NO. 11-17255
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

KRISTIN PERRY, et al.,
Plaintiffs-Appellees,

v.

EDMUND G. BROWN, Jr. et al.,
Defendants,

and

DENNIS HOLLINGSWORTH, et al.,
Defendant-Intervenors-Appellants.

Appeal from United States District Court for the Northern District of California
Civil Case No. 09-CV-2292 JW (Honorable James Ware)

EMERGENCY MOTION UNDER CIRCUIT RULE 27-3

DEFENDANT-INTERVENORS-APPELLANTS DENNIS HOLLINGWORTH, GAIL J. KNIGHT, MARTIN F. GUTIERREZ, MARK A. JANSSON, AND PROTECTMARRIAGE.COM'S EMERGENCY MOTION FOR STAY PENDING APPEAL

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Circuit Rule 27-3 Certificate

Pursuant to Circuit Rule 27-3, Appellants respectfully certify that their motion for a stay pending appeal is an emergency motion requiring at least temporary "relief … in less than 21 days" in order to "avoid irreparable harm."

Appellants are official Proponents of Proposition 8 and the official Yes on 8 campaign (collectively, "Proponents"), who were permitted to intervene in this case to defend that California ballot initiative against a challenge by two same-sex couples ("Plaintiffs"). Following the trial in this case and the retirement of the presiding judge, Plaintiffs moved to unseal a video-recording of the trial proceedings in this case. The district court granted Plaintiffs' motion on September 19. At Proponents' request, Chief Judge Ware granted a stay of his ruling that will expire on Friday, September 30, 2011. He did not, however, rule on Proponents' request for a stay pending appeal.[1]

As elaborated in Proponents' stay motion, the district court's unlawful decision to unseal the recording will cause immediate irreparable harm. Because the district court ordered the Clerk to execute the order on September 30, "relief is needed in less than 21 days" in order to prevent these irreparable injuries. Cir. R.

[1] Accordingly, Proponents have satisfied the procedural prerequisite for seeking a stay from this Court. *See* Fed. R. App. P. 8(a)(1). Out of an abundance of caution, Proponents renewed their request for a stay pending appeal with the district court shortly before this filing, but in view of the looming September 30 expiration of the current stay, prompt relief from this Court is urgently needed and fully warranted.

27-3(a). Accordingly, Proponents respectfully request that the Court immediately stay the district court's order pending appeal.

All of the grounds in the stay motion have been presented to the district court, and, before filing this motion, Proponents notified counsel for the other parties by email and also emailed them a service copy of the motion.

Pursuant to 9th Cir. R. 27-3(a)(3)(i), the telephone numbers, email addresses, and office addresses of the attorneys for the parties are as follows:

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Dated: September 23, 2010

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Corporate Disclosure Statement Under Fed. R. App. P. 26.1

Defendant-Intervenor-Appellant ProtectMarriage.com is not a corporation but a primarily formed ballot committee under California Law. *See* CAL. GOV. CODE §§ 82013 & 82047.5. Its "sponsor" under California law is California Renewal, a California nonprofit corporation, recognized as a public welfare organization under 26 U.S.C. § 501(c)(4).

Pursuant to Fed. R. App. P. 8(a)(2), Appellants respectfully seek a stay of the district court's judgment of September 19, 2011 (attached as Ex. 1), pending resolution of their appeal.

INTRODUCTION

"In 1996, the Judicial Conference of the United States adopted a policy opposing the public broadcast of [trial] court proceedings." *Hollingsworth v. Perry*, 130 S. Ct. 705, 711 (2010); *see also* Ex. 2 at 54. This policy was rooted in "decades of experience and study" showing the potentially negative impact of broadcasting on trial proceedings. Ex. 3 at 1; *see also Hollingsworth*, 130 S. Ct. at 711-12; Ex. 4 at 46-47. In July 2009 the Judicial Conference forcefully reiterated to Congress its conclusion that the "negative [e]ffects of cameras in trial court proceedings far outweigh any potential benefits." Ex. 3 at 1.

Also in 1996, the Ninth Circuit Judicial Council "voted to adopt the policy of the Judicial Conference of the United States regarding the use of cameras in the courts." Ex. 5. The Council's policy thus provided: "The taking of photographs and radio and television coverage of court proceedings in the United States district courts is prohibited." *Id*. "[T]his policy [was] . . . binding on all courts within the Ninth Circuit." *Id*. Accordingly, the Northern District of California adopted Local Rule 77-3, which prohibits the "taking of photographs, public broadcasting or televising, or recording for those purposes in the courtroom or its environs, in

connection with any judicial proceeding." *Hollingsworth*, 130 S. Ct. at 710-11 (quoting Rule 77-3); *see also id*. at 707 (Rule 77-3 "forbid[s] the broadcasting of trials outside the courthouse in which a trial takes place"); Ex. 6.

In plain contravention of these authorities and in the teeth of the Supreme Court's decision enforcing them in this very case, the district court below ordered that video recordings of the trial proceedings in this case be unsealed and made available to the public. Ex. 1 at 13. And it did so even though these recordings owed their very existence to the district court's solemn assurance, in open court, that they would *not* be used for "purposes of public broadcasting or televising." Ex. 7 at 754:21-23. Not only was this assurance necessary to comply with Rule 77-3 and the policies of the Judicial Conference and this Court's Judicial Council, but it came on the heels of an emergency Supreme Court decision specifically enforcing Rule 77-3 after then-Chief Judge Walker had ordered the trial to be broadcast.

The decision below thus goes beyond simply violating a binding rule, disregarding longstanding judicial policies, and directly defying the Supreme Court's ruling in this very case. Rather, by setting at naught a solemn commitment made by a federal judge on which litigants and witnesses relied to their detriment, the decision below threatens deep and lasting harm to the integrity and credibility of the federal judiciary. As explained more fully below, the extraordinary ruling unsealing the video recordings should be stayed pending appeal.

STATEMENT

Two same-sex couples filed this suit claiming that Proposition 8, which provides that "[o]nly marriage between a man and a woman is valid or recognized in California," Cal. Const. art. I, § 7.5, violates the Federal Constitution. The case was assigned to the Honorable Vaughn R. Walker, who at the time was Chief Judge of the Northern District of California. Correctly anticipating that the state officials named as defendants would refuse to defend Proposition 8, the official proponents of the measure and their official campaign committee (collectively "Proponents") successfully moved to intervene.

As the case proceeded, Chief Judge Walker expressed a strong desire to publicly broadcast the forthcoming trial, notwithstanding Proponents' repeated warning that several of their witnesses would decline to testify if the proceedings were broadcasted. *See, e.g.*, Ex. 26 at 7. On January 6, 2010 (five days before the start of trial) he ordered that it be broadcast daily via the internet. *Hollingsworth*, 130 S. Ct. at 707; Ex. 8 at 16-17. Chief Judge Walker's determined effort to broadcast the trial, and the lawless procedural irregularities it occasioned, are recounted in detail in the Supreme Court's decision staying Chief Judge Walker's order and prohibiting the public broadcast of the trial. *See Hollingsworth*, 130 S. Ct. at 708-09, 711-12, 714-15. It suffices to repeat the Supreme Court's conclusion: "The District Court here attempted to revise its rules in haste, contrary

to federal statutes and the policy of the Judicial Conference of the United States," solely "to allow broadcasting of this high-profile trial without any considered standards or guidelines in place." *Id.* at 713; *see also id*. (Chief Judge Walker's order "complied neither with existing rules or policies nor the required procedures for amending them").

