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LAW OFFICES OF ANDREW P. PUGNO

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andrew@pugnolaw.com

October 24, 2008

Station Managers  
California Broadcast and Cable Television Stations

**Re: ProtectMarriage.com – Yes on 8 TV ad  
*Finally, The Truth***

Dear Station Managers:

The undersigned serves as general counsel for the official proponents of Proposition 8 and *ProtectMarriage.com – Yes on 8*, a Project of California Renewal. This letter provides the basic substantiation for the campaign's television advertisement, entitled *Finally, The Truth*. Additional information and documentation is available upon request.

**Claim:**

“Opponents of Proposition 8 said gay marriage has nothing to do with schools.”

**Backup:**

In No on 8's recent ad, Superintendent of Public Instruction Jack O'Connell says, “Prop 8 has nothing to do with schools or kids.” The No on 8 campaign's Rebuttal to Argument in Favor of Proposition 8, appearing in the statewide voter pamphlet, similarly says, “PROP. 8 DOESN'T HAVE ANYTHING TO DO WITH SCHOOLS.”

**Claim:**

“Then a public school took first graders to a lesbian wedding, calling it a ‘teachable moment.’”

**Backup:**

On October 10, 2008, public school officials took 5- and 6-year-old first grade children on a school-sponsored field trip to San Francisco City Hall for a same-sex wedding performed by Mayor Gavin Newsom. The school principal proudly defended the trip, calling it “a teachable moment” for the children. (*Class Surprises Lesbian Teacher On Wedding Day*, San Francisco Chronicle, Oct. 11, 2008.)

**Claim:**

"Now a liberal education politician says schools aren't required to teach about marriage."

**Backup:**

In No on 8's ad that began airing 10/22/2008, Superintendent of Public Instruction Jack O'Connell says, "Our schools aren't required to teach anything about marriage."

**Claim:**

"Yet his official website confirms teaching marriage is required in 96% of schools."

**Backup:**

The California Department of Education's website states, "According to *Sex Education in California Public Schools* (survey conducted PB Consulting, 2003), 96 percent of California school districts provide comprehensive sexual health education." (See <http://www.cde.ca.gov/ls/he/se/faq.asp>) It further states:

"Education Code (EC) 51933 specifies that school districts are not required to provide comprehensive sexual health education, **but if they choose to do so, they shall comply with all of the requirements listed below.**

... Instruction shall ... teach respect for marriage and committed relationships."

(See <http://www.cde.ca.gov/ls/he/se/sexeducation.asp> (bold in original).)

This information repeats what is in Education Code § 51933, which provides:

"School districts may provide comprehensive sexual health education .... in any kindergarten to grade 12, inclusive... . *A school district that elects to offer comprehensive sexual health education ... shall satisfy all of the following criteria: ... Instruction and materials shall teach respect for marriage ... .*"

Thus "teaching marriage is required in 96% of schools," because 96% of schools choose to provide comprehensive sexual health education, thereby triggering the mandatory content requirements of state law.

**Claim:**

"And a leading Prop 8 opponent has warned parents cannot remove children from this instruction."

**Backup:**

The National Center for Lesbian Rights (NCLR) is a coalition member of the No on 8 campaign. The NCLR's Executive Director, Kate Kendell, serves on the Executive Committee of the No on 8 campaign.<sup>1</sup> The NCLR has raised over \$300,000 to campaign against Prop 8. (Sec. of State reports, FPPC ID# 1308206.) NCLR is therefore a leading Prop 8 opponent.

The NCLR has published an advocacy document entitled *LGBT Legal Issues for School Attorneys*. It states:

"State law explicitly provides that 'instruction or materials that discuss gender, sexual orientation, or family life and do not discuss human reproductive organs and their functions' **is not subject to the parental notice and opt-out laws**. California Education Code § 51932(b)."

(*LGBT Legal Issues for School Attorneys*, National Center for Lesbian Rights.)

In further states:

"So long as these programs do not include sexually explicit content (i.e. discuss the human reproductive organs and their functions), **parents are not entitled to prior notice and the opportunity to opt their children out.**"

(*Ibid.*)

Therefore, under NCLR's view of the law, parents are only entitled to notice and the opportunity to opt their children out from "sexually explicit content" involving discussions of "human reproductive organs and their functions," but **not** from any other instruction about gender, sexual orientation, and family life, which would obviously include "respect for marriage and committed relationships."

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<sup>1</sup> See <http://www.noonprop8.com/headlines/mormon-scholars-memo-debunks-prop-8-ads/>

**Claim:**

"Children WILL be taught about gay marriage unless we vote yes on Proposition 8."

**Backup:**

As explained above, 96% of California schools are required to teach children about marriage. As long as gay marriage remains legal in California, the law requires public school teachers to present both traditional and gay marriage as equal when giving instruction that in any way involves marriage.

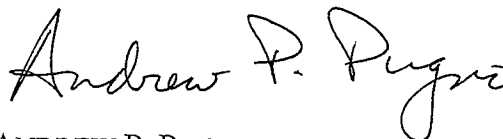
The Education Code provides: "No teacher shall give instruction nor shall a school district sponsor any activity that promotes a discriminatory bias because of a characteristic listed in Section 220." (Educ. Code, § 51500, as amended by Stats. 2007, ch. 569 (S.B. 777), § 29.) Section 220, in turn, lists the characteristic of "sexual orientation". The traditional definition of marriage, according to the Supreme Court, "realistically must be viewed as discriminating against gay persons on the basis of their *homosexual orientation*"<sup>2</sup>--- a bias strictly forbidden in the classroom under the Education Code.

Also, with specific reference to the topic of *marriage*, the Education Code explicitly forbids mentioning marriage in a way that reflects a discriminatory bias on the basis of sexual orientation. The same code section (§ 51933) that states "[a] school district that elects to offer comprehensive sexual health education ... shall teach respect for marriage" also provides: "If a school district elects to offer comprehensive sexual health education... the school district shall comply with the following: ...*Instruction and materials may not reflect or promote bias against any person on the basis of [sexual orientation].*" (Educ. Code, § 51933(d)(2), referring to the list of prohibited biases in § 220.) As noted above, the Supreme Court has expressly stated that the traditional definition of marriage *is* sexual orientation discrimination.

**Conclusion**

As you can see, the facts and legal authorities completely substantiate the simple claims made in this ad. Thank you for your attention. Please contact me directly if there are any questions, (916) 608-3065.

Very truly yours,



ANDREW P. PUGNO  
Attorney at Law

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<sup>2</sup> *In Re Marriage Cases* (2008) 43 Cal.4th 757, 840 (emphasis added)