you to look next, Dr. Tam, at Plaintiffs'
22 Exhibit 2538.

23 **A.** Okay.

24 **Q.** This is an e-mail that you wrote on May 15, 2008, correct?

25 **A.** Yes.

1 Q. And it talks about at one point how you stood with the
2 lawyers from ProtectMarriage.com and other people when the
3 California Supreme Court had come down with its opinion saying
4 that same-sex marriage is legal for California, correct?

5 A. Yes.

6 Q. And the last sentence of this says:

7 "We can't lose the next battle."

8 And the "next battle" was the battle for
9 Proposition 8, correct, sir?

10 A. Yes.

11 Q. You say:

12 "We can't lose the battle for Proposition 8,
13 or God's definition of marriage will be
14 permanently erased in California."

15 Do you see that?

16 A. Yes.

17 Q. Was that your motivation for participating with
18 ProtectMarriage.com in promoting Proposition 8?

19 A. Yeah, one of the reasons.

20 MR. BOIES: Your Honor, I would offer Plaintiffs'
21 Exhibit 2538.

22 THE COURT: Very well. 2538 is admitted.

23 (Plaintiffs' Exhibit 2538 received in evidence.)

24 BY MR. BOIES:

25 Q. What were the other reasons, Dr. Tam?

1 **A.** Uhm, the other reason is I think it's very important for
2 the next generation to understand the historical meaning of
3 marriage. It is very important that our children won't grow up
4 to fantasize or think about, Should I marry Jane or John when I
5 grow up?

6 **A.** Because this is very important for Asian families,
7 the cultural issues, the stability of the family.

8 **Q.** Any other reasons that you supported Proposition 8?

9 **A.** That's about it, for the next generation.

10 **Q.** You wanted the next generation to understand the
11 historical meaning of marriage; is that right?

12 **A.** Right.

13 **Q.** And did you believe that it was necessary, in order for
14 people to be educated about the historical meaning of marriage,
15 to --

16 **A.** Yes.

17 **Q.** -- to prevent gays and lesbians from marrying?

18 **A.** I did not think of it that way.

19 **Q.** Okay. You support domestic partnerships for gays and
20 lesbians, correct?

21 **A.** Yes.

22 **Q.** And you support legislation giving gays and lesbians equal
23 rights in employment and housing, correct?

24 **A.** Yes.

25 **Q.** And you support the right of gays to adopt children,

1 correct?

2 **A.** Uhm, I haven't come to a conclusion with that yet.

3 **Q.** One way or the other?

4 **A.** Uhm, no.

5 **Q.** Okay. Do you consider yourself hostile to gays and
6 lesbians?

7 **A.** No, I don't.

8 **Q.** Let me ask you about a website, lmanlwoman.net.

9 **A.** Uh-huh.

10 **Q.** That's a website you're familiar with, correct, sir?

11 **A.** Yes.

12 **MR. TERRY THOMPSON:** Objection, Your Honor. That's
13 an anonymous website. There's no foundation here for that,
14 that Dr. Tam has any connection with that website.

15 **THE COURT:** Well --

16 **MR. TERRY THOMPSON:** There's no --

17 **THE COURT:** We'll see whether Mr. Boies can lay a
18 foundation.

19 This is exhibit what?

20 **MR. BOIES:** It's going to be Plaintiffs' Exhibit
21 2199, Your Honor.

22 **BY MR. BOIES:**

23 **Q.** Dr. Tam, before we get to that exhibit -- Dr. Tam --

24 **A.** Yes.

25 **Q.** -- may I have your attention?

1 A. Yes.

2 Q. Thank you.

3 What is your connection with the website
4 lman1woman.net?

5 A. My connection?

6 Q. Yes, sir.

7 A. Well, this is a website of a group called America Return
8 to God Prayer Movement.

9 Q. Called what?

10 A. America Return to God Prayer Movement.

11 Q. And what is your relationship to that group?

12 A. I am the secretary of that group.

13 Q. You're the secretary of that group?

14 A. Right.

15 Q. Okay. And who else participates in that group?

16 A. Different Chinese pastors.

17 Q. Okay. And as the secretary of this group, you're familiar
18 with their website, correct?

19 A. Yes.

20 Q. And you see what's on the website, correct?

21 A. Yes.

22 Q. And if you saw something on the website that you did not
23 approve of, you'd say it, right?

24 A. Uhm, I'd say it, but they might not listen.

25 Q. Well, have --

1 A. I'm the secretary.

2 Q. Have they ever not listened to you, sir, about something
3 on the website?

4 A. Yeah.

5 Q. What -- what did you want to put on the website or take
6 off the website that they wouldn't do?

7 A. For example, well, something like -- something mention
8 about bestiality, that I object to.

9 Q. You objected to something about bestiality?

10 A. Right, the mention of it.

11 Q. But they left it on the website?

12 A. I don't know.

13 Q. Have you ever objected to anything on the website other
14 than to this reference to bestiality?

15 A. I don't recall.

16 Q. Now, did they remove the reference to bestiality?

17 A. I don't know. I have to check.

18 Q. Why did you object to this reference to bestiality?

19 A. Because it is not related to -- to homosexuality.

20 Q. Let me ask you now to look at Plaintiffs' Exhibit 2199.

21 A. Okay.

22 Q. Now --

23 MS. MOSS: Excuse me.

24 Your Honor, defendant-intervenors would object to

25 questioning about this document. It does not appear, from its

1 face, to reference Proposition 8.

2 We don't believe that one organization's Internet
3 site related to homosexuality is relevant to the issues in this
4 case, so we would object to questioning on it.

5 **THE COURT:** Well, the witness testified that he was
6 secretary of the organization whose website this was.

7 **MS. MOSS:** I understand, Your Honor, but it's a
8 general website that's not directed -- at least, this exhibit
9 does not demonstrate that it is a Prop 8 -- that it's directed
10 at Proposition 8.

11 **MR. BOIES:** Your Honor, this actually was already
12 admitted during the testimony of Ms. Zia.

13 **BY MR. BOIES:**

14 **Q.** Dr. Tam --

15 **A.** Yes.

16 **Q.** -- this -- this printout from the website does not, as
17 near as I can tell, mention bestiality. However, the first
18 line says:

19 "Studies show that homosexuality is linked to
20 pedophilia."

21 Do you see that?

22 **A.** Yes.

23 **Q.** Did you believe that was true?

24 **A.** Yes, I do.

25 **Q.** And so you supported this website making those kind of

1 statements?

2 **A.** Yes.

3 **Q.** Incidentally, could you read into the record what the
4 heading of this is. At the very top it says, "1 man 1 woman,"
5 right?

6 **A.** Right.

7 **Q.** And then what's the next line?

8 **A.** "Homosexuality linked to pedophilia."

9 **Q.** And it says here:

10 "Homosexuals are 12 times more likely to
11 molest children."

12 Do you see that?

13 **A.** Yes.

14 **Q.** And did you believe that was an appropriate thing for your
15 organization to be telling people?

16 **A.** Which organization?

17 **Q.** Your organization that you're the secretary of, that puts
18 out this website.

19 **A.** Yes, because these information are -- now, from what you
20 see here, those are not the statements of the organization.
21 Those are just links to other websites.

22 So as far as I -- my position is, if there is
23 something like this people want to read about, then the
24 organization has a right to -- to link it.

25 **Q.** You're not only linking it, your organization is stating

1 right here:

2 "Homosexuals are 12 times more likely to
3 molest children."

4 That was written by your organization, correct?

5 **A.** No. This, as far as I know, is what that paper, what
6 that -- the "more," when you click that, the -- whatever
7 information provided in that web page --

8 **Q.** Dr. Tam --

9 **A.** -- shows that homosexuals are 12 times more likely to
10 molest children. It is in that website. Is not a statement
11 made by this organization.

12 **Q.** Dr. Tam, this is a page from your organization's website,
13 correct?

14 **A.** From the organization I -- I have a small part in.

15 **Q.** You're the secretary of it, right?

16 **A.** Yeah. But there are presidents, vice presidents, and
17 other more important persons.

18 (Laughter)

19 **Q.** I'm sure there are other officers. And there are other
20 people who are not officers?

21 **A.** What's the power of the secretary of your company?

22 **Q.** Considerable.

23 (Laughter)

24 **A.** Well, you are very generous.

25 **Q.** But my point, sir, is that --

1 **A.** If you are trying to prove that, you know, I influence
2 that organization, then that's not true. I'm just a secretary.
3 I was told.

4 **Q.** First of all, you told us that you looked at the website.
5 You were familiar with the website?

6 **A.** I'm familiar with it.

7 **Q.** Remember telling us that?

8 **A.** Yeah.

9 **Q.** And you knew that the words on this page had been typed by
10 somebody from your organization, correct?

11 **A.** Uh-huh (nods head).

12 **Q.** You knew that?

13 **A.** Yes.

14 **Q.** Okay. And you know that somebody from your organization
15 had typed the words "Homosexuals are 12 times more likely to
16 molest children," and put it on the Internet --

17 **A.** Yes.

18 **Q.** -- correct?

19 Now, do you believe that homosexuals are 12 times
20 more likely to molest children? Do you believe that?

21 **A.** Yeah, based on the different literature that I've read.

22 **Q.** Oh. And what literature have you read, sir, that says
23 that?

24 **A.** Uhm, I've read what is posted here.

25 **Q.** And what is it? Tell me what it is that you read.

1 A. I don't remember now.

2 Q. Who -- who authored it?

3 A. Some from, apparently, academic papers.

4 Q. What academic papers, sir?

5 A. I don't remember.

6 Q. Well, do you remember any of them?

7 A. No.

8 Q. Was it in a -- a journal, or was it in a book that you
9 read?

10 A. Some could be news. Some could be from journals.

11 Q. It could be. I'm not asking you what it could be.

12 You told me you'd read something that said that
13 homosexuals were 12 times more likely to molest children. You
14 told me that, right?

15 A. Yes.

16 Q. Okay. Now, I'm asking you what you read. Was it a book?

17 A. I don't remember.

18 Q. Was it an article?

19 A. I don't remember.

20 Q. Who wrote it?

21 A. I don't know.

22 Q. Okay, sir. Let me ask you to turn, next, to Plaintiffs'
23 Exhibit 513.

24 A. Okay.

25 Q. And this is something that you wrote during the campaign

1 for Proposition 8, correct, sir?

2 **A.** Yes.

3 **Q.** And the heading is, "What If We Lose," correct?

4 **A.** Yes.

5 **Q.** And what you meant was, what if we lose Proposition 8,
6 correct?

7 **A.** Yes.

8 **Q.** And you say that:

9 "If Proposition 8 does not pass, they" --
10 whoever that is -- "will lose no time pushing
11 the gay agenda."

12 Do you see that?

13 **A.** Yes.

14 **Q.** And you say:

15 "The San Francisco city government is under
16 the rule of homosexuals."

17 Do you see that?

18 **A.** Yes.

19 **Q.** Did you believe that, sir?

20 **A.** Yes, I believed that.

21 **Q.** Who are the homosexuals that San Francisco is under the
22 rule of?

23 **A.** Uhm, at that time, supervisor Tom Ammiano was a supervisor
24 there.

25 **Q.** And there was also a mayor, right?

1 **A.** Yes.

2 **Q.** The mayor was a homosexual, was he, according to you?

3 **A.** I don't think so.

4 **Q.** You don't think so? No, I don't think so either,
5 actually.

6 So if you knew the mayor wasn't homosexual, why are
7 you telling people in part of the Proposition 8 campaign that
8 San Francisco is under the rule of homosexuals?

9 **A.** Uhm, well, you see, Mayor Newsom pass out the same-sex
10 marriage licenses in 2004. And if he is not a friend of them,
11 why would he do that?

12 **Q.** When you say that San Francisco was under the rule of
13 homosexuals, did you mean San Francisco was under the rule of
14 heterosexuals that were friends of homosexuals? Is that what
15 you meant?

16 **A.** Could be.

17 **Q.** Could be.

18 **A.** Yeah, you know, I'm not a lawyer. I don't write things so
19 specifically. You know, that well-defined.

20 **Q.** Okay.

21 **A.** Now you're trying to use your legal arguments to pinpoint
22 me in something that I said that -- that is sometimes I think
23 it's beyond my original intent.