Despite the Supreme Court's ruling, Chief Judge Walker insisted over Proponents' objection on video recording the trial. *See* Ex. 8 at 16:12-18; Ex. 9 at 1; Ex. 7 at 753:22-754:6. In rejecting Proponents' objection, Chief Judge Walker stated that Rule 77-3 "permits . . . recording for purposes of use in chambers," and that the recordings "would be quite helpful to [him] in preparing the findings of fact." *Id*. at 754:15-19. He assured Proponents that "that's the purpose for which the recording is going to be made going forward. *But it's not going to be for purposes of public broadcasting or televising*." *Id*. at 754:21-23 (emphasis added).

On May 31, Chief Judge Walker *sua sponte* invited the parties "to use portions of the trial recording during closing arguments" and made "a copy of the video . . . available to the part[ies]." Ex. 11. The parties were instructed to "maintain as strictly confidential any copy of the video pursuant to paragraph 7.3 of the protective order," *id.*, which restricts "highly confidential" material to the parties' outside counsel and experts and to the district court and its personnel. Ex. 12 at 8. Plaintiffs and Plaintiff-intervenor City and County of San Francisco

requested and were given copies of the recording of the trial proceedings, *see* Ex. 13, portions of which were played during closing argument, *see* Ex. 14. Separately, Chief Judge Walker denied a request by a media coalition to broadcast closing argument outside the courthouse. *See* Ex. 16.

Proponents moved for the return of all videos to the district court after closing argument, but Chief Judge Walker denied the motion and "DIRECTED" the district court clerk to "file the trial recording under seal as part of the record" and allowed Plaintiffs (and San Francisco) to "retain their copies of the trial recording pursuant to the terms of the protective order." Ex. 17 at 4. Elsewhere in the same order, Chief Judge Walker stated that "the potential for public broadcast" of the trial proceedings "had been eliminated." *Id*. at 35-36.

Meanwhile, Proponents petitioned the Supreme Court for review and vacatur of this Court's ruling, issued before the Supreme Court's stay, denying their mandamus petition seeking to prohibit broadcast of the trial. Proponents argued that, in light of Chief Judge Walker's "unequivocal[] assur[ances] that [his] continued recording of the trial proceedings was not for the purpose of public dissemination, but rather solely for that court's use in chambers," this Court's mandamus ruling should be vacated as moot. Ex. 18 at 11-13. The Supreme Court granted the petition and vacated this Court's ruling. *See* Ex. 19.

Despite Rule 77-3, the policies of the Judicial Conference and this Court's Judicial Council, the Supreme Court's prior decision in this case, the sealing order, and his own solemn commitment in open court, on February 18, 2011, Chief Judge Walker began to broadcast portions of the video recordings of the trial in connection with his teaching and public speaking. *See* Ex. 20 at 1-2. After learning of Chief Judge Walker's activities, Proponents promptly moved the district court to order the return of all copies of the trial recordings. Chief Judge Ware, who had replaced Chief Judge Walker as the presiding judge below, denied this motion, Ex. 21 at 4, and subsequently granted Plaintiffs' cross-motion to unseal the recordings, Ex. 1 at 13. At Proponents' request, *see* Ex. 23 at 54:14-18, Chief Judge Ware granted a temporary stay of his ruling that will expire on September 30, 2011, Ex. 1 at 14.[1] He did not, however, rule on Proponents' request for a stay pending appeal. Ex. 23 at 54:14-18.[2] Proponents noticed this appeal on September 22, 2011.

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[1] Former Chief Judge Walker voluntarily lodged his copy of the recordings with the district court pending resolution of Proponents' motion and Plaintiffs' cross-motion. *See* Ex. 22. In its order granting Plaintiffs' cross-motion to unseal, the district court ordered that Chief Judge Walker's tapes be returned to him and, "in light of the Court's disposition of the Motion to Unseal," denied "as moot" Proponents "request for an order directing Judge Walker to comply with the Protective Order sealing the recording of the trial." Ex. 1 at 13-14 & n.24. Given that its denial of this request appears to rest on its disposition of the motion to unseal, Proponents' understand that this portion of the district court's ruling is subject to the temporary stay entered by the district court and would be subject to any stay issued by this Court as well.

[2] Proponents have thus satisfied the procedural prerequisite for seeking a stay from this Court. *See* Fed. R. App. P. 8(a)(1). Out of an abundance of caution,

ARGUMENT

Four factors guide this Court's consideration of Proponents' emergency petition for a stay pending appeal: (1) Proponents' likelihood of success on the merits, (2) the possibility of irreparable harm absent a stay; (3) the possibility of substantial injury to other parties if a stay is issued; and (4) the public interest. *See Golden Gate Rest. Ass'n v. San Francisco*, 512 F.3d 1112, 1115 (9th Cir. 2008). These factors all point to the same conclusion: This Court should "suspend[] judicial alteration of the status quo" by staying the district court's order pending appeal. *Nken v. Holder*, 129 S. Ct. 1749, 1758 (2009).

I. PROPONENTS' APPEAL IS LIKELY TO SUCCEED.

A. The district court's order contravenes Rule 77-3, the policies of the Judicial Conference and this Court's Judicial Council, and the Supreme Court's previous decision in this case.

As the district court implicitly recognized in grounding its ruling in the public's common-law right of access to judicial records, unsealing the video-recordings will intentionally and inevitably lead to their public broadcast outside " 'the confines of the courthouse.' " *Hollingsworth*, 130 S. Ct. at 711 (quoting Rule 77-3). The order unsealing the recordings thus plainly violates Rule 77-3, as well

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Proponents renewed their request for a stay pending appeal with the district court shortly before this filing, but in view of the looming expiration of the current stay, prompt relief from this Court is urgently needed and fully warranted.

as the longstanding policies of the Judicial Conference and this Court's Judicial Council. It also directly defies the Supreme Court's prior ruling in this case.

1. Rule 77-3, which "has the force of law," *Hollingsworth*, 130 S. Ct. at 711, provides in relevant part as follows:

> Unless allowed by a Judge or a Magistrate Judge with respect to his or her own chambers or assigned courtroom for ceremonial purposes or for participation in a pilot or other project authorized by the Judicial Council of the Ninth Circuit or the Judicial Conference of the United States, the taking of photographs, public broadcasting or televising, or recording for those purposes in the courtroom or its environs, in connection with any judicial proceeding, is prohibited. Electronic transmittal of courtroom proceedings and presentation of evidence within the confines of the courthouse is permitted, if authorized by the Judge or Magistrate Judge.

Ex. 6. As the Supreme Court recognized, this rule prohibits not only "public broadcasting or televising" of trial proceedings, but also "recording for those purposes." *Id*. at 710-11 (quoting Rule 77-3).[3] Accordingly, Chief Judge Walker's decision to record the trial proceedings over Proponents' objection was lawful only on his unequivocal representation that the recordings would not be publicly broadcast beyond the confines of the courthouse.[4]

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[3] The version of Rule 77-3 in force at the time of the Supreme Court's decision in *Hollingsworth* did not contain an exception for public broadcast in connection with a pilot program (though the district court had attempted unlawfully to amend the rule to create such an exception). *See Hollingsworth*, 130 S. Ct. at 712. As discussed below, the public broadcast of the trial proceedings in this case is plainly not authorized in connection with any pilot program.

[4] Chief Judge Walker's decision to permit Plaintiffs to play portions of these video-recordings during closing arguments violated his assurance that the

Furthermore, contrary to the district court's claim that "Rule 77-3 speaks only to the *creation* of digital recordings of judicial proceedings for particular purposes or uses," Ex. 1 at 10, the Rule's separate prohibition against "public broadcasting or televising" of trial proceedings outside "the confines of the court house," Ex. 6, applies by its plain terms regardless of when the public dissemination occurs. Indeed, the Rule's reference to "recording for these purposes" can only be understood as extending the prohibition against "public broadcasting or televising" to subsequent broadcasts of recorded proceedings. Accordingly, regardless of whether the act of recording a particular trial itself is contrary to Rule 77-3, the subsequent public dissemination of trial recordings clearly runs afoul of the distinct "prohibit[ion against] the streaming of transmissions, or other broadcasting or televising, beyond the 'confines of the courthouse.' " *Hollingsworth*, 130 S. Ct. at 711 (quoting Rule 77-3). Thus, contrary to the district court's naked assertion that "[n]othing in the language of Rule 77-3 governs whether digital recordings may be placed into the record," Ex. 1

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recordings would be "simply for use in chambers," Ex. 7 at 754:24-755:4. The closing arguments themselves were not publicly broadcast outside the courthouse, however, and parties were required "to maintain as strictly confidential" their copies of the recordings "pursuant to . . . the protective order." Ex. 11 at 2. Accordingly, the use of the video-recordings in connection with closing arguments did not violate Rule 77-3's prohibition on public broadcast outside the confines of the courthouse. Nor did it violate Judge Walker's assurance, made with reference to this rule, that the recordings would not be used "for purposes of public broadcast or televising." Ex. 7 at 754:21-23.

at 10, Chief Judge Walker's decision to place the trial recordings in the record would have violated this Rule but for his order sealing the recordings and thereby preventing their public dissemination. And lifting the seal to permit public broadcasting of the trial proceedings will plainly violate the Rule. Indeed, any other reading of Rule 77-3 would render it a nullity, for it would give judges determined to broadcast trial proceedings publicly a blueprint for doing so.

2. By permitting public broadcast of the trial, the ruling below also violates the policy of the Judicial Conference, which is "at the very least entitled to respectful consideration," *Hollingsworth*, 130 S. Ct. at 711-12, and of this Court's Judicial Council, which is "binding on all courts within the Ninth Circuit," Ex. 5. The district court's disregard of these policies is plainly a serious matter. *See In re Complaint Against Dist. Judge Joe Billy McDade*, No. 07-09-90083 (7th Cir. Sept. 28, 2009); *In re Sony BMG Music Entm't*, 564 F.3d 1 (1st Cir. 2009).

Noting this Court's announcement, on December 17, 2009, of a pilot program "to allow the use of cameras in certain district court proceedings," Chief Judge Ware asserted that "at the time the digital recording was made, it was the policy of the Ninth Circuit that the recording of civil non-jury district court proceedings was permissible." Ex. 1 at 11-12. The December 2009 program, however, "was not adopted after notice and comment procedures," as is required by statute. *Hollingsworth*, 130 S. Ct. at 712 (citing 28 U.S.C. § 332(d)(1)). In any

event , this case was formally withdrawn from the purported pilot program promptly after the Supreme Court's decision in this case. *See* Ex. 10; Ex. 24.[5]

3. The district court's decision to unseal its recordings also flatly contravenes the Supreme Court's prior decision in this case. Not only did the Supreme Court hold that the district court's attempt to amend Rule 77-3 was procedurally invalid, *see* Ex. 1 at 9, it also held that the district court's broadcast order violated the substance of that Rule (as well as Judicial Conference policy). *See, e.g.*, *Hollingsworth*, 130 S. Ct. at 713 (holding that Chief Judge Walker's broadcast order "complied *neither* with existing rules or policies *nor* the required procedures for amending them"). Further, as discussed more fully below, the Supreme Court credited Proponents' witnesses' well-substantiated fears of harassment and intimidation, *see id*. at 713-14, and accordingly made clear that even if this Court's Judicial Council had successfully implemented a pilot program allowing public broadcast of trial proceedings, and even if Rule 77-3 had been successfully amended to permit participation in that program, this "high-profile, divisive" case, "involv[ing] issues subject to intense debate in our society," was "not a good one for a pilot program." *Hollingsworth*, 130 S. Ct. at 714.

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[5] Although the Judicial Conference recently adopted a pilot program permitting, in certain narrow circumstances, the broadcast of civil trial proceedings, *see* Ex. 1 at 11 n.20, it likewise provides no support for the ruling below given that (1) it did not exist at the time of the trial in this case, and (2) participation in the new program requires the consent of all parties, Ex. 25 at 11.

B. The common-law right of access to judicial records does not support the district court's ruling.

The district court rested its ruling solely on the common-law right "to inspect and copy public records and documents, including judicial records and documents." Ex. 1 at 6. As demonstrated below, however, this common-law right has no application to the video recordings at issue here. Even if it did apply, moreover, this qualified right would not support public access in this case, for the harms that would result from public broadcast far outweigh any potential benefits.

1. The common-law right of access is just that—a judge-made, common-law rule. It "is not absolute, and is not entitled to the same level of protection accorded a constitutional right." *San Jose Mercury News, Inc., v. U.S. Dist. Ct. for the N.D. Cal.*, 187 F.3d 1096, 1102 (9th Cir. 1999). Like every common-law rule, it may be displaced by statute or other positive enactment. *See Ctr. for Nat'l Sec. Studies v. U.S. DOJ*, 331 F.3d 918, 937 (D.C. Cir. 2003); *see generally Heck v. Humphrey*, 512 U.S. 477, 501 (1994). For example, the common-law right of access is supplanted by Fed. R. Crim. P. 6(e), governing recording and disclosure of grand jury proceedings. *See U.S. v. McDougal*, 559 F.3d 837, 840 (8th Cir. 2009); *In re Motions of Dow Jones & Co.*, 142 F.3d 496, 504 (D.C. Cir. 1998). It is likewise displaced by Fed. R. Civ. P. 5.2, which does not permit documents containing minors' names to be unsealed unless those names are redacted. *See* Rule

5.2(d). In short, where applicable, "[r]ules, not the common law, now govern." *In re Motions of Dow Jones & Co.*, 142 F.3d at 504.

As demonstrated above, Rule 77-3 would have prohibited the creation of the video-recordings at issue here but for Chief Judge Walker's unequivocal representation that they would not be publicly broadcast outside the courthouse. The Rule likewise would have barred the placement of these recordings in the record but for Chief Judge Walker's sealing order. Chief Judge Ware's decision allowing the common-law right of access to trump a binding rule of the court, *see* Ex. 1 at 10, turns the well-established relationship between common-law and positive enactments on its head.