24 **Q.** Well, let's see, as we go through this, how you use words.

25 You go on to say that:

1 "After legalizing same-sex marriages they
2 want to legalize prostitution."

3 Do you see that?

4 **A.** Yes.

5 **Q.** Did you think the people who were opposing Proposition 8
6 wanted to legalize prostitution?

7 **A.** Uhm, that was a Proposition K at that time, on the
8 San Francisco ballot. And I saw several homosexual
9 politicians, they supported that. So I draw from that -- from
10 their support that they want to legalize prostitution.

11 **Q.** But that didn't have anything to do with Proposition 8;
12 did it, sir?

13 **A.** No.

14 **Q.** No, it didn't.

15 And you knew that at the time, didn't you? You knew
16 that Proposition K was entirely separate from Proposition 8?

17 **A.** Yeah.

18 **Q.** And didn't have anything to do with one another, right?

19 **A.** Right.

20 **Q.** You knew that?

21 **A.** Right.

22 **Q.** But, nevertheless, you said:

23 "After legalizing same-sex marriage, they
24 want to legalize prostitution."

25 That's what you wrote here, right?

1 **A.** Yes.

2 **Q.** You then go on to say:

3 "What will be next? On their agenda list is
4 legalizing having sex with children."

5 Do you see that?

6 **A.** Uh-huh.

7 **Q.** And that's what you told people to try to convince them to
8 vote yes on Proposition 8, correct?

9 **A.** Yes.

10 **MR. BOIES:** Your Honor, I would offer Plaintiffs'
11 Exhibit 513.

12 **THE COURT:** Very well. 513 is admitted.
13 (Plaintiffs' Exhibit 513 received in evidence.)

14 **THE WITNESS:** May I add my comment to this?

15 **BY MR. BOIES:**

16 **Q.** Usually, people say you've got to wait until your lawyer
17 examines you. But, go ahead, sir.

18 **A.** Okay. I want to explain my reason of writing this.

19 Because when I look at liberal countries in Europe,
20 which have -- or even look north, at Canada, at that time, they
21 have their legal age of consent down to like 14 years old.
22 Some are even down to 13 years old. To me, those is very
23 unacceptable. And that is having sex with children. Or older
24 child having sex with another child.

25 And -- and Canada was a country that legalize

1 same-sex marriage. So the liberal trend, that's what I'm
2 afraid of.

3 **Q.** Have you finished?

4 **A.** Yes.

5 **Q.** Okay. Now, Proposition 8 didn't have anything to do with
6 the age of sexual consent, correct?

7 That's nowhere in the 14 words that you wrote,
8 correct?

9 **A.** Right.

10 **Q.** Now, you could have written it in, but you didn't write it
11 in, right?

12 **A.** I wouldn't write it in.

13 **Q.** No, you didn't write it in.

14 And so the proposition didn't have anything to do
15 with this, did it?

16 **A.** Right.

17 **Q.** Okay. And Canada, after it adopted same-sex marriage, it
18 didn't change the age of consent, did it?

19 **A.** Right.

20 **Q.** And when you talked about these liberal countries in
21 Europe, some of those countries have same-sex marriage and some
22 don't, correct?

23 **A.** Yes.

24 **Q.** And the ones that have adopted same-sex marriage, they
25 haven't changed their age of consent, have they?

1 **A.** That I don't know.

2 **Q.** You don't know. But you don't have any reason to believe
3 that allowing same-sex marriage would affect the age of
4 consent, correct, sir?

5 **A.** Not directly, no.

6 **Q.** Okay. Now, you go on to say that:

7 "If Proposition 8 loses, one by one other
8 states would fall into Satan's hand."

9 Do you see that?

10 **A.** Yes.

11 **Q.** And by falling into Satan's hand, you meant permitting
12 gays and lesbians to marry, correct?

13 **A.** Yes.

14 **MR. BOIES:** Your Honor, I would offer -- I already
15 did offer Plaintiff's --

16 **THE COURT:** 513 is in.

17 **BY MR. BOIES:**

18 **Q.** I would ask you, next, to look at Plaintiffs' Exhibit
19 2507.

20 This is a e-mail from you, dated September 16th,
21 2008. And it is essentially the same as Exhibit 513, that we
22 just looked at, correct? It's dated --

23 **A.** 2507 --

24 **Q.** It's dated later in September, but it's essentially the
25 same, correct?

1 A. 2507, you mean?

2 Q. Yes.

3 A. Yeah.

4 MR. BOIES: Your Honor, we would offer Plaintiffs'
5 Exhibit 2507.

6 THE COURT: 2507 is admitted.

7 (Plaintiffs' Exhibit 2507 received in evidence.)

8 BY MR. BOIES:

9 Q. Let me ask you to look next at Plaintiffs' Exhibit 2343.

10 A. Okay.

11 Q. And this is a translation of a document that was
12 originally in Chinese. And if you look behind the blue
13 divider, you will see the Chinese original.

14 MS. MOSS: Point of clarification, potentially an
15 objection.

16 Mine appears to be -- what I was given appears to be
17 a compilation exhibit, some of which I may well have objections
18 to.

19 But I don't know if you're referring to an individual
20 exhibit or if this is, in fact, the entire exhibit.

21 MR. BOIES: This is the entire exhibit.

22 MS. MOSS: Well, then, I would object, Your Honor.

23 I think several pages within this exhibit are -- some
24 of them appear to -- well, let me make sure.

25 Yeah, some of them appear to relate to articles that

1 were written years before Proposition 8, and do not refer to
2 Proposition 8 at all. So we would object that they're not
3 specifically relevant to this case.

4 And, yeah, at least --

5 **THE COURT:** Proposition 8 is mentioned throughout the
6 exhibit; is it not?

7 **MS. MOSS:** It is. But this is an exhibit that
8 appears to have been put together by plaintiffs, of differing
9 documents that came from different sources. And it was -- I
10 don't believe it was produced this way.

11 And in terms of the individual documents, as I said,
12 each one there may be different. But in terms of the articles
13 that are in here, that do not relate to -- there's Chinese
14 articles that have been translated into English. And at least
15 some of them predate Proposition 8 by many years, and we would
16 contend are not relevant, and would object on those grounds.

17 **THE COURT:** Can you point to an example.

18 **MS. MOSS:** Yes, Your Honor. Page --

19 **MR. BOIES:** Your Honor, just a moment.

20 Counsel, you have the same exhibit, 2199?

21 **MS. MOSS:** Do I have the wrong one?

22 **MR. BOIES:** I'm sorry. That wasn't the exhibit. It
23 was 2343.

24 **MS. MOSS:** Yes. 2343.

25 **MR. BOIES:** Okay.

1 **MS. MOSS:** And it appears -- well, there is a Chinese
2 article -- don't know how many pages into the exhibit it is.
3 The article is entitled "Homosexuality is not Equal Rights."

4 **THE COURT:** Where are you reading?

5 **MS. MOSS:** Well, the actual -- the English
6 translation, I guess, that they are purporting to offer of one
7 article is page one, two, three -- the fourth page in on the
8 back of that page. And the -- the English title that they have
9 translated it to is "The Harm to Children from Same-Sex
10 Marriage."

11 And it -- it appears to have -- it appears to predate
12 Proposition 8, and to be an article that he wrote on the topic,
13 but not specifically to Proposition 8.

14 **THE COURT:** Oh, I see. But this is an article
15 written by the witness?

16 **MS. MOSS:** It appears to be, yes.

17 **THE COURT:** Attached to the documents that reference
18 Proposition 8?

19 **MS. MOSS:** I don't -- I don't know. I think that
20 plaintiffs put together this exhibit. I don't know that it
21 came this way.

22 I don't know that the article was attached to
23 anything that was -- I believe that this is an article that
24 they pulled down off of his website, that is a standalone
25 article; that he has multiple articles on his website, his own

1 personal home -- his own Bill Tam's website, and that there's
2 multiple articles on there.

3 From his deposition, I am aware of this. And this is
4 not a Proposition 8 website. These are -- it's an article that
5 he wrote years ago and has posted on his website.

6 **THE COURT:** Well, I gather this is a document the
7 source of which is the witness.

8 **MS. MOSS:** It is, Your Honor. But, again, we would
9 contend -- we would object.

10 **THE COURT:** Mr. Boies can explore what the document
11 is, and how it came to be put together, and how it was used and
12 all of that.

13 **BY MR. BOIES:**

14 **Q.** Dr. Tam?

15 **A.** Yes.

16 **Q.** The -- does your -- does your exhibit have handwritten
17 pages in the lower right-hand corner?

18 **A.** Handwritten?

19 **Q.** Yeah. Lower right-hand corner. This is Exhibit 2343.

20 **A.** I'm at 2343.

21 **Q.** 2343?

22 **A.** Right. I'm there.

23 **Q.** What?

24 **A.** Yeah, I'm at 2343.

25 **Q.** 2343.

1 A. Right.

2 Q. Now, the first -- the first three pages of this are
3 affidavits of accuracy from the translator. Do you see that?

4 A. Yes.

5 Q. Okay. So let me go to the fourth page of the exhibit. It
6 says, "Why should we support Proposition 8?"

7 Do you see that?

8 A. Yes, right.

9 Q. And is that something that you wrote?

10 A. No.

11 Q. It's not? Is that your testimony?

12 A. Right.

13 Q. All right. Let me --

14 A. This is in reference to -- wait. Wait a minute. Is it
15 referring to this -- this page?

16 Q. Yeah. If you go to the Chinese version --

17 A. Right, right.

18 Q. Do you have that?

19 A. Uhm, yeah. With this, right?

20 Q. Yes.

21 A. Yeah, I did not write this document.

22 Q. You did not write that document?

23 A. No.

24 Q. Do you see in the bottom right-hand corner of the Chinese
25 version?

1 A. Right.

2 Q. What does that say, sir?

3 A. Bottom right-hand corner.

4 Q. Yes. Bottom right-hand --

5 MR. BOIES: May I approach, Your Honor?

6 THE COURT: You may.

7 THE WITNESS: 1man1woman.net --

8 BY MR. BOIES:

9 Q. Yes.

10 A. -- right?

11 Q. Yes.

12 A. Yeah.

13 Q. The organization that you are the secretary of, correct,
14 sir?

15 A. Right.

16 Q. Have you seen this document before?

17 A. Yes, I have. But I did not write it.

18 Q. Who did write it?

19 A. Somebody in charge of that part of the printing and the --
20 and the putting this together.

21 Q. And what was the purpose of putting this together?

22 A. Well, for support of Prop 8.

23 Q. Okay. So this was prepared by the organization that you
24 are a secretary of, to support Proposition 8, correct?

25 A. Right.

1 Q. Okay. Now, let me ask you to look at and go back to the
2 English version for a moment. The portion of this that begins,
3 "The Harm to Children from Same Sex Marriage Tam Hak Sing," do
4 you see that?

5 A. Yes.

6 Q. And this is also a translation from something that was in
7 Chinese, correct?

8 A. Right.

9 Q. And did you write this?

10 A. Yes.

11 Q. And when did you write this?

12 A. I believe in 2004.

13 Q. And what was the purpose of writing it?

14 A. In response to, I think, Mayor Newsom's passing out of the
15 same-sex marriage licenses.

16 Q. So it was in opposition to the 2004 issuance of same-sex
17 marriage licenses?

18 A. Yes.

19 Q. And was this also distributed by 1man1woman.net?

20 A. No.

21 Q. How was this distributed?

22 A. This was a Chinese article I wrote and put onto my
23 website, among 60 other articles, Chinese articles.

24 Q. Now, when you say you put it on your website, what website
25 was that?

1 **A.** Billtam.org.

2 **MR. BOIES:** Your Honor, I would -- I would offer the
3 four pages that we began -- begins, "Why should we support
4 Proposition 8?" as Exhibit 2343A.

5 And then I would offer the remainder of the document,
6 that begins, "The Harm to Children From Same Sex Marriage," as
7 Plaintiffs' Exhibit 2343B.

8 **MS. MOSS:** Your Honor, we would object to both.

9 First, we would object that no foundation was laid
10 that this was distributed or that anybody ever saw this
11 document, the flier. And the second one we would object on the
12 same grounds stated earlier.