2. In addition, the video recordings at issue here are simply not the type of judicial record to which the common-law right of access applies. As even Plaintiffs have conceded, *see* Ex. 23 at 12-13, the recordings are not themselves evidence or even argument; rather they are wholly derivative of the evidence offered, and the arguments made, in open court during the trial in this case. Further, the court reporter's transcript, not the video recordings, is the official record of the trial proceedings.[6] And as the Plaintiffs likewise conceded, the public was free to attend the trial in this case and continues to have access to the official

[6] *Cf*. Ex. 35 ("digital recordings emanating from the pilot [project] . . . are not the official record of the proceedings, and should not be used as exhibits or part of any court filing."); *supra* n.4.

trial transcript, which is "widely available on the internet." *See* Pls. Opp. Br. at 3. None of the authorities cited by the district court or the parties below hold—or even suggest—that the common-law right of access requires more.

Indeed, in *U.S. v. McDougal*, 103 F.3d 651, 656-57 (8th Cir. 1996), the Eighth Circuit held that a videotape of President Clinton's deposition testimony (which was played in court in lieu of live testimony) was "not a judicial record to which the common-law right of public access attaches." As the Court explained, "the videotape at issue … is merely an electronic recording of witness testimony. Although the public had a right to hear and observe the testimony at the time and in the manner it was delivered to the jury in the courtroom . . . there was, and is, no additional common law right to obtain, for purposes of copying, the electronic recording of that testimony." *Id.*; *see also id*. (distinguishing recordings of "the primary conduct of witnesses or parties"); *cf. In re Sony BMG Music Entm't*, 564 F.3d 1, 8-9 (1st Cir. 2009) ("the venerable right of members of the public to attend federal court proceedings is far removed from an imagined entitlement to view court proceedings remotely on a computer screen"). In this case the video recordings are one step even further removed than in *McDougal* from the type of record to which the common-law right of access applies, for (with the exception of a few brief snippets played during closing arguments), the recordings simply depict the trial proceedings and were not themselves played at trial.

3. Even where the common-law right of access does apply, it "does not mandate disclosure in all cases." *San Jose Mercury News, Inc.*, 187 F.3d at 1102. It merely creates a presumption in favor of access that "can be overcome by sufficiently important countervailing interests." *Id.* Here, as recognized by the Supreme Court, public broadcast of the trial proceedings would subject Proponents' witnesses to a well-substantiated risk of harassment and would prejudice any further trial proceedings that may prove necessary in this case. *See Hollingsworth*, 130 S. Ct. at 713. In addition, public broadcast of the trial in violation of Chief Judge Walker's solemn assurances (and direct circumvention of the Supreme Court's stay, the local rules, and well-settled judicial policy) threatens grave damage to the integrity of the judicial process itself. These threatened injuries are discussed more fully below. Further, this is not a case where the public seeks access to evidence or proceedings hidden from public view: the trial in this case was open to the public, widely reported, and memorialized in an official public transcript. Thus, balanced against the serious risks to Proponents, their witnesses, and the integrity of the judicial process posed by the public broadcast of the video-recording, any applicable common-law right of access must surely yield.

II. PROPONENTS FACE IRREPARABLE HARM ABSENT A STAY.

A. Unsealing the record now will moot Proponents' appeal.

Absent a stay pending appeal, the video-recording of the trial will be unsealed and its widespread dissemination will be immediate. Once that happens,

Proponents' appeal will be moot. They will "not be able to obtain adequate relief through an appeal," for "[t]he trial will have already been broadcast." *Hollingsworth*, 130 S. Ct. at 713. Mootness is by definition an irreparable harm to a party seeking appellate review. *See Artukovic v. Rison*, 784 F.2d 1354, 1356 (9th Cir. 1986). This Court should issue a stay pending appeal to preserve its ability to review the district court's order and to provide effective appellate relief.

B. Unsealing the record will place Proponents' witnesses at grave risk of harrassment.

Based on "decades of experience and study," the Judicial Conference has repeatedly found that the public broadcast of trial proceedings "can intimidate litigants [and] witnesses," "create privacy concerns," and "increase[] security and safety issues." *E.g.*, Ex. 3 at 1 -3; *see also Hollingsworth*, 130 S. Ct. at 712-13. "Threats against judges, lawyers, and other participants could increase even beyond the current disturbing level." Ex. 3 at 3. Significantly, these findings are based on the Judicial Conference's study of ordinary, run-of-the-mine cases. "[I]n 'truly high-profile cases' one can '[j]ust imagine what the findings would be.' " *Hollingsworth*, 130 S. Ct. at 714.

As Proponents repeatedly advised Chief Judge Walker before the trial in this "high-profile, divisive" case, *id*. , several of Proponents' expert witnesses voiced "concerns for their own security," *id*. at 714, and made clear "that they [would] not testify if the trial [were] broadcast," *id. at* 713. Chief Judge Walker was wholly

indifferent to this fact and to its obvious implications for the fundamental fairness of the trial itself, for he never even mentioned this consideration as bearing on his decision to broadcast -- and when that was stayed, to video record -- the trial.[7] The Supreme Court however, was acutely concerned that Proponents' witnesses had "substantiated their concerns by citing incidents of past harassment." *Id*. at 713. Indeed, the record reflects repeated harassment of Prop 8 supporters. *See* Ex. 27; Ex. 28 at ¶¶ 10-12; Ex. 29 at ¶¶ 6-8, 12-15; Ex. 30 ; Ex. 31at ¶¶ 5-6; Ex. 32 at ¶ 8; *see also* Thomas M. Messner, *The Price of Prop 8*, *available at* www.heritage.org/ Research/Family/bg2328.cfm; www.youtube.com/watch?v=hcKJEHrvwDI. For example, "donors to groups supporting Proposition 8 'have received death threats and envelopes containing a powdery white substance,' " and "numerous instances of vandalism and physical violence have been reported against those who have been identified as Proposition 8 supporters." *Hollingsworth*, 130 S. Ct. at 707. Even Plaintiffs' lead counsel has acknowledged "widespread economic reprisals" against supporters of Proposition 8. Ex. 36 at 28-29 (*cited in Hollingsworth*, 130 S. Ct. at 707). There can thus be little doubt that unsealing the trial recording for

[7] Despite Chief Judge Walker's subsequent assurance that the video-recordings would not be publicly broadcast, all but two of Proponents' experts ultimately did not testify. As counsel for Proponents advised Chief Judge Walker early in the trial, the witnesses "were extremely concerned about their personal safety, and did not want to appear with any recording of any sort, whatsoever." Ex. 33 at 1094:18-23.

public broadcast would expose Proponents' witnesses to a serious and well-substantiated risk of harassment or worse.

C. Unsealing the record could prejudice future trial proceedings.

Given that Proponents are currently appealing both the judgment invalidating Proposition 8 and the district court's subsequent denial of our motion to vacate that judgment, it is quite possible that this case will be retried in the future. As noted above, *supra* note 7, only two of Proponents' six scheduled expert witnesses were willing to rely on Chief Judge Walker's unequivocal assurances that the trial recordings were solely for his judicial use in chambers, and to testify at trial. One of those witnesses soon regretted his decision to take Chief Judge Walker at his word, as he watched excerpts of his testimony displayed on national television by Chief Judge Walker himself. *See* http://www.c-spanvideo.org/program/Vaugh. If the video recording of the trial is now unsealed and made public, these witnesses and others would almost certainly refuse to participate in any further trial proceedings in this case, or in any other case raising such highly divisive issues. *See Hollingsworth*, 130 S. Ct. at 713 ("witnesses subject to harassment as a result of broadcast of their testimony might be less likely to cooperate in any future proceedings.") Unsealing the recordings would thus surely prejudice any future trial proceedings.

III. <u>A STAY WILL NOT HARM PLAINTIFFS.</u>

Here, as before, "[t]he balance of equities favors" a stay, for "[w]hile applicants have demonstrated the threat of harm they face if the trial is broadcast, [Plaintiffs] have not alleged any harm if the trial is not broadcast." *Hollingsworth*, 130 S. Ct. at 713. And they certainly have identified no harm that they will suffer *during the pendency of this appeal* if a stay is entered.

IV. THE PUBLIC INTEREST WEIGHS IN FAVOR OF A STAY.

As Chief Judge Ware recognized, *see* Ex. 23 at 24-25, nothing less than the integrity and reputation of the judiciary is at stake in this case. Chief Judge Walker solemnly and unambiguously represented in open court that the recording of the trial would not be used "for purposes of public broadcasting or televising." Ex. 7 at 754:21-23. He assured the parties that only "some further order of the Supreme Court or the Court of Appeals" could permit transmission beyond the courthouse. Ex. 34. Proponents (and their witnesses who took the stand) took him at his word. They took no action to enforce the Supreme Court's stay or otherwise prevent the recording of the trial. Indeed, in express reliance on Chief Judge Walker's promise, *see* Ex. 18 at 11-12, Proponents forwent their opportunity, invited by the Supreme Court itself, to seek further review from that Court of Chief Judge Walker's broadcast order. And in deciding not to appeal the subsequent order placing the recording in the record *under seal*, Proponents relied on Chief Judge Walker's unequivocal determination—made in the very same opinion placing the recording

in the record—that "the potential for public broadcast" of witness testimony "had been eliminated," Ex. 17 at 35-36. Despite all of this, Chief Judge Walker himself later reneged on his commitment, violated his seal, and ignored Local Rule 77-3 and judicial conference policy by broadcasting excerpts of the trial recording.

Now, Chief Judge Ware, declaring that he is not bound by his predecessor's commitments, Ex. 1 at 8, has permitted public broadcast of the entire trial and has thus exponentially compounded this deeply troubling course of events. If the order under review is permitted to stand, future litigants and witnesses will be on notice that judicial promises are unworthy of confidence, and grave and lasting injury will be done to the integrity and credibility of the federal judiciary.

As discussed above, any countervailing public interest in access to the video-recording of the public trial in this case is small. And any public interest in *immediate, pre-appeal access* is surely negligible. The public interest, like the other equities, thus weighs heavily in favor of a stay.

CONCLUSION

For the foregoing reasons, this Court should stay the district court's order pending appeal. Should the Court disagree, Proponents request in the alternative a limited seven-day stay to permit us to seek a stay pending appeal from the Supreme Court.

9th Circuit Case Number(s) 11-17255

NOTE: To secure your input, you should print the filled-in form to PDF (File > Print > *PDF Printer/Creator*).

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Signature (use "s/" format) s/ Charles J. Cooper

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EXHIBIT 1

United States District Court
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

Kristin M. Perry, et al.,

Plaintiffs,

v.

Arnold Schwarzenegger, et al.,

Defendants.

/

NO. C 09-02292 JW

ORDER GRANTING PLAINTIFFS' MOTION TO UNSEAL DIGITAL RECORDING OF TRIAL; GRANTING LIMITED STAY

I. INTRODUCTION

Foremost among the aspects of the federal judicial system that foster public confidence in the fairness and integrity of the process are public access to trials and public access to the record of judicial proceedings. Consequently, once an item is placed in the record of judicial proceedings, there must be compelling reasons for keeping that item secret. In the course of the non-jury trial of this case, at the direction of the presiding judge, court staff made a digital recording of the trial. After the close of the evidence, the judge ordered the clerk of court to file that digital recording under seal. The trial record is closed and the case is currently on appeal to the Ninth Circuit.

Presently before the Court is a Motion by Plaintiffs to unseal the recording.[1] The Motion is opposed by Defendant-Intervenors. Upon review of the papers and after a hearing conducted on August 29, 2011, the Court concludes that no compelling reasons exist for continued sealing of the

[1] (hereafter, "Motion," Docket Item No. 771-4.) This Motion was originally brought before the Ninth Circuit, which currently has appellate jurisdiction over the merits of the underlying decision in this case, including the judgment. (See Order at 2, Docket Item No. 771.) On April 27, 2011, the Ninth Circuit transferred the Motion to this Court, on the ground that this Court still has jurisdiction over "ancillary matters" associated with this case. (Id. at 2-3.)

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digital recording of the trial. Accordingly, the Court GRANTS Plaintiffs' Motion to Unseal and ORDERS the Clerk of Court to place the digital recording in the publicly available record of this case.

II. BACKGROUND

The digital recording at issue in this Motion is of a trial over which former Chief Judge Vaughn Walker (retired) presided. A detailed summary of the background of the case and its procedural history can be found in the Order issued by Judge Walker on August 4, 2010.[2] Here, the Court reviews the procedural history relevant to the present Motion.

On December 21, 2009, a coalition of media companies requested Judge Walker's permission to televise the trial.[3] (See Docket Item No. 313.) On January 6, 2010, Judge Walker held a hearing regarding the recording and broadcasting of the trial at which he announced that an audio and video feed of the trial would be streamed to several courthouses in other cities, and that the trial would be recorded for broadcast over the Internet. Hollingsworth, 130 S. Ct. at 708-09. On January 7, 2010, Judge Walker notified the parties that the Court had made a formal request to Ninth Circuit Chief Judge Kozinski that the trial be included in a pilot program being conducted by the Ninth Circuit that allowed audio-video recording and transmission of non-jury trial court proceedings. (See Docket Item No. 358.) On January 8, 2010, Chief Judge Kozinski issued an order approving real-time streaming of the trial to certain courthouses, pending the resolution of technical difficulties. Hollingsworth, 130 S. Ct. at 709.

On January 9, 2010, Defendant-Intervenors applied to the Supreme Court for a stay of the Court's order approving the broadcasting of the trial, which the Supreme Court granted on January 13, 2010. See id. at 709-10 (staying the broadcast because the Northern District of California's amendment of its Local Rules to permit broadcast of the trial "likely did not" comply with federal

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[2] (See Pretrial Proceedings and Trial Evidence; Credibility Determinations; Findings of Fact; Conclusions of Law; Order, hereafter, "August 4 Order," Docket Item No. 708.)

[3] A detailed discussion of the factual background of the Court's consideration of whether the trial should be recorded or broadcast may be found in the Supreme Court's opinion staying the broadcast of the trial. See Hollingsworth v. Perry, 130 S. Ct. 705 (2010).