13 **THE COURT:** Very well. Objection overruled. 23A
14 and -- I'm sorry. 2343A and 2343B are admitted.

15 (Plaintiffs' Exhibits 2343A and 2343B received in
16 evidence.)

17 **BY MR. BOIES:**

18 **Q.** Now, looking at 2343A, Dr. Tam, the document that begins,
19 "Why should we support Proposition 8?" do you have that?

20 **A.** Yes.

21 **Q.** And you say:

22 "Science proves that homosexuality is a
23 changeable sexual preference."

24 Do you see that?

25 **A.** No. Where -- where?

1 Q. Number 2 says:

2 "Same sex marriage is not a civil right."

3 A. Oh, okay.

4 Q. And do you see the sentence there that says:

5 "Science proves that homosexuality is a
6 changeable sexual preference"?

7 A. Yes, I see that.

8 Q. What science were you referring to?

9 A. I did not write this, okay.

10 Q. Do you know what science is being referred to?

11 A. Yes.

12 Q. You do? Uhm, what -- is that a scientific study?

13 A. Have you heard of Dr. Spitzer? He used to be the -- I
14 think, a very prominent position at APA, who in 1973, he was
15 the one or one of the persons who promote that homosexuality is
16 not a disease, or mental disease, or whatever.

17 Q. Not a medical -- not a disease?

18 A. Right.

19 Q. Right.

20 A. And because of that, what I learn was, homosexuality were
21 taken out of being a medical condition that need to be treated.

22 Q. It was taken out of medical conditions, right?

23 A. Yeah. Becoming not a disease.

24 Q. Not a disease?

25 A. It's just a -- a -- a part of normal behavior.

1 Q. Right. Normal human behavior?

2 A. Yeah, that's what I learned.

3 Q. That's what you learned?

4 A. Right.

5 Q. And you believed that?

6 A. And then -- and then in -- later on, I don't know at what
7 year, the same Dr. Spitzer, produced evidence that some
8 homosexuals did turn back and return to heterosexuality.

9 So that is a very prominent scientist. So that's
10 what I refer to here, that it is a changeable sexual
11 preference; that it is not genetically wired.

12 Q. As you understand it, did Dr. Spitzer say it was not
13 genetically wired?

14 A. No. That's another person. That's --

15 Q. What person is that?

16 A. That's -- that's Francis Collins.

17 Q. Francis Collins?

18 A. Yeah. He's the one who -- well, I read, okay, was the one
19 who mapped the human genome.

20 Q. And he is the one -- and you believe Francis Collins says
21 that sexual orientation can be changed?

22 A. It's not genetically wired.

23 Q. Does Francis Collins, as you understand it, believe that
24 sexual orientation can be changed?

25 A. I think so.

1 Q. Have you seen anything in writing that says that?

2 A. I saw in a website, yeah.

3 Q. What website?

4 A. It's the NARTH website.

5 Q. What?

6 A. NARTH.

7 Q. And do you believe that the NARTH website is a source of
8 objective scientific information?

9 A. Well, I believe in what they say.

10 Q. Now, you mentioned the APA a moment ago.

11 A. Yes.

12 Q. Do you recall that?

13 A. Yes.

14 Q. What's the APA?

15 A. I think it's American Psychological Association.

16 Q. Yes.

17 And what does the American Psychological Association
18 say about sexual orientation?

19 A. I don't know.

20 Q. You don't know?

21 A. I don't know.

22 Q. You never tried to find out?

23 A. No, I don't -- I don't.

24 Q. You thought it was better to get your scientific
25 information about this issue from the NARTH website as opposed

1 to the American Psychological Association. Is that your
2 testimony?

3 **A.** Uhm, yeah, I believe in what NARTH says.

4 **Q.** All right, sir. Let me go back to the -- to the exhibit
5 we were talking about. And let me turn to what you wrote,
6 which is Exhibit 2343B.

7 Now, the second paragraph refers to Mayor Newsom. Do
8 you see that?

9 **A.** Yes.

10 **Q.** It says:

11 "The mayor says homosexuals are minorities
12 and should not be discriminated against."

13 Do you see that?

14 **A.** Yes.

15 **Q.** Now, you would agree that homosexuals are a minority,
16 correct?

17 **A.** I -- I don't believe they are minorities.

18 **Q.** You don't believe they are the minority?

19 **A.** I am a minority.

20 **Q.** You are a minority.

21 What percentage of the population do you think are
22 homosexuals?

23 **A.** My understanding of minority is --

24 **Q.** What percentage of the population --

25 **A.** -- based on skin color.

1 Q. What percentage of the population is homosexual?

2 A. I -- what I read is, about from 2 to 4 percent.

3 Q. 2 to 4 percent?

4 A. Right.

5 Q. Is that a minority, sir?

6 A. In terms of their sexual practice, it is.

7 Q. It is. Okay. So they are a minority.

8 The second thing the mayor says is that this
9 minority, homosexuals, should not be discriminated against. Do
10 you see that?

11 A. Right.

12 Q. Do you agree with that?

13 A. Yes. I agree with that.

14 Q. Okay. So you agree that homosexuals are a minority and
15 should not be discriminated against.

16 Now, the next line of this says:

17 "Homosexuals are not minorities."

18 Do you see that?

19 A. Right.

20 Q. And you wrote that, sir, right?

21 A. Uhm, yes.

22 Let me look back at my Chinese, first, okay.

23 Q. Okay.

24 A. Because this is translation.

25 Q. Okay.

1 **A.** All right. Now, in the Chinese what I wrote is translated
2 into English it should be more accurately to be stated that
3 homosexuals is -- are not a racial minority.

4 **Q.** Not a racial minority?

5 **A.** Right.

6 **Q.** So what you're saying is, the Chinese writing, contrary to
7 this translation, really says homosexuals are not racial
8 minorities. Is that right?

9 **A.** Right. The word "racial" is not put into the English
10 here.

11 **Q.** But it is in the Chinese?

12 **A.** Yes.

13 **MR. BOIES:** Your Honor, so the record is clear, we
14 will mark the Chinese version as 2343C. And we would offer
15 that.

16 **THE COURT:** Very well.

17 (Plaintiffs' Exhibit 2343C received in evidence.)

18 **BY MR. BOIES:**

19 **Q.** Let me ask you to turn to Exhibit 537.

20 **A.** I don't have a 537.

21 **Q.** Don't have 537?

22 **THE COURT:** 2537 or 537?

23 **MR. BOIES:** 537. I apologize, Your Honor. I'll come
24 back to that, if you don't have it in the book.

25

1 **BY MR. BOIES:**

2 **Q.** Let me ask you, do you have Exhibit 515?

3 **MR. TERRY THOMPSON:** We don't have it either.

4 **THE WITNESS:** Yes, I have 515.

5 **MR. TERRY THOMPSON:** Right here.

6 **BY MR. BOIES:**

7 **Q.** This is a article that appeared October 15th, 2008, in the
8 *San Jose Mercury News*, correct, sir?

9 **A.** Yes.

10 **Q.** And if you turn to the second page of the article, the
11 next to the last paragraph, there is a quotation attributed to
12 you, correct, sir?

13 **A.** Yes.

14 **Q.** And that was, in fact, what you said, correct, sir?

15 **A.** Yes.

16 **Q.** And what you said was, quote:

17 "We hope to convince Asian Americans that gay
18 marriage will encourage more children to
19 experiment with the gay lifestyle, and that
20 that lifestyle comes with all kinds of
21 disease."

22 Do you see that?

23 **A.** Yes.

24 **Q.** And this was part of your campaign to convince voters to
25 adopt Proposition 8, correct?

1 A. Yes.

2 Q. Now, do you have Exhibit 2601 in your book?

3 A. All right.

4 THE COURT: Are you moving in 515?

5 MR. BOIES: No, Your Honor.

6 THE COURT: What's that?

7 MR. BOIES: No.

8 THE COURT: All right.

9 MR. BOIES: I'm happy to if defendants' counsel wants
10 me to. But that was the only paragraph I was interested in.

11 BY MR. BOIES:

12 Q. Do you have Exhibit 2601?

13 A. Yes, I'm there.

14 Q. And the first pages are 2601A, correct?

15 A. I'm at 2601.

16 Q. And does the Exhibit number have an A there?

17 A. No.

18 MR. BOIES: May I approach, Your Honor?

19 THE COURT: Yes, you may.

20 THE WITNESS: Oh, okay.

21 BY MR. BOIES:

22 Q. And Exhibit 2601A bears the document production numbers
23 TAM_PM_4313 through 4314, correct?

24 A. Yes.

25 Q. And can you identify this document?

- 1 A. This is a document I received from medical doctor.
- 2 Q. What medical doctor?
- 3 A. You mean his specialty?
- 4 Q. Or just who it was.
- 5 A. Oh. From Dr. Lau. Lau Huang Chi.
- 6 Q. What was the purpose of this?
- 7 A. He send me a article that he wrote.
- 8 Q. And is the article attached here?
- 9 A. That's the article.
- 10 Q. Okay. Now, look at what has been marked as 2601B, which
- 11 bears the document production numbers TAM_PM_4315 through 4317.
- 12 A. Okay.
- 13 Q. And can you identify that document?
- 14 A. Yes.
- 15 Q. What is that?
- 16 A. Uhm, that's another article he wrote.
- 17 Q. Okay. Now, go to Exhibit 2601C, that bears document
- 18 production numbers TAM_PM_4318 through 4320.
- 19 A. Yes.
- 20 Q. And can you identify that document?
- 21 A. Seems to be a translation. Oh, wait. Let's see.
- 22 Yeah, it seems to be a translation of 2601-B.
- 23 Q. So this is a translation of 2601-B?
- 24 A. Uh-huh.
- 25 Q. And this is a translation that had you had in your files,

1 correct, sir?

2 **A.** In my file?

3 **Q.** Yes. This was produced to us. We didn't make this
4 translation. You produced this translation to us, correct?

5 **A.** Could be. I don't remember. Actually, I did not really
6 read this article.

7 **Q.** Okay. It is headed "Reasons Why We Do Not Support
8 Same-Sex Marriage;" do you see that?

9 **A.** Right.

10 **Q.** And it says "Presence Ministry," do you see that?

11 **A.** Right.

12 **Q.** What is Presence Ministry?

13 **A.** It's the Chinese Christian organization in L.A.

14 **Q.** Do I take it from what you have said before that you don't
15 have any connection with that organization?

16 **A.** No.

17 **Q.** You do not have any connection, correct?

18 **A.** Well, I -- I know the president and I went to one of their
19 conferences. That's my connection.

20 **Q.** That's your only connection with them, right?

21 **A.** Right, right. I was a guest there.

22 **Q.** Let me ask you to look next at Exhibit 2187.

23 **A.** Okay.

24 **Q.** And this is a flier for an open air rally, correct?

25 **A.** Right.

1 Q. And this was a rally that Mr. Prentice participated in,
2 correct?

3 A. Yes.

4 Q. And this was a rally organized by you, correct?

5 A. I had a part in it. It is organized by lmanlwoman.net.

6 Q. And beyond that, one of the sponsors is your Traditional
7 Family Coalition, correct?

8 A. Right.

9 Q. And one of the co-sponsors was ProtectMarriage.com,
10 correct?

11 A. Oh, okay. Yeah.

12 MR. BOIES: Your Honor, I would offer Exhibit 2187.

13 THE COURT: Very well. 2187 is admitted.

14 (Plaintiffs' Exhibit 2187 received in evidence.)

15 BY MR. BOIES:

16 Q. And this was a rally that was part of the campaign that
17 you and ProtectMarriage.com was waging to adopt Proposition 8,
18 correct?

19 A. Yes.

20 Q. And if you look at the third paragraph -- third sentence
21 of the first paragraph, you say:

22 "It is time the church rise up against the
23 forces of evil that are destroying families
24 and young souls."

25 Do you see that?

1 A. Yes.

2 Q. What are the forces of evil that you are referring to?

3 A. I did not write this, so I'm not referring to anything.

4 Q. Who wrote this, sir?

5 A. I don't know.

6 Q. Well, you saw it at the time, didn't you?

7 A. I'm not very familiar with this document.

8 Q. Isn't it a fact, sir, that you were the one that asked
9 Mr. Prentice to attend this rally?

10 A. Yes.

11 Q. And is it your testimony that you didn't see this at the
12 time?

13 A. No. Because there were many people working in preparing
14 these rallies.

15 As I said, my role in this organization is pretty
16 small because I have my own organization to deal with. So a
17 lot of their documents I haven't had a chance to read, not to
18 mention, you know, to comment on it.