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law). On January 15, 2010, Judge Walker notified the parties that, in compliance with the Supreme Court's January 13, 2010 Order, he had formally requested Chief Judge Kozinski to withdraw the case from the pilot project. (See Docket Item No. 463 at 2.)

Although he did not commence broadcasting of the trial, Judge Walker notified the parties that digital recording of the trial would continue "for use in chambers." (See Docket Item No. 463 at 2.) Later, on May 31, 2010, Judge Walker expanded the use of the recording. He notified the parties that "[i]n the event any party wishes to use portions of the trial recording during closing arguments, a copy of the video can be made available to the party." (Docket Item No. 672 at 2.) He ordered that the parties "to maintain as strictly confidential any copy of the video pursuant to paragraph 7.3 of the protective order."[4] (Id.) On June 2, 2010, both Plaintiffs and Plaintiff-Intervenor City and County of San Francisco requested a copy of the digital recording, pursuant to the Court's May 31, 2010 Order.[5] In the August 4 Order, Judge Walker noted that the "trial proceedings were recorded and used by [the Court] in preparing the findings of fact and conclusions of law" and directed the Clerk to "file the trial recording under seal as part of the record." (August 4

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[4] On January 12, 2010, the parties entered into an Amended Protective Order. (hereafter, "Protective Order," Docket Item No. 425.) The Protective Order was entered because disclosure and discovery activity in the case would be "likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation would be warranted." (Id. at 1.) Paragraph 7.3 of the Amended Protective Order addresses items that are designated as "HIGHLY CONFIDENTIAL–ATTORNEYS' EYES ONLY," and states that such items may only be disclosed to the parties' counsel of record, certain experts, the Court and its personnel, "court reporters, their staffs, and professional vendors" who have signed an agreement to be bound by the Protective Order and the author of the item. (Id. at 8-9.) The Protective Order specifies that "[e]ven after the termination of this litigation, the confidentiality obligations imposed by [the Order] shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise directs." (Id. at 2.)

[5] (See Notice to Court Clerk from Plaintiff-Intervenor City and County of San Francisco Re Use of Video, Docket Item No. 674 (stating that Plaintiff-Intervenor "wishes to obtain a copy of [certain portions] of the trial video to review for possible use at closing argument"); Notice to Court Clerk Re Plaintiffs' Request for a Copy of the Trial Recording, Docket Item No. 675 (stating that Plaintiffs "respectfully request a copy of the trial recording for possible use during closing arguments").)

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Order at 4.) The Order also provided that the "parties may retain their copies of the trial recording pursuant to the terms of the protective order."[6] (Id.)

After judgment was entered, an appeal from the Judgment was taken to the Ninth Circuit. (See Docket Item Nos. 719, 728.) During the course of the appeal, Defendant-Intervenors moved to prevent Judge Walker from showing snippets of the recording from a copy which he took as part of his judicial papers upon his retirement and to compel Judge Walker, as well as Plaintiffs and Plaintiff-Intervenor, to return the recording. Along with their opposition to that motion, Plaintiffs filed what the Ninth Circuit deemed a Cross-Appeal to unseal the recording. On June 14, 2011, the Court denied Defendant-Intervenors' Motion. (June 14 Order at 1.) This Order addresses Plaintiffs' Cross-Motion to Unseal the recording.

Plaintiffs, joined by a non-party coalition of media companies,[7] move the Court to unseal the digital recording of the trial on constitutional and common law grounds. (Motion at 9-10.) Defendant-Intervenors oppose unsealing the recording on multiple grounds.[8] As their principal grounds for maintaining the seal, they rely on a statement made by Judge Walker about how the

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[6] On June 14, 2011, after the case was assigned to Chief Judge Ware, the Court issued an order denying Defendant-Intervenors' Motion for Order Compelling Return of Trial Recordings. (hereafter, "June 14 Order," Docket Item No. 798.) In its June 14 Order, the Court explained that copies of the digital recording of the trial had been made available to both parties for use during the trial, and held that because "there is no indication that the parties have violated the Protective Order, and because appellate proceedings in this case are still ongoing, the parties may retain their copies of the trial [digital recording]." (Id. at 4.)

[7] Plaintiffs' Motion has been joined by the Non-Party Media Coalition, which is comprised of Los Angeles Times Communications, LLC; The McClatchy Company; Cable News Network, In Session; The New York Times Co.; FOX News; NBC News; Hearst Corporation; Dow Jones & Company, Inc.; The Associated Press; KQED Inc., on behalf of KQED News and the California Report; The Reporters Committee for Freedom of the Press; and the Northern California Chapter of the Radio & Television News Directors Association. (See Joinder of Non-Party Media Coalition in Plaintiffs-Appellees' Motion to Unseal at 1, Docket Item No. 771-6.) Like Plaintiffs, the Non-Party Media Coalition contends that there is a First Amendment right of access to judicial proceedings, and that the right applies to the digital recording in this case. (Id. at 4-10.)

[8] (Appellants' Opposition to Appellees' Motion to Unseal at 5-7, hereafter, "Opp'n," Docket Item No. 771-7.) In addition, the State Defendants have filed a Statement of Non-Opposition stating that they "do not oppose the Plaintiffs' motion to publicly release the videotapes of the trial of this matter." (Docket Item No. 805 at 2.)

recording would be used, a ruling by the United States Supreme Court and various Judicial Council statements and Northern District Local Rules.

III. DISCUSSION

A. The Digital Recording of the Trial Is in the Record

Before discussing the specific grounds urged in favor and in opposition to unsealing the recording, the Court discusses the significance the Court gives to the fact that the digital recording is part of the judicial record.

It is undisputed that on August 4, 2010, Judge Walker ordered the Clerk to file the digital recording of the trial under seal "as part of the record." (August 4 Order at 4.) District court judges have wide discretion to note adjudicative facts and occurrences for the record. (See, e.g., Fed. R. Evid. 201.) While a digital recording of a trial might be an unusual item, district court judges have the authority to order the clerk to include as part of the record any item indicative of the proceedings. At the time Judge Walker ordered the recording filed as part of the record, none of the parties, including Defendant-Intervenors, made an objection. Moreover, here and now, in their Opposition to unsealing the recording, Defendant-Intervenors do not contend that Judge Walker committed a legal error or abused his discretion when he ordered the digital recording to be filed as part of the record. Furthermore, no party has filed a motion either to vacate the portion of the Court's August 4 Order that directed the Clerk to file the recording as part of the record or to strike the digital recording from the record.[9] Instead, the parties, including Defendant-Intervenors, proceed from the common premise that the digital recording is unquestionably part of the record.[10] The

[9] At the August 29 hearing, the Court brought this issue to the attention of the parties, and was informed by Defendant-Intervenors' counsel that Defendant-Intervenors, to counsel's knowledge, have not considered bringing such a motion. By raising this issue however, the Court is not commenting whether if such a motion were to be made, it would be timely or appropriate.

[10] (See Opp'n at 5-6 (asserting that "the [digital recording is] now part of the record of the case," but contending that this fact "does not matter" because the common law right to access trial records "has no purchase" in this case, insofar as the digital recording was created "only on condition that [it] not be publicly disseminated outside the courthouse").)