19 Q. Your organization is the Traditional Family Coalition,
20 correct?

21 A. That's right.

22 Q. And that was one of the sponsors of this rally, right?

23 A. Yeah, right.

24 Q. And you were the one that asked Mr. Prentice to attend,
25 correct?

1 **A.** That's correct.

2 **Q.** Who asked the other people to attend?

3 **A.** Their other leaders in their organization, they asked the
4 other speakers to attend.

5 **Q.** Who did? Who asked them?

6 **A.** The chairman.

7 **Q.** The chairman of what?

8 **A.** Of that organization.

9 **Q.** Did you play any role in getting these people there, sir?

10 **A.** No. I didn't know Tony Perkins. I didn't know these
11 speakers. All I know was Ron Prentice.

12 **Q.** If you didn't know any of the speakers, why did you ask
13 Mr. Prentice to attend?

14 **A.** Mr. Prentice was the CEO of California Family Council.

15 **Q.** And if you didn't know the speakers, why were you asking
16 anybody to attend? What was your role here?

17 **A.** My role was very small. I asked Ron Prentice because I
18 knew him, but I didn't know Tony Perkins. I didn't know
19 Won-Bae Son. I didn't know David -- I cannot pronounce his
20 name.

21 **Q.** Did you attend this rally, sir?

22 **A.** Yeah, I attended it.

23 **Q.** You attended it.

24 **A.** Yeah, but I did not speak there.

25 **Q.** Did you meet the people that were speaking?

1 A. Yeah, I meet them.

2 Q. You met them?

3 A. Right.

4 Q. You met Tony Perkins and the others?

5 A. Yeah, I admit them.

6 Q. But it was your testimony --

7 A. But I was not even allowed to speak there. So you see how
8 small a role I was.

9 Q. They told you you couldn't speak?

10 A. Right.

11 Q. Did they tell you why you couldn't speak?

12 A. Pardon me?

13 Q. Did they tell you why you couldn't speak?

14 A. Well, we have other speakers there.

15 Q. Let me ask you --

16 MR. BOIES: Your Honor, I would offer Exhibit 2187?

17 THE COURT: Very well. 2187 is admitted.

18 (Plaintiffs' Exhibit 2187 received in evidence.)

19 BY MR. BOIES:

20 Q. And just to be clear, Dr. Tam --

21 A. Yes.

22 Q. (Continuing) -- it was your testimony that before today
23 you had never seen this flier, is that true?

24 A. This flier?

25 Q. Yeah.

1 **A.** It might have in front of my eyes, but I --

2 **Q.** You don't remember anything?

3 **A.** I don't remember the content or, you know, something like
4 this could have passed by my desk, but there are so many
5 documents that pass by. Some I did not pay attention to, and
6 this is one of those.

7 **Q.** Well, let me show you another document and see if you paid
8 attention to this one. Look at Plaintiffs' Exhibit 2595.

9 **A.** All right.

10 **Q.** No. Excuse me, Dr. Tam. I think there is another
11 document I would like to have you look at.

12 Look at Plaintiff's Exhibit 2204.

13 **A.** Okay.

14 **Q.** Now, you remember telling me a moment ago in connection
15 with Exhibit 2187 that you didn't remember this and didn't
16 have -- just played a small role. All you did was get Mr.
17 Prentice there. Do you remember telling me that?

18 **A.** Yes.

19 **Q.** Now, would you look at Exhibit 2204 and tell me what that
20 is?

21 **A.** This is a press invitation to attend that rally in
22 Cupertino.

23 **Q.** Exactly. It's the same rally, isn't it, sir?

24 **A.** Yes.

25 **Q.** And who is sending out this press invitation?

1 A. I did.

2 Q. You did?

3 A. Right.

4 Q. And this press invitation says that you were one of the
5 two contacts for the rally, correct, sir?

6 A. Right.

7 Q. Now, does that refresh your recollection that you were
8 more involved in this than you said before?

9 A. Well, this is -- I am one of the contacts, and it is sent
10 out with our stationery; that is because I have more contact
11 with the Chinese press. So using our stationery to invite them
12 may get more attendance.

13 Q. This press invitation didn't go out without your
14 knowledge, did it, sir?

15 A. Oh, I know about it.

16 Q. You knew about it?

17 A. Yeah, of course.

18 Q. Right. Sure.

19 A. Yeah.

20 Q. In fact, if you turn to Plaintiffs' Exhibit 2203?

21 A. Yes.

22 Q. You personally sent out an email --

23 A. Yes.

24 Q. (Continuing) -- about this rally, right?

25 A. Uh-huh.

1 Q. And Exhibit 2203 is that email, correct?

2 A. Uh-huh, yes.

3 Q. And you are inviting people to the rally, correct?

4 A. Yes.

5 Q. And telling people who your speakers are?

6 A. Yes.

7 Q. Despite the fact that you claim that you didn't know the
8 speakers, is that your testimony?

9 A. Yeah. That's true. I didn't know some of the speakers.

10 MR. BOIES: Your Honor, I would offer Exhibits 2204
11 and 2203.

12 THE COURT: Are you offering 2595 as well?

13 MR. BOIES: I'm also offering 2595.

14 THE COURT: Very well. They will be admitted.

15 (Plaintiffs' Exhibits 2203, 2204 and 2595 received in
16 evidence.)

17 BY MR. BOIES:

18 Q. Now, Dr. Tam, would you turn to Exhibit 2595?

19 A. Okay.

20 Q. And can you identify what this document is?

21 A. Yes. I know of this.

22 Q. You know of this document?

23 A. Yes.

24 Q. How do you know of this document?

25 A. Because this is one of the -- this is the English version

1 of the Chinese fliers they put out for Prop 8.

2 Q. When you say "they" put out, who is the "they"?

3 A. The team that is lmanlwoman.net that takes care of the --
4 this promotional fliers. They have a team to do it.

5 Q. You have a team that does that?

6 A. Yeah.

7 Q. And did you see this flier at the time it went out?

8 A. Yes.

9 Q. And this was something that you were putting out in order
10 to convince people to vote for Proposition 8, correct?

11 A. Uh-huh. Yes.

12 Q. And the last bullet on the first page said that:

13 "Proposition 8 protects against social moral
14 decay."

15 Do you see that?

16 A. Yes.

17 Q. What is the "social moral decay" that's being referred to
18 there?

19 A. Well, from the Christian angle, homosexuality or the sex
20 between two person of the same sex is a sin.

21 Q. And what you were saying is Proposition 8 protects against
22 homosexuality because it's a sin; is that what you are saying?

23 A. No. I think what they mean is if --

24 Q. You say "they," who is "they"?

25 A. The persons who wrote this. And, of course, I know about

1 this and I agree with this, too, okay? So you can say that me,
2 okay?

3 Q. So you, exactly?

4 A. All right.

5 Q. So the "they" is you?

6 A. Yeah.

7 Q. All right.

8 A. "They" is not me. Okay. I agree with what they say here,
9 that is what I'm saying.

10 Q. Yes.

11 A. Social moral decay, what it means -- what mean is if
12 same-sex marriage is legal, it would encourage children to
13 explore same sex as their future marriage partner.

14 And from the both Asian cultural and, also, from our
15 Christian angle, we think this is social moral decay.

16 Q. And on the second page, 1man1woman.net is a little more
17 specific about what social moral decay is, correct?

18 A. Uh-huh.

19 Q. Is that a "yes"?

20 A. Yes.

21 Q. And under number two where it says, "Same-sex marriage is
22 not a civil right," the last sentence says:

23 "If sexual orientation is characterized as a
24 civil right, then so would pedophilia,
25 polygamy and incest."

1 Do you see that, sir?

2 **A.** Uh-huh, yes.

3 **Q.** Do you agree with that, sir?

4 **A.** Yes, I agree.

5 **Q.** And that's what you were tell people in order to convince
6 them to vote for Proposition 8, correct?

7 **A.** Yes.

8 **Q.** Let me go down to point four where you say that:

9 "Countries that legalized same-sex marriage
10 saw alarming moral decline."

11 Do you see that?

12 **A.** Yes.

13 **Q.** And you say:

14 "Netherlands legalized same-sex marriage in
15 2001, and to date incest and polygamy became
16 legal."

17 Do you see that?

18 **A.** Yes.

19 **Q.** Now, did you agree with that, sir?

20 **A.** Yes.

21 **Q.** You believe that after Netherlands legalized same-sex
22 marriage, the Netherlands went on after that to legalize incest
23 and polygamy?

24 **A.** It says here "to date." It does not say something caused
25 the other to happen. However, it shows the moral decay of a

1 liberal country in their views of sex.

2 **Q.** You are saying here that after same-sex marriage was
3 legalized, the Netherlands legalized incest and polygamy.

4 Whether that was causal or not, you're saying that's
5 what happened after same sex was legalized, correct, same-sex
6 marriage?

7 **A.** Yeah, look at the date. It's -- polygamy happens
8 afterwards.

9 **Q.** Who told you that, sir? Where did you get that idea?

10 **A.** It's in the internet.

11 **Q.** In the internet?

12 **A.** Yeah.

13 **Q.** Somewhere out in the internet it says that the Netherlands
14 legalized incest and polygamy in 2005?

15 **A.** Frankly, I did not write this, all right? Polygamy was
16 legalized in 2005. Another person in the organization found it
17 and he showed me that.

18 **Q.** And you just put it out there to convince voters to vote
19 for Proposition 8?

20 **A.** Well, I -- I look at the document and I think that was
21 true.

22 **Q.** Did you ever look up what the law was in the Netherlands
23 or ask anybody to do that?

24 **A.** Yes. There is -- there are different documents out there
25 that shows that was true.

1 Q. And when you say "that was true," what you are saying is
2 that after the Netherlands legalized same-sex marriage, the
3 Netherlands legalized incest and polygamy; is that what you are
4 saying?

5 A. I don't know if incest, but polygamy --

6 Q. It says "incest" here. Do you see it?

7 A. Yeah, it says here, "incest." It's there. But it does
8 not say whether -- when it was legalized, okay?

9 Q. So what you are saying is they may have had incest before
10 same-sex marriage?

11 A. They might.

12 Q. In fact, if that was the case, same-sex marriage couldn't
13 have had anything to do with the incest, right?

14 A. Right. It does not say that same-sex marriage causes
15 incest. It does not say in this document.

16 Q. Well, if you --

17 A. It just show when a country is so liberal in their law
18 regarding sex between people --

19 Q. But you have said you support civil unions and domestic
20 partnerships. You told me that right at the beginning,
21 remember?

22 A. Uh-huh.

23 Q. And that's still your testimony, right?

24 A. Yes.

25 Q. Now, you say here:

1 "Sweden accepted same-sex unions in 1994.

2 Today siblings can legally marry.

3 Traditional marriage is no longer valued."

4 Do you see that?

5 **A.** Yes.

6 **Q.** Now, those unions were civil unions. They weren't

7 marriage; correct, sir?

8 **A.** Yeah. Right.

9 **Q.** Right. So any problem that was here, was coming not from
10 marriage, but from the civil unions that you say you support,
11 correct?

12 **A.** Well, I said I support domestic partnership. I didn't say
13 about civil union.

14 **Q.** You don't remember me asking you about civil unions just
15 like two minutes ago?

16 **A.** Oh, well. I'm sorry. I -- I don't know how to look at
17 civil union really. So, but I support domestic partnerships.

18 **Q.** What's the difference between a domestic partnership and a
19 civil union?

20 **A.** I don't really know, but it seems like it's more closer to
21 marriage, the union, civil union.

22 **Q.** Because of the name?

23 **A.** Yeah, because of the name.

24 **Q.** Because of anything other than the name?

25 **A.** I haven't gone in to study about it.

1 Q. But you know the domestic partnerships are the same as
2 marriage, except for the name, right?

3 A. Yeah. That's what I learned.

4 Q. And you support domestic partnerships?

5 A. Uh-huh.

6 Q. But you think that just changing the name of domestic
7 partnerships to marriage will have this enormous moral decay,
8 right?

9 A. Yes.

10 Q. Will bring on incest and polygamy, right? And pedophilia,
11 correct?

12 A. Well, how would you --

13 Q. I'm just asking you the question, sir.

14 A. Okay. I believe that if the term "marriage" can be used
15 beyond one man and one woman, then any two person of any age or
16 of any relationships can use the same argument and come and ask
17 for the term "marriage." That would lead to incest. That
18 would lead to polygamy.

19 I mean, if -- if this is a -- if this is a civil
20 right, what would prevent the other groups not to use the same
21 argument and come and ask for the name "marriage"?

22 Q. Dr. Tam, right now can two people of any age or any
23 relationship become domestic partners? Can a brother and
24 sister become domestic partners?

25 A. I don't think so.

1 Q. No, I don't think so either.

2 And a man and a ten-year-old girl could not become
3 domestic partners, correct?

4 A. Uh-huh.

5 Q. Right?

6 A. Right.

7 Q. Okay. So you don't have to allow people of all ages and
8 all relationships to enter into domestic partnerships, correct?

9 A. I agree --

10 Q. But on --

11 A. Would you repeat that again?

12 Q. Sure. Domestic partnerships are limited to people of a
13 certain age and they exclude people of a certain relationship,
14 like brothers and sisters, correct?

15 A. Okay. Yeah.

16 Q. And you know that, right?

17 A. That's why I support it.

18 Q. And just the fact that they have offered domestic
19 partnerships to gays and lesbians has not led them to offer
20 domestic partnerships to underage children or brothers and
21 sisters, correct?

22 A. Oh, okay. Now I understand your logic.

23 Q. You see where I'm going?

24 A. Uh-huh.

25 Q. Yeah.

1 **A.** All right. Well, the logic is good.

2 **Q.** The logic is pretty good, isn't it?

3 (Laughter.)

4 **Q.** Yeah, the logic, hmm.

5 **A.** Yeah, the logic is good, but when you look at some
6 European countries, then you see something like this.

7 Now, for example, the age of consent. For me, I
8 don't care whether it is same sex or different sex. For me,
9 it's a moral decay. If a country allows two people of
10 13-year-old plus one day to have sex legally, to me, it is
11 moral decay.

12 **Q.** But, Dr. Tam, is it your position that because we change
13 the name, just the name -- everything else you said is the
14 same. We change the name of "domestic partnerships" to
15 "marriage," all of a sudden we are going to begin to have sex
16 with 13-year-old girls?

17 **A.** No, I'm not saying that. I'm not saying that. Because
18 the name of "marriage" is so important, especially for us
19 parents to teach our kid kids, all right? That if the name of
20 "marriage" is not so narrow, which is between people of
21 different -- different blood, of different -- of age above 18,
22 then our children -- you know, I always, we always look at
23 things from the angle of a parent -- that they would fantasize.
24 Everyone fantasize whom they will marry when they grow up.

25 So children will fantasize about marrying either a

1 man or a woman. And to us parents -- you may say that I'm a
2 paranoid Chinese parent -- we get very, very upset about that.

3 However, if "domestic partner" is defined as it is
4 now, then we can explain to our children that, yeah, there are
5 some same-sex person wants to have a lifetime together as
6 committed partners, and that is called "domestic partner," but
7 it is not "marriage." Then we have something that is very easy
8 for our children to understand.

9 But if you mix up marriages as different kind of
10 sexes, then to us, as parents, we are -- I have parents coming
11 to me and ask me, you know, what to do about this.

12 **Q.** Are you finished?

13 **A.** Yes.

14 **Q.** Okay. You agree that just because you allow gays and
15 lesbians to marry, that does not necessarily mean that you have
16 to let brothers and sisters marry, correct?

17 **A.** Right.

18 **Q.** And you agree that just because you allow gays and
19 lesbians to marry, you don't have to allow people to have sex
20 with children, correct?

21 **A.** Right.

22 **Q.** That's up to what the people and the legislature decides,
23 correct?

24 **A.** (No verbal response.)

25 **Q.** You have got to say "yes," Doctor, not just nod your head.

1 A. Yes.

2 Q. The -- it's also true that you realize that it's important
3 to gays and lesbians that they be able to marry, correct?
4 That's important to them, right?

5 A. Uh-huh.

6 Q. You have got to say "yes."

7 A. Yes.

8 Q. And, you know, just as your children are benefited from
9 you and your wife being married, the children of gays and
10 lesbians would be benefited if their parents were married,
11 correct?

12 A. No.

13 Q. No? If you -- you don't think children want their parents
14 to be married?

15 (Brief pause.)

16 A. I don't know what you are trying to get at.

17 Q. What I'm trying to get at, and I will be really clear, is
18 that children of gays and lesbians want their parents to be
19 married, just like children of heterosexual couples want their
20 parents to be married, because the word "marriage" means
21 something, correct?

22 You may think they shouldn't have it --

23 A. Yes.

24 Q. (Continuing) -- okay? You may think they shouldn't have
25 it for all sorts of reasons, but you recognize that that's

1 important to those children, correct?

2 **A.** Yes. Okay.

3 **Q.** Let me turn to another subject. Let me ask you to look at
4 Exhibit 2633.

5 (Witness complied.)

6 **Q.** And can you identify what this is, sir?

7 **A.** Yes.

8 **Q.** What is it?

9 **A.** That's an email that I received from Andy Pugno about the
10 Statement of Unity.

11 **Q.** And the second page of the exhibit, the page that bears
12 the document production stamp TAM_PM_6668, is a Statement of
13 Unity; correct, sir?

14 **A.** Yes.

15 **Q.** And this was a Statement of Unity with respect to the
16 Proposition 8 campaign, correct?

17 **A.** Yes.

18 **Q.** And it is headed ProtectMarriage.com, correct?

19 **A.** Yes.

20 **Q.** And at the bottom you say:

21 "I, and the organization I represent, join in
22 the foregoing statement of unity."

23 Correct?

24 **A.** Yes.

25 **Q.** And you signed it, correct?

1 A. Yes.

2 Q. On behalf of yourself and on behalf of the Traditional
3 Family Coalition, correct?

4 A. Yes.

5 Q. And this Statement of Unity that you say you agree to in
6 the second line says:

7 "Victory depends on the mutual commitment of
8 each coalition partner to work in the service
9 of a unified campaign."

10 Do you see that?

11 A. Which paragraph?

12 Q. The very first paragraph, the second line --

13 A. Oh, okay. Yeah, I see that.

14 Q. And you agreed to that, correct?

15 A. Yes.

16 Q. You agreed to work in the service of a unified campaign
17 with ProtectMarriage.com, correct?

18 A. Yes.

19 Q. And going to the second paragraph, you agreed that:

20 "Multiple campaign committees, independent
21 strategies for public messaging, and personal
22 use of the marriage amendment to raise funds
23 or increase membership are counterproductive
24 and increase the likelihood of defeat."

25 Correct?

1 A. Yes.

2 Q. And you agreed that you would not have independent
3 strategies for public messaging, correct, sir?

4 A. Yes. But later on I forgot about this document and I made
5 some independent statements, I believe, not aligned with
6 ProtectMarriage.com and not following the directions of this
7 document.

8 Q. Well, sir, you consider yourself an honest person, don't
9 you?

10 A. Yes.

11 Q. And you wouldn't sign something you didn't believe, would
12 you?

13 A. Right. Yeah. I wouldn't sign it if I don't believe.

14 Q. And when you sign something and make a commitment, you
15 take that commitment seriously, don't you, sir?

16 A. Yes.

17 Q. Now, one of the things that you committed here, number
18 two, do you see this -- the heading "Message Discipline"?

19 A. Uh-huh.

20 Q. You agreed that:

21 "Public communications by coalition partners
22 in support of the marriage amendment must be
23 approved by the campaign manager for
24 strategic message discipline."

25 Do you see that, sir?

1 A. Yes.

2 Q. And you agreed to that, didn't you, sir?

3 A. Yes. At that time, yes, but later on I -- I admit that I
4 violated this, this message principle.

5 Q. Well, let's explore that. This was signed in July of
6 2008, correct?

7 A. Oh, okay. Yeah.

8 Q. Right?

9 A. Yes.

10 Q. So up to that point you had message discipline, correct?

11 A. I think so.

12 Q. And you didn't start violating this pledge the next day,
13 did you?

14 A. I don't know when.

15 Q. You don't know when?

16 A. Right.

17 Q. When do you think you started violating this pledge?

18 A. Frankly, I don't remember. I don't know.

19 Q. What did you say that violated this pledge?

20 A. I think in, like, what I told the *Mercury, San Jose*
21 *Mercury News* about homosexuality leads to all kinds of
22 diseases. I think I said that. By saying that I might
23 violated the principle.

24 Q. Now, that was published in the *Mercury News*, right?

25 A. Yes.

1 Q. That wasn't something that was hidden. That was right out
2 there in the public, right?

3 A. Right.

4 Q. Did anybody from ProtectMarriage.com come and tell you you
5 shouldn't have said that?

6 A. Yes.

7 Q. Who said that? Who told you that?

8 A. I forgot his name, but one person called me and said that
9 you shouldn't have said that.

10 Q. Is that in writing anywhere, any record of that?

11 A. No.

12 Q. Do you remember the name --

13 A. That was Mr. White. I think Mr. White. Yeah, something
14 like that, Mr. White.

15 Q. Something like Mr. White?

16 A. Yeah.

17 Q. But you didn't get in it writing or anything?

18 A. I don't remember.

19 Q. When they had you sign the pledge, they had you do it in
20 writing, right?

21 A. Uh-huh.

22 Q. Right?

23 (No response.)

24 Q. You have to answer audibly, so the court reporter can take
25 it down.

1 A. Yes.

2 Q. But here, this supposed statement that Mr. White or
3 somebody told you, was never written down, was never in an
4 email, you never made a note of it, they never recorded it in
5 any way; is that your testimony?

6 A. Uh-huh. Yes.

7 Q. Now, this interview in the *San Jose Mercury News* was
8 October 15, 2008.

9 Did you violate this pledge any other time?

10 A. Yeah, I think -- yeah.

11 Q. When Mr. White came to you and said, "Mr. Tam, you are
12 violating your pledge." Did you say, "Oh, I'm sorry. I won't
13 do that any more"?

14 A. Let's see. That was in October.

15 Q. Yeah.

16 A. That happened in October. Yeah, after October I think I
17 haven't -- I haven't said anything to violate this. I try to
18 keep my mouth shut.

19 Q. So the only time that you say you violated this pledge was
20 the *San Jose Mercury News*?

21 A. No, there is another time.

22 Q. What was that other time?

23 A. I think that time was when I spoke to a Chinese newspaper
24 reporter.

25 Q. And what did you tell that Chinese newspaper reporter?

1 **A.** I mentioned something about what you had probed me before
2 about the sibling marriage. And that happened in September,
3 sometime in September.

4 **Q.** Did anybody from ProtectMarriage.com tell you -- come to
5 you after that and say you shouldn't be talking about what's
6 happening in other countries?

7 **A.** No, because there was a Chinese newspaper reporter and I
8 don't think they read that.

9 **Q.** Let me go back to one of the exhibit we looked at before,
10 exhibit 2199.

11 **A.** Okay.

12 **Q.** You know, this is, you know, where your lmanlwoman.net
13 website said that homosexuality is linked to pedophilia and
14 homosexuals are 12 times more likely to molest children.

15 Do you remember that?

16 **A.** Uh-huh. Yes.

17 **Q.** Did anyone from ProtectMarriage.com come and tell you you
18 ought to take that off your website?

19 **A.** No, they didn't. Because if I remember correctly, this
20 website or this part of the website was established in 2009.
21 It was way after Prop 8 was passed.

22 **Q.** Dr. Tam, let me ask you to look at Plaintiffs' Exhibit
23 2595?

24 **A.** 2595?

25 **Q.** Yes.

1 **THE COURT:** 2595?

2 **MR. BOIES:** Yes. I think we offered that earlier.

3 **THE COURT:** 2595 is in.

4 **BY MR. BOIES:**

5 **Q.** Now, this is clearly before the November, 2008 election,
6 right.