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parties have limited their argument solely to whether the digital recording should remain sealed. The Court now proceeds to consider the legal standard for maintaining the recording under seal.

B. Legal Standards for Maintaining an Item in the Record Under Seal

Plaintiffs move to unseal the recording on constitutional and common law grounds. Although a number of circuits have explicitly held that there is a First Amendment right of access to court records in civil proceedings,[11] the Ninth Circuit has declined to reach such a conclusion. See San Jose Mercury News v. U.S. Dist. Court, 187 F.3d 1096, 1101-02 (9th Cir. 1999) ("We leave for another day the question of whether the First Amendment . . . bestows on the public a prejudgment right of access to civil court records."). Accordingly, the Court only evaluates Plaintiffs' Motion to Unseal under the common law.

There is a common law right of public access to records in civil proceedings. Hagestad v. Tragesser, 49 F.3d 1430, 1434 (9th Cir. 1995) (citing Nixon v. Warner Comm., Inc., 435 U.S. 589, 597 (1978)). The common law right of access is "a general right to inspect and copy public records and documents, including judicial records and documents." Nixon, 435 U.S. at 597. This right of access is generally not conditioned "on a proprietary interest in the document or upon a need for it as evidence in a lawsuit." Id. Rather, the kinds of public interest that have been found to support the issuance of a writ compelling access to public records include "the citizen's desire to keep a watchful eye on the workings of public agencies" and "a newspaper publisher's intention to publish information concerning the operation of government." Id. at 598.

Transparency "is pivotal to public perception of the judiciary's legitimacy and independence."[12] As the Second Circuit has explained, while the political branches of government can "claim legitimacy by election," judges can only do so by way of their reasoning; thus, "[a]ny step that withdraws an element of the judicial process from public view makes the ensuing decision

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[11] See, e.g., Hartford Courant Co. v. Pellegrino, 380 F.3d 83, 91-92 (2d Cir. 2004) (observing that the Second Circuit recognizes a First Amendment right of access to civil proceedings, and discussing similar caselaw in the Third and Fourth Circuits).

[12] United States v. Aref, 533 F.3d 72, 82 (2d Cir. 2008).

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look more like fiat and requires rigorous justification."[13] Therefore, because the Constitution "grants the judiciary 'neither force nor will, but merely judgment,'" it is imperative that courts "impede scrutiny of the exercise of that judgment only in the rarest of circumstances."[14]

This is not to say that transparency must never yield to other interests.[15] There are undoubtedly circumstances in which the damage that would be caused by making public certain aspects of judicial proceedings is so significant that it must override the public's interest in being able to freely scrutinize those proceedings. In determining whether access to the record is appropriate, courts should consider "the interests advanced by the parties in light of the public interest and the duty of the courts." Hagestad, 49 F.3d at 1434 (quoting Nixon, 435 U.S. at 602).

In the Ninth Circuit, the decision whether to unseal an item in the record is "one best left to the sound discretion of the trial court, a discretion to be exercised in light of the relevant facts and circumstances of the particular case." Hagestad, 49 F.3d at 1434 (quoting Nixon, 435 U.S. at 599). Courts that consider the common law right of access are instructed to "start with a strong presumption in favor of access to court records." Foltz v. State Farm Mut. Auto. Ins. Co., 331 F.3d 1122, 1135 (9th Cir. 2003). A party seeking to overcome this strong presumption bears the burden of meeting a "compelling reasons" standard, under which the party must "articulate compelling reasons supported by specific factual findings" that "outweigh the general history of access and the public policies favoring disclosure." Kamakana v. City and County of Honolulu, 447 F.3d 1172, 1178-79 (9th Cir. 2006) (citations omitted). In determining whether the right of access should be overridden, courts should consider "all relevant factors," including "the public interest in understanding the judicial process and whether disclosure of the material could result in improper use of the material for scandalous or libelous purposes or infringement upon trade secrets." Foltz,

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[13] Id. (citing Hicklin Eng'g, L.C. v. Bartell, 439 F.3d 346, 348 (7th Cir. 2006)).

[14] Id. (citing The Federalist No. 78 (Alexander Hamilton)).

[15] (See, e.g., id. (finding that the "legitimate national-security concerns at play" in a case made it appropriate for the district court to seal certain documents, despite the compelling public interest in a transparent judicial process).)

331 F.3d at 1135 (citing Hagestad, 49 F.3d at 1434). The presumption of access "may be overcome only 'on the basis of articulable facts known to the court, not on the basis of unsupported hypothesis or conjecture.'" Hagestad, 49 F.3d at 1434 (citations omitted). Further, a "judge need not document compelling reasons to unseal [a court record]; rather the proponent of sealing bears the burden with respect to sealing. A failure to meet that burden means that the default posture of public access prevails." Kamakana, 447 F.3d at 1182.

C. Whether the Digital Recording Should Be Unsealed

With a strong presumption in favor of unsealing the digital recording of the trial for the public to access it, the Court considers the grounds urged by Defendant-Intervenors for maintaining the seal. Defendant-Intervenors offer four justifications for maintaining the seal: (1) the circumstances under which the recording was made; (2) an injunction issued by the United States Supreme Court during the proceedings before Judge Walker; (3) unsealing would violate Civil Local Rule 77-3; and (4) public policy concerns. The Court considers each of these contentions in turn.

1. The Conditions Under Which the Digital Recording Was Created

Defendant-Intervenors contend that the digital recording should not now be made public, because it was originally created "on condition that [it] not be publicly disseminated outside the courthouse." (Opp'n at 6.) Defendant-Intervenors contend that Judge Walker's statement that he would use the digital recording during his deliberations constituted a guarantee that the recording would remain sealed. (See id. at 1, 7.) Upon review, the Court finds that the record does not support the contention that Judge Walker limited the digital recording to chambers use only. As discussed above, Judge Walker, without objection, made copies of the digital recording available to the parties for use during closing arguments. (See Docket Item No. 672 at 2.) At least two of the parties obtained copies of the digital recording, and one of the parties played segments on the record during closing argument in open court.

Moreover, Defendant-Intervenors offer no authority in support of the proposition that the conditions under which one judge places a document under seal are binding on a different judge, if a

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motion is made to that different judge to examine whether sealing is justified; nor is the Court aware of any authority standing for that proposition.[16]

Accordingly, the Court finds that the conditions under which the digital recording was created do not constitute "compelling reasons" to overcome the strong presumption in favor of granting the public access to the recording.

2. The Injunction by the U.S. Supreme Court

Defendant-Intervenors contend that unsealing the digital recording would violate the injunction issued by the United States Supreme Court. (See Opp'n at 5-7.) However, the Court finds that Defendant-Intervenors' reliance on the Supreme Court's decision is misguided. In its decision staying the broadcasting of the trial, the Supreme Court stated that its "review [was] confined to a narrow legal issue: whether the District Court's amendment of its local rules to broadcast [the] trial complied with federal law." Hollingsworth, 130 S. Ct. at 709. Without "expressing any view on whether [federal] trials should be broadcast," the Supreme Court held only that the proposed "live streaming of [the] court proceedings" in this case should be stayed "because it appears that the [Northern District of California and the Ninth Circuit] did not follow the appropriate procedures . . . before changing their rules to allow such broadcasting." Id. at 706-09. Accordingly, in light of the Supreme Court's explicit statement that it was solely addressing procedural issues arising from the Northern District's amendment of its local rules regarding the broadcast of court proceedings, the Court finds that the Supreme Court's opinion does not provide

[16] In fact, caselaw suggests that a party's reliance on the confidentiality provisions of a protective order may not suffice to outweigh the strong presumption in favor of public access to court records. See Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110, 125 (2d Cir. 2006) (holding that the "mere existence of a confidentiality order says nothing about whether complete reliance on the order to avoid disclosure was reasonable"). In Lugosch, the court observed that the confidentiality order at issue specifically "contemplate[d] that relief from the provisions of the order may be sought" from the court, and concluded that it was therefore "difficult to see how the defendants can reasonably argue that they produced documents in reliance on the fact that the documents would always be kept secret." Id. Similarly in this case, the Protective Order states that "[n]othing in this Order abridges the right of any person to seek its modification by the Court in the future." (Protective Order at 11.)

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"compelling reasons" to overcome the strong presumption in favor of public access to the digital recording, now that the trial is over and the digital recording has entered the court record.

3. Civil Local Rule 77-3

At the August 29 hearing, Defendant-Intervenors contended that the plain language of Local Rule 77-3's prohibition on "the taking of photographs, public broadcasting or televising, or recording for those purposes in the courtroom or its environs, in connection with any judicial proceeding" necessarily means that the digital recording may not be unsealed, because unsealing the recording would inevitably result in an unlawful "transmission" of the recording outside the environs of the courtroom.

Admittedly, digital recordings of trial proceedings come within the ambit of Local Rule 77-3.[17] However, Local Rule 77-3 speaks only to the *creation* of digital recordings of judicial proceedings for particular purposes or uses.[18] At the time the digital recording at issue in this case was made, there was no objection that Local Rule 77-3 prohibited its creation; nor is such an argument being made now. Nothing in the language of Local Rule 77-3 governs whether digital recordings may be placed into the record. Nor does the Rule alter the common law right of access to court records if a recording of the trial is placed in the record of proceedings. The Court is unaware of any case holding that a court's local rule on recordings can override the common law right of access to court records. Accordingly, the Court finds that Local Rule 77-3 is not authority for superseding the common law right of access to court records, even for a digital recording of the trial itself.

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[17] The Court uses the version of Local Rule 77-3 that was in effect during the trial.

[18] The Court observes that the "plain language" of Local Rule 77-3 may give rise to several possible interpretations. Defendant-Intervenors, in effect, offer the interpretation that the Rule is intended to be a bridle on district court judges, constraining them from recording judicial proceedings and then entering those recordings into the court record. Another possible interpretation is that the Rule is intended to function as a protective cover for the court, shielding judicial proceedings from being photographed or recorded by outside parties or litigants. Defendant-Intervenors offer no caselaw indicating that the Court should adopt the former interpretation of the Rule. In the absence of any such authority, the Court declines to adopt the former, or any, interpretation of the Rule.

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4. The Chilling Effect on Expert Witnesses and Other Public Policy Considerations

Defendant-Intervenors contend that "public dissemination of the [digital recording] could have a chilling effect on . . . expert witnesses' willingness 'to cooperate in any future proceeding.'" (See Opp'n at 7.) However, the Court finds that this contention is mere "unsupported hypothesis or conjecture," which may not be used by the Court as a basis for overcoming the strong presumption in favor of access to court records. Hagestad, 49 F.3d at 1434.

The Court is aware that many observers have expressed concerns that the broadcast of federal judicial proceedings may have detrimental consequences.[19] Indeed, it is because of such concerns that the Judicial Conference of the United States has urged that the circuits exercise caution with respect to the use of cameras in federal courtrooms.[20] Consistent with that advice, the Ninth Circuit has exhibited a willingness to allow the use of cameras in certain district court proceedings, and under certain limited circumstances. On December 17, 2009, the Judicial Council of the Ninth Circuit voted to allow district courts in the Ninth Circuit to "experiment with the dissemination of video recordings in civil non-jury matters only."[21] In accordance with that

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[19] (See, e.g., Opp'n at 3-4 (noting the concerns that broadcasting trial proceedings may, *inter alia*, "intimidate litigants, witnesses, and jurors" and "cause judges to avoid unpopular decisions or positions").)

[20] (See Report of the Proceedings of the Judicial Conference of the United States at 17, *available at* www.uscourts.gov/judconf/96-Mar.pdf (Mar. 12, 1996) (stating that the Conference "[s]trongly urge[d] each circuit judicial council to adopt an order . . . not to permit the taking of photographs and radio and television coverage of court proceedings in the United States district courts.").) On June 21, 1996, the Judicial Council of the Ninth Circuit voted to prohibit the "taking of photographs and radio and television coverage of court proceedings in the United States district courts," in accordance with the Judicial Conference's recommendation. (See Appellants' Motion for Order Compelling Return of Trial Recordings, Ex. 5, Docket Item 771-2.) On September 14, 2010, however, the Judicial Conference of the United States evinced a willingness to reconsider its stance on the propriety of recording district court proceedings by approving a pilot project to "evaluate the effect of cameras in district court courtrooms, video recordings of proceedings, and publication of such video recordings." (See Judiciary Approves Pilot Project for Cameras in District Courts, *available at* http://www.uscourts.gov/news/NewsView/10-09-14/Judiciary_Approves_Pilot_Project_for_Cameras_in_District_Courts.aspx.)

[21] (See Ninth Circuit Judicial Council Approves Experimental Use of Cameras in District Courts, *available at* http://www.ce9.uscourts.gov/cm/articlefiles/137-Dec17_Cameras_Press%20Relase.pdf.) The Ninth

decision, the Ninth Circuit created a "pilot program" for recording certain district court cases. (Id.) It is true that the Supreme Court stayed the broadcast of this trial. However, as discussed above, the Supreme Court only stayed the broadcast on the grounds that the Northern District's revision of its Local Rules to permit the broadcast "likely did not" comport with federal law. Hollingsworth, 130 S. Ct. at 709-10. The Supreme Court did not invalidate the Ninth Circuit's policy in regard to the recording of civil non-jury district court proceedings. Thus, at the time the digital recording was made, it was the policy of the Ninth Circuit that the recording of civil non-jury district court proceedings was permissible.[22] Accordingly, the Court finds that the policy concerns expressed by the Judicial Conference of the United States do not prevent the Court from unsealing the digital recording of this civil, non-jury trial.

Although the Court acknowledges that significant public policy concerns are implicated in allowing cameras in federal courtrooms, nothing in this Order speaks to the broader question of whether district court trials should be recorded or broadcast. Rather, this Order solely addresses the narrow question of whether the digital recording in this case, which is in the record, should now be unsealed pursuant to the common law right of access to court records. The Court answers that question in the affirmative, without addressing any of the larger questions that may potentially arise from circumstances similar to this case.

5. The Fairness of the Trial Is Not Part of This Consideration

In addition to relying on constitutional and common law bases for unsealing the recording, at the August 29 hearing, Plaintiffs argued that the digital recording of the trial should be unsealed in order to assist the litigants in rebutting arguments made by Defendant-Intervenors, including