7 **A.** Oh, yes. This is.

8 **Q.** And it's something from the 1man1woman.net website,
9 correct, sir?

10 **A.** Right.

11 **Q.** So this website was in operation during the campaign,
12 correct, sir?

13 **A.** Oh, yeah, it is.

14 (Brief pause.)

15 **A.** But this website does not belong to Traditional Family
16 Coalition, and only Traditional Family Coalition signed that
17 pledge with ProtectMarriage.com. 1man1woman.net never signed
18 anything with them.

19 **Q.** Let me try to unpack that, okay.

20 What you are saying is that this wasn't a violation
21 of the pledge, because 1man1woman.net had never signed the
22 pledge, right? That's what you are saying?

23 **A.** Right.

24 **Q.** Okay. I'm focusing on a different question?

25 **A.** Okay.

1 Q. lmanlwoman.net was a website that was up and running
2 during the campaign for Proposition 8, correct?

3 A. Right.

4 Q. Okay.

5 A. But those information, this particular page that you
6 pointed at, I remember was not up there --

7 Q. You remember that?

8 A. (Continuing) -- during the campaign.

9 Q. You remember that?

10 A. Yeah.

11 Q. Sir, if I represented to you that a prior witness has
12 testified that she saw this during the campaign, would that
13 refresh your recollection?

14 A. Maybe she saw the lmanlwoman.net --

15 Q. No. Saw this one about homosexuality and pedophilia link,
16 and homosexuals are 12 times more likely to molest children.
17 Saw this particular page during the election.

18 Would that refresh your recollection, sir?

19 A. I don't know. Maybe, maybe it is. But then -- well, I
20 cannot remember correctly when, okay, but that's what I
21 thought. That's what I thought.

22 Q. Now, ProtectMarriage.com was well aware of the
23 lmanlwoman.net website, correct, sir?

24 A. That I don't know.

25 Q. You don't know. Well, for example, go to Plaintiffs'

1 Exhibit 2204.

2 **A.** Okay.

3 **Q.** This is your press invitation for the rally?

4 **A.** Uh-huh. Yeah.

5 **Q.** That Ron Prentice spoke at?

6 **A.** Yes.

7 **Q.** And do you see what the website is?

8 **A.** Yes.

9 **Q.** What is it?

10 **A.** lmanlwoman.net.

11 **Q.** And if you look at 2595, that flier that went out?

12 **A.** Yes.

13 **Q.** And that refers to lmanlwoman.net, correct?

14 **A.** Right.

15 **Q.** And if you go to Plaintiffs' Exhibit 2187, the flier for
16 the open air rally, that's headed "Restore Marriage, Protect
17 Children;" do you see that?

18 **A.** Yes.

19 **Q.** Again, with Mr. Prentice speaking; do you see that?

20 **A.** Right.

21 **Q.** A co-sponsor is listed as ProtectMarriage.com, correct?

22 **A.** Yes.

23 **Q.** And right at the top it's lmanlwoman.net, correct?

24 **A.** Right.

25 **Q.** Now, does that refresh your recollection that the

1 ProtectMarriage.com people were well aware of lmanlwoman.net?

2 **MS. MOSS:** Objection, your Honor. Calls for
3 speculation.

4 **THE COURT:** Objection overruled.

5 **A.** Well, I'm not -- I'm not ProtectMarriage.com. So you can
6 infer that they know.

7 **BY MR. BOIES:**

8 **Q.** Well, let's see if we can do more than infer. Let's look
9 at Plaintiffs' Exhibit 2599.

10 Now, this is a document that is sent out August 22,
11 2008, correct?

12 **A.** August 22, yes.

13 **Q.** And it is sent from Mr. Schubert's firm, correct?

14 **A.** Uh-huh. Yes.

15 **Q.** And, again, for the record, what was Mr. Schubert's firm's
16 responsibility here?

17 **A.** To run the campaign.

18 **Q.** Yes, to run the campaign.

19 And he sends this to a variety of people, a number of
20 whom have been redacted, but among the people that have not
21 been redacted are you; correct, sir?

22 **A.** Yes.

23 **Q.** And ProtectMarriage.com, correct?

24 **A.** Yes.

25 **Q.** And CatholicExchange.com, correct?

1 A. Yes.

2 Q. And CaliforniaFamily.org, right? Do you see that?

3 A. Yes.

4 Q. And a number of other people and organizations, correct?

5 A. Right.

6 Q. It says:

7 "Attached are the Project Marriage weekly
8 grassroots meeting minutes from yesterday."

9 A. Yes.

10 Q. Did you attend Project Marriage weekly grassroots meetings?

11 A. Yes.

12 Q. And who else attended those meetings?

13 A. I remember leaders of different grassroots teams.

14 Q. And what grassroots team were you the leader of?

15 A. Asian American.

16 Q. Now, would you look at page three of this document, the
17 page that has the document production stamp TAM_PM_5429?

18 A. Yes.

19 Q. And do you see the third bullet there at the top of the
20 page?

21 A. Yes.

22 Q. And would you read what that says in these Project
23 Marriage weekly grassroots meeting minutes --

24 A. Okay.

25 Q. (Continuing) -- of all of the team leaders for the

1 Proposition 8 campaign distributed by the people running the
2 campaign; what does that say, sir?

3 **A.** You mean, the third bullet point?

4 **Q.** Yes, sir.

5 **A.** "A website is up: lmanlwoman.com."

6 **MR. BOIES:** Your Honor, I have no more questions.

7 **THE COURT:** Very well. Mr. Thompson, do you have any
8 examination?

9 **MR. THOMPSON:** No cross-examination, your Honor.

10 **THE COURT:** Very well.

11 Ms. Moss, on behalf of the other defendants?

12 **CROSS EXAMINATION**

13 **BY MS. MOSS:**

14 **Q.** Good afternoon, Dr. Tam.

15 **MS. MOSS:** Your Honor, may I approach the witness?

16 **THE COURT:** Very well.

17 (Whereupon, binders were tendered to
18 the Court, the witness and counsel.)

19 **BY MS. MOSS:**

20 **Q.** Dr. Tam, I would like to take you back a bit it to the
21 petition phase of the campaign.

22 And by "petition phase," I'm referring to the time
23 before Prop 8 qualified for the ballot, had gathered enough
24 signatures and got on the ballot.

25 **A.** Yes.

1 Q. Would you agree that the majority of work that you did
2 with ProtectMarriage.com was during the petition phase of the
3 campaign?

4 MR. BOIES: Objection. Leading, your Honor. This is
5 not cross.

6 THE COURT: He's right, Ms. Moss.

7 MS. MOSS: Very well, your Honor.

8 BY MS. MOSS:

9 Q. Dr. Tam, during the campaign broadly -- not just the
10 petition phase, but the petition phase and after it had gotten
11 on the ballot -- was there a period of time when you worked
12 more closely with ProtectMarriage.com?

13 A. It was during the time that we have to put out the
14 petitions to collect signatures. Those were the times I work
15 more closely with Andy Pugno.

16 Q. And how frequently would you say that during that petition
17 phase of the campaign, that you had contact with Mr. Pugno?

18 A. We have about six or seven phone calls about all the
19 technicalities and, also, I have met him one time to pick up
20 petition forms from him.

21 Q. And when you say about the "technicalities," what are you
22 referring to?

23 A. Like the form -- the petition forms, how -- let's see, how
24 that was -- that should be distributed. And, also, later on
25 with filing the papers to the Secretary of State for the

1 qualifying process.

2 So those were times that he would send me the
3 paperwork. I read it, and then I sign it, send it back to him;
4 all that back and forth.

5 **Q.** Did you have any role in drafting any of the language that
6 would be on the petition?

7 **A.** No.

8 **Q.** Were you involved with Mr. Pugno or anybody else from
9 ProtectMarriage.com during that time in formulating messaging
10 related to the ballot initiative that you were attempting to
11 get on the ballot; that became known as Prop 8, I guess?

12 **A.** No.

13 **Q.** And over the 1 million signatures that were ultimately
14 gathered, how many were you personally responsible for turning
15 over to ProtectMarriage.com?

16 **A.** I would guess about, not more than 20,000.

17 **Q.** Do you recall the questions from Mr. Boies about your
18 declaration that you signed? It was PX-exhibit 507 in their
19 binder.

20 **A.** 507?

21 **Q.** Yeah. It was PX Exhibit 507. It's the very first tab of
22 plaintiffs' binder. It was your declaration in support of
23 proposed intervenors' motion to intervene?

24 **A.** Yes.

25 **Q.** I believe on your direct testimony you referred to

1 ProtectMarriage.com drafting this declaration. Is there --

2 **A.** Yes.

3 **Q.** Is there a specific person within ProtectMarriage.com that
4 you were thinking of when you said that?

5 **A.** Mr. Andy Pugno.

6 **Q.** And Mr. Pugno was your attorney at the time?

7 **A.** Yes.

8 **Q.** Mr. Tam, you also testified that ProtectMarriage.com -- in
9 relation to this debate that you attended, that
10 ProtectMarriage.com instructed you to -- to go to -- I'm sorry,
11 excuse me, told you to participate in that debate?

12 **A.** Yes.

13 **Q.** What does that mean to you? Did you feel you could say no
14 to them?

15 **A.** Yeah, I could have said no to them.

16 **Q.** And focusing, then, on the campaign phase after Prop 8 was
17 actually on the ballot, Mr. Boies had you look at a Statement
18 of Unity. Let me find that here. It's going to be this their
19 binder, not mine. I think it's 2633.

20 **A.** Yes.

21 **Q.** If you look at the second -- it's the paragraph that's
22 numbered number two, which says, "Message Discipline."

23 **A.** Yes.

24 **Q.** (As read)

25 "Public communications by coalition partners

1 in support of the marriage amendment must be
2 approved by the campaign manager for
3 strategic message discipline."

4 Did that, in fact, occur with you or any of your
5 organizations that you were involved with?

6 **A.** Could you repeat the question? A discipline --

7 **Q.** Did you get any of the -- did you get any of the messaging
8 that you did personally approved by the campaign manager for
9 ProtectMarriage.com before you sent it out?

10 **A.** No.

11 **Q.** Did you get any of the messaging that you sent out or that
12 your organization, the Traditional Family Coalition, sent out
13 approved by the campaign manager, Schubert Flint --

14 **A.** No.

15 **Q.** (Continuing) -- from ProtectMarriage.com?

16 **A.** No.

17 **Q.** How about the 1man1woman.net organization? Did any of
18 that information get approved or submitted to the campaign
19 manager before it was sent out?

20 **A.** No.

21 **Q.** The third paragraph where it says -- that is entitled "The
22 Face of Coalition," and the second sentence says:

23 "All media requests are to be forwarded to
24 the campaign for assignment to the
25 appropriate spokesperson, which may or may

1 not be the coalition partner originally
2 contacted by the press."

3 Every time that you were contacted by the press, did
4 you refer it to ProtectMarriage.com?

5 **A.** No.

6 **Q.** Now, looking -- I'm going to take you through now some of
7 these documents that Mr. Boies raised with you today.

8 I would like you to look first at the tab Plaintiffs'
9 Exhibit 513. It's the second tab in plaintiffs' binder.

10 **A.** Okay.

11 **Q.** First of all, did you post this on the internet yourself?

12 **A.** No, I did not.

13 **Q.** And at the top where it indicates, "Dear Friends," who
14 were you sending this to?

15 **A.** I send to the TFC members.

16 **Q.** And approximately how many TFC members are on the mailing
17 list that you sent this to?

18 **A.** At that time it was about 100.

19 **Q.** And if you look right down beneath your signature where it
20 says, "Thanks for your efforts, Bill Tam, Traditional Family
21 Coalition," what does it say right beneath there?

22 **A.** "Last updated on Friday, September 4th, 2009."

23 **Q.** 2009. And so, to your knowledge, was this posted on the
24 internet before September 4th, 2009?

25 **A.** I don't know. I don't even know -- I don't even know that

1 they posted this letter online.

2 **Q.** Did you submit this letter to the "Dear Friends of TFC,"
3 did you submit this to ProtectMarriage.com or its campaign
4 manager before you sent it out?

5 **A.** No.

6 **Q.** I would now like you to turn to PX-2187 in plaintiffs'
7 binder.

8 **A.** 2187, okay.

9 **Q.** Yeah, 2187, sir.

10 **A.** Okay.

11 **Q.** At the very bottom where -- first of all, you did not
12 draft -- did you testify that you did not draft this flier?

13 **A.** No, I did not draft this.

14 **Q.** So at the bottom where it says, "Co-sponsors for this
15 rally is ProtectMarriage.com," do you have any basis to know
16 why it says that on this flier?

17 **A.** I don't know. I did not -- I did not pay any attention to
18 this flier.

19 **Q.** Do you know whether ProtectMarriage.com paid for this
20 flier?

21 **A.** I don't think so.

22 **Q.** If you would turn to tab PX-2343, this was the tab -- the
23 exhibit that ended up getting broken up into A, B and C.

24 **A.** Yes, okay.

25 **Q.** And I believe that the Chinese version of the flier that

1 was admitted in evidence was 2343-D. Do I have that down
2 correctly? Do you have that Chinese flier in front you?

3 **A.** Yes, I have.

4 **Q.** Was this flier submitted to ProtectMarriage.com or
5 Schubert Flint before it was disseminated?

6 **A.** No.

7 **Q.** Did they have anything to do with its creation?

8 **A.** No.

9 **Q.** Did they distribute this flier?

10 **A.** No.

11 **Q.** Staying in the same exhibit, but going back to the article
12 that you published on your website, your personal website that
13 Mr. Boies asked you about, this is the 2004 article?

14 **A.** Uh-huh. Yes.

15 **Q.** I'm going to ask you -- well, do you know approximately,
16 as of today, how many individuals have visited your personal
17 website?

18 **A.** About 1600, I believe.

19 **Q.** Would you turn to tab two?

20 And I'm sorry to make you jump around, but this would
21 be in the binder I gave you, in the defendant-intervenors'
22 binder.

23 **A.** Okay.

24 **Q.** And this is marked as Plaintiffs' Exhibit 527?

25 **A.** Yes.

1 Q. Is this a printout from your -- well, what is this
2 document?

3 A. This is one of the pages on my website.

4 Q. And does one have to go to this page in order to access
5 the article, such as the one that is contained in PX-2343?

6 A. Yes.

7 Q. And can you tell me as of -- well, what is the date -- do
8 you see the date on the bottom right-hand corner of this
9 document that shows when it was printed out?

10 A. Yes.

11 Q. And can you tell me as of that date in November of 2009,
12 how many visitors it shows have been to your website?

13 A. 1547.

14 Q. Do you know how many of those may have been lawyers in
15 this case?

16 A. Pardon me?

17 Q. I said, do you know how many those, if any, were lawyers
18 in this case?

19 A. Some of the visitors?

20 Q. Yes.

21 A. I don't know.

22 Q. And, Dr. Tam, turning to tab PX-2507 in plaintiffs'
23 binder.

24 A. Two what? Two five --

25 Q. 2507.

1 **A.** Okay. All right.

2 **Q.** Is this the -- is this the same small email list of TFC
3 members that you sent the last email that we looked at that got
4 posted on the Presence Ministry website? Is it the same email
5 list that's being referred to here?

6 **A.** Yes. All the emails that I write to my members, they are
7 either titled "Dear Friends" or "Dear Friends of TFC." And the
8 mailing list number is very small. It's like 100 at that time.

9 **Q.** And was this email -- did you share this email with
10 ProtectMarriage.com or the campaign manager before you sent it
11 out?

12 **A.** No.

13 **Q.** Did you share any of your emails that you sent to "Dear
14 Friends of TFC" with Protect Marriage or the campaign manager
15 before you sent them out?

16 **A.** No.

17 **Q.** Turning to PX-2595.

18 **A.** Okay.

19 **Q.** I believe on direct you testified that this was the
20 English version of the Chinese flier that we were looking at
21 just a short while ago?

22 **A.** Yes.

23 **Q.** Did this English version of the flier get submitted to
24 ProtectMarriage.com or Schubert Flint for their approval before
25 it went out?

1 A. I don't think so.

2 Q. Did they have any involvement in its creation?

3 A. I don't think so.

4 Q. Did they distribute this flier?

5 A. No.

6 Q. Dr. Tam, during the campaign phase of Prop 8 after it got
7 on the ballot, approximately how many times did you have
8 contact with Ron Prentice, the chairman of Protect Marriage?

9 A. "Contact" meaning?

10 Q. How about phone calls?

11 A. Phone calls? Maybe four times.

12 Q. And how frequently were you in contact with Schubert and
13 Flint?

14 A. Very rare. Maybe one or two times.

15 Q. At any point in time during the campaign phase or, really,
16 any phase of the campaign for Proposition 8, did you have any
17 involvement in drafting the official messaging of
18 ProtectMarriage.com Yes On 8?

19 A. No.

20 Q. Did you have any involvement in formulating the messaging
21 strategy for ProtectMarriage.com Yes On 8?

22 A. Not at all. I was acting independently.

23 Q. And apart from not sharing any of your materials with
24 ProtectMarriage.com or Schubert Flint before you sent them out,
25 did you have any -- did Schubert Flint or ProtectMarriage.com

1 have any input into the messaging strategy of the Traditional
2 Family Coalition or 1man1woman.net?

3 **MR. BOIES:** Objection to the form of the question.

4 **THE COURT:** Compound. Sustained.

5 **MS. MOSS:** Certainly. I can rephrase.

6 **BY MS. MOSS:**

7 **Q.** Did ProtectMarriage.com have any involvement in the
8 messaging strategy of the Traditional Family Coalition --

9 **A.** No.

10 **Q.** (Continuing) -- in support of Prop 8?

11 **A.** No.

12 **Q.** Did ProtectMarriage.com have any involvement in the
13 messaging strategy of 1man1woman.net in promoting Prop 8?

14 **A.** No.

15 **Q.** When you were communicating with members of the
16 Traditional Family Coalition, were you doing so on behalf of
17 ProtectMarriage.com?

18 **A.** Could you repeat that?

19 **Q.** When you communicated with members of the Traditional
20 Family Coalition, such as in your "Dear Friends" letters, were
21 you doing so on behalf of ProtectMarriage.com?

22 **A.** No, not at all.

23 **Q.** And in the documents we have looked at today, when you
24 described working with ProtectMarriage.com, what were you
25 referring to?

1 **A.** I was referring to the conference calls during the
2 campaign phase. I mean, the conference calls that I was in.

3 And then during the petition phase, I was referring
4 to the petition signature collection, things like that.

5 **Q.** And in the documents that we have looked at today and in
6 your testimony that has explored some of your viewpoints on
7 same-sex marriage and on homosexuality generally, did you share
8 any of those viewpoints with anybody from ProtectMarriage.com
9 at any time during the campaign?

10 **A.** No.

11 **Q.** Did you share those viewpoints with anybody at the
12 campaign manager, Schubert Flint, at any time during or after
13 the campaign?

14 **A.** No.

15 **MS. MOSS:** That's all I have, your Honor.

16 **THE COURT:** Redirect, Mr. Boies?

17 **MR. BOIES:** Thank you, your Honor.

18 **THE WITNESS:** Do you mind if I like to take a break?
19 I'm getting pretty tired.

20 **THE COURT:** That would be fine. I assume the
21 redirect is reasonably short?

22 **MR. BOIES:** It is, your Honor.

23 **THE COURT:** But if the witness wants a break, that
24 will be fine. Shall we take 10 minutes?

25 **THE WITNESS:** If it is a short one, then --

1 **MR. BOIES:** About 15 minutes, your Honor.

2 **THE WITNESS:** Okay.

3 **THE COURT:** Can you hold out? If you want a break,
4 we'll take a break. If you don't --

5 **THE WITNESS:** Yeah, I --

6 **MR. BOIES:** We will take a break, if not.

7 **THE WITNESS:** Yeah, I would appreciate that. Thank
8 you.

9 **THE COURT:** Take five minutes.

10 (Whereupon there was a recess in the proceedings
11 from 4:15 p.m. until 4:23 p.m.)

12 **THE COURT:** Very well, Mr. Boies. You may redirect.

13 **MR. BOIES:** Thank you, your Honor.

14 **REDIRECT EXAMINATION**

15 **BY MR. BOIES:**

16 **Q.** Dr. Tam, you said you worked more closely with the
17 ProtectMarriage.com people during what you call the petition
18 phase, as opposed to what you call the campaign phase; do you
19 recall that?

20 **A.** Yes.

21 **Q.** When did the campaign phase, as you describe it, start?

22 **A.** I say the -- in the fall.

23 **Q.** In the fall of 2008?

24 **A.** Yeah.

25 **Q.** Well, let me ask you to look at Plaintiffs' Exhibit 2472.

1 A. Okay.

2 Q. This is an email that you wrote February 14th, 2008, is
3 that correct?

4 A. Yes.

5 Q. And in it you talk about your opportunity to publicize
6 what you refer to as, "Our Protect Marriage Amendment on
7 television"?

8 A. Uh-huh. Yes.

9 Q. Did you view this as part of the campaign phase?

10 A. Probably not. Because if it is in the campaign phase, it
11 would have -- you know, everybody know about it. I don't have
12 to publicize it.

13 Q. Well, let me refer to the debate that you had with -- that
14 was broadcast by Channel 26. I mean, that was a debate that
15 certainly people -- everybody knew about, right?

16 A. Yes.

17 Q. Because ProtectMarriage.com had told you to do it, right?
18 Remember?

19 A. Yes.

20 Q. So they knew about that?

21 A. Yes.

22 Q. Was that part of the campaign phase?

23 A. Yes. That was, I think, in October.

24 Q. Let me ask you to look at Plaintiffs' Exhibit 2633 that we
25 dealt with before.

1 A. 2633?

2 Q. 2633.

3 A. Okay.

4 Q. It's the Statement of Unity.

5 MR. BOIES: And, your Honor, I think I did not offer
6 it earlier, but I will offer it at this time?

7 THE COURT: 2633?

8 MR. BOIES: Yes.

9 THE COURT: Very well. If it is not previously been
10 admitted, it shall be.

11 (Plaintiffs' Exhibit 2633 received in evidence.)

12 BY MR. BOIES:

13 Q. Now, this is July 21, 2008, correct?

14 A. Yes.

15 Q. And was this part of the campaign phase?

16 A. I say, yeah, that's the -- the starting point.

17 Q. This is the starting point of the campaign phase, is that
18 what you are saying?

19 A. Could be. Yeah, could be.

20 Q. Let me ask you to look at Plaintiffs' Exhibit 2631.

21 A. All right.

22 Q. This is in early August of 2008, correct?

23 A. Yes.

24 Q. And this shows you attending the weekly grassroots
25 conference, correct?

1 A. Uh-huh. Yes.

2 Q. And this was certainly part of the campaign phase,
3 correct?

4 A. Yes.

5 THE COURT: Did you say 2631?

6 MR. BOIES: 2631, yes.

7 Of which I would offer, your Honor.

8 THE COURT: Hearing no objection 2631 is admitted.

9 (Plaintiffs' Exhibit 2631 received in evidence.)

10 BY MR. BOIES:

11 Q. And you told counsel on cross-examination that you only
12 met with people from Schubert Flint a few times; do you
13 remember that?

14 A. Met them? No, I did not meet them.

15 Q. You said "very rare contact with Schubert Flint, one or
16 two times." Do you remember telling that to your counsel?

17 A. Yeah.

18 Q. Now, Schubert Flint were running these weekly conference
19 calls, right?

20 A. I did not know who runs it really.

21 Q. Well, Exhibit 2631 came from Schubert Flint, correct?

22 A. Yes.

23 Q. And you knew that Schubert Flint was running the
24 ProtectMarriage.com campaign, correct?

25 A. Yes.

1 Q. And these calls went on every week, correct, sir?

2 A. Yes.

3 Q. And you participated in them every week, correct, sir?

4 A. Not every week. I think I -- I have done six or seven,
5 something like that.

6 Q. And each one of those six or seven were ones that Schubert
7 Flint was on, correct?

8 A. Frankly, I -- I don't know who was on. They all sound
9 alike.

10 I'm very bad in recognizing names and relate to
11 the -- to their voice, especially so many people are talking.
12 And then -- and English is not my mother tongue.

13 Q. Well, sir, let's get a couple things straight.

14 First, when you receive notices of these calls, it
15 came from Schubert Flint, correct?

16 A. Yes.

17 Q. And when you received minutes of the calls, it came from
18 Schubert Flint, correct?

19 A. I know it's from -- from their company.

20 Q. For example, Plaintiffs' Exhibit 2630.

21 A. All right.

22 MR. BOIES: Your Honor, did I offer Plaintiffs'
23 Exhibit 2631?

24 THE COURT: You did. And it's in.

25 MR. BOIES: Thank you.

1 **BY MR. BOIES:**

2 **Q.** And Exhibit 2630 is minutes of that conference call that
3 Schubert Flint then sent you, correct?

4 **A.** Yes.

5 **Q.** And if you look at Plaintiffs' Exhibit 2599?

6 **A.** Yes.

7 **Q.** This is, again, minutes of a grassroots meeting, a weekly
8 grassroots meeting that you are getting from Schubert Flint,
9 correct?

10 **A.** Yes.

11 **Q.** And this is during the campaign phase, correct?

12 **A.** Yes.

13 **Q.** And you recall that this is one that talks about you and
14 talks about a website being up of lmanlwoman.com. I think it
15 means.net.

16 **A.** Yes.

17 **Q.** I sometimes make that mistake myself.

18 Do you see that?

19 **A.** Yes.

20 **MR. BOIES:** Your Honor, I would offer Plaintiffs'
21 Exhibit 2599.

22 **THE COURT:** Very well. 2599 is in.

23 (Plaintiffs' Exhibit 2599 received in evidence)

24 **BY MR. BOIES:**

25 **Q.** And if you would look at Exhibit 2504? This is

1 October 29, 2008, correct?

2 **A.** Yes.

3 **Q.** And this is during the campaign phase, correct?

4 **A.** Yes.

5 **Q.** These are communications between you and

6 ProtectMarriage.com, correct?

7 **A.** Yes.

8 **MR. BOIES:** Your Honor, I would offer Plaintiffs'

9 Exhibit 2504.

10 **THE COURT:** Very well. There have been some

11 redactions here. Is that material?

12 **MR. BOIES:** Your Honor, the redactions might be

13 material to permit the Court to evaluate the extent of the

14 contact, and I would ask the Court in camera to look at the

15 names.

16 **MS. MOSS:** Your Honor, as well, I only have a

17 redacted version, and I think we would need to see it to

18 evaluate whether it's, in fact, somebody with

19 ProtectMarriage.com.

20 We need to see the name to be able to evaluate

21 whether it is even somebody with ProtectMarriage.com.

22 **THE COURT:** Well, can you submit an unredacted copy?

23 **MS. MOSS:** I believe it's been submitted to them. I

24 didn't do these redactions.

25 **MR. BOIES:** We will work with counsel and we will be

1 sure that the Court gets an unredacted copy.

2 **THE COURT:** Very well. Then 2504 will be admitted.

3 (Plaintiffs' Exhibit 2504 received in evidence.)

4 **BY MR. BOIES:**

5 **Q.** And would you look at Plaintiffs' Exhibit 2185, Dr. Tam?

6 **A.** Okay.

7 **Q.** This is a TFC news bulletin, correct?

8 **A.** Yes.

9 **Q.** And this follows the passage of Proposition 8, correct?

10 **A.** Yes.

11 **Q.** And if you'd look at the page that is marked

12 DEFINT_PM_5077 at the bottom?

13 **A.** Yes.

14 **Q.** It says that:

15 "The Traditional Family Coalition during 2008

16 was allied with ProtectMarriage.com."

17 Do you see that?

18 **A.** Could you point to where I can see? Where it is --

19 **Q.** Do you see the box on the right-hand side? It says,

20 "Traditional Family Coalition 2008 Historical Events."

21 **A.** Yes, I see that. Yeah.

22 **Q.** Do you see the first one is, "Allied with

23 ProtectMarriage.com"?

24 **A.** Yes.

25 **MR. BOIES:** I would offer Exhibit 2185.

1 **THE COURT:** Very well. 2185 is admitted.

2 (Plaintiffs' Exhibit 2185 received in evidence.)

3 **MR. BOIES:** And if I did not -- I think I may not
4 have offered it. I would offer Plaintiffs' Exhibit 2630.

5 **THE COURT:** All right. If not previously admitted,
6 2630 is in.

7 (Plaintiffs' Exhibit 2630 received in evidence.)

8 **BY MR. BOIES:**

9 **Q.** And with respect -- would you look at Plaintiffs' Exhibit
10 2187?

11 (Witness complied.)

12 **Q.** With respect to your assertion that you were not closely
13 working with ProtectMarriage.com during the campaign phase,
14 October of 2008 was clearly during the campaign phase, correct?

15 **A.** Yes.

16 **Q.** And this is a flier that was sponsored by Traditional
17 Family Coalition, your organization, and co-sponsored by
18 ProtectMarriage.com, correct?

19 **A.** Yes.

20 **Q.** And this was the one that you asked Mr. Prentice to speak
21 at, correct?

22 **A.** Yes.

23 **Q.** And during the -- during the campaign phase,
24 ProtectMarriage.com reimbursed you for your expenses of
25 television, radio and print advertisements, correct?

1 **A.** They reimbursed not me. They reimbursed people, the
2 organization who placed some ads for Protect Marriage.

3 **Q.** I'm sorry. Say that one more time? Who did they
4 reimburse?

5 **A.** They reimbursed the people who run some ads, TV ads or
6 newspaper ads.

7 **Q.** Was this Traditional Family Coalition that they were
8 reimbursing?

9 **A.** No. These are the people -- there were some Chinese
10 Christians who offered to put some advertisement for Prop 8,
11 but then they don't know how to do it. So, yeah.

12 **Q.** Let me ask you to look at Plaintiffs' Exhibit 2627.

13 (Witness complied.)

14 **Q.** This is an email that you got from Mr. Pugno of
15 ProtectMarriage.com, correct?

16 **A.** Right.

17 **Q.** And this is dated October 27, 2008, correct?

18 **A.** Yes.

19 **MR. BOIES:** I would offer Exhibit 2627, Plaintiffs'
20 Exhibit 2627.

21 **THE COURT:** Very well. 2627 is admitted.

22 (Plaintiffs' Exhibit 2627 received in evidence.)

23 **BY MR. BOIES:**

24 **Q.** And this is addressed to multiple people, but one of them
25 is Traditional Family Coalition, correct?

1 A. Yes.

2 Q. And it says at the top, "Bill and Peter." And you are the
3 "Bill," correct?

4 A. Yes.

5 Q. And it says:

6 "Your organizations are spending
7 approximately \$50,000 to place TV, radio and
8 print advertising with Asian media."

9 Do you see that?

10 A. Yes.

11 Q. And "your organizations" refer to Peter's organization and
12 your organization, correct?

13 A. It looks like he was referring to that, but my
14 organization did not do any of the TV or whatever ad. It's
15 Peter's.

16 But then I introduced Peter to Andy, so that they can
17 work those things out because I don't want to get involved with
18 those.

19 Q. Well, sir, this doesn't say -- this isn't just addressed
20 to Peter and it doesn't just say "your organization." It's
21 addressed to both of you and it says "your organizations,"
22 plural, correct?

23 A. Yeah, that's what it is here.

24 Q. And you are saying that was just wrong?

25 A. Right.

1 Q. Is there anything in writing where you correct that? Did
2 you send them back an email that says, No, my organization is
3 not spending any of this money?

4 A. Once again, I --

5 Q. I'm just asking you whether you did it or not, sir.

6 A. No, I did not. Whether this is an "s" after
7 "organization" to me, as a Chinese, I never knew that I have to
8 face a lawyer asking me this kind of questions, so I never
9 bothered to specify, Hey, you are saying this "s" is wrong, you
10 know.

11 Q. When you get emails, you often reply to them, correct?

12 A. Not really.

13 Q. In fact, we have seen some of yours.

14 A. Yeah, sometimes I reply. To some of the things, I don't
15 reply.

16 Q. Sir, all I'm doing is I'm just asking -- see, you're
17 saying today that this is wrong, and I'm just trying to figure
18 out whether there is anything that's written down
19 contemporaneously that supports that or not; whether there is
20 anything that could support your testimony? That's all I'm
21 asking.

22 A. No. I -- I did not reply to it and correcting how many
23 organizations are doing that or, you know, that I'm not
24 involved in this.

25 Q. Incidentally, you worked closely with Peter, did you not,

1 in organizing things in support of ProtectMarriage.com?

2 **A.** No, not really, because only I work with him in organizing
3 the rally. But in terms of -- he runs a lot of the show.

4 **Q.** A lot of what show?

5 **A.** Well, like, a rally, the -- the putting out the pamphlet,
6 the flier. I did not do those kind of things.

7 **Q.** You worked with him in doing those kind of things, didn't
8 you? I mean, for example, you and he were both the contacts
9 for the press invitation for the rally, correct?

10 **A.** That's true.

11 **Q.** And your organization was the sponsor of the rally,
12 correct?

13 **A.** Yes.

14 **Q.** I have got just two more questions.

15 The first is: Is it your testimony that you were not
16 involved in the formulation of campaign strategy and messaging
17 for ProtectMarriage.com; is that your testimony?

18 **A.** That's correct.

19 **Q.** And I think you testified earlier that based on the
20 knowledge of what a core group means that you have picked up,
21 you didn't think you were part of the core group, is that
22 correct?

23 **A.** No.

24 **Q.** Am I correct, that you are not part of the core group,
25 according to your current testimony?

1 A. Right. I'm not the core group.

2 Q. Okay. During the break, did you talk to anybody about
3 your testimony?

4 A. I talk to my lawyer.

5 Q. You talked to your lawyer.

6 (Brief pause.)

7 Q. What did you say to your lawyer?

8 A. I said I felt like a naughty boy being put in front of a
9 classroom and being mocked at.

10 Q. And what did your lawyer say to you?

11 A. He laughed.

12 MR. THOMPSON: Objection, your Honor.

13 THE COURT: Sustained.

14 BY MR. BOIES:

15 Q. One last question, Dr. Tam.

16 You have indicated earlier that you felt you were a
17 minority; do you remember that?

18 A. Yes.

19 Q. And you are aware that there were periods, unfortunate
20 periods in our history, when Asian Americans were limited in
21 who they could marry; do you know that?

22 A. Uh-huh. Yes.

23 Q. And I take it if those laws were present today, you would
24 feel very aggrieved by those laws, would you not, if you
25 couldn't marry the person you loved?

1 **MS. MOSS:** Your Honor, this is beyond the scope of my
2 direct.

3 **A.** Yes.

4 **MR. BOIES:** Okay. Thank you. He has answered.

5 **THE COURT:** Objection overruled.

6 Very well. Mr. Tam, thank you for your testimony,
7 sir. You may step down.

8 (Witness excused.)

9 **THE COURT:** Well, counsel, what do we have in store
10 tomorrow?

11 **MR. BOUTROUS:** Tomorrow, your Honor, we will be
12 calling Dr. Herek as our last witness, I believe.

13 We do have some document issues concerning documents
14 that have been produced, some of which were the Prentice
15 documents. We are hoping we don't have to call Mr. Prentice to
16 authenticate them, but we are -- those are the last two things
17 on our agenda and then some clean-up issues on exhibits.

18 **THE COURT:** And have you approached your opposite
19 numbers about those documents?

20 **MR. BOUTROUS:** I believe that process is unfolding,
21 so we are trying to ease things.

22 **THE COURT:** Mr. Dusseault is handing that?

23 **MR. DUSSEAULT:** We have been exchanging specific
24 lists of all the exhibit numbers in an effort to minimize any
25 disagreements.

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CERTIFICATE OF REPORTERS

We, KATHERINE POWELL SULLIVAN and DEBRA L. PAS,
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/s/ Katherine Powell Sullivan

Katherine Powell Sullivan, CSR #5812, RPR, CRR
U.S. Court Reporter

/s/ Debra L. Pas

Debra L. Pas, CSR #11916, RMR CRR
U.S. Court Reporter

Thursday, January 21, 2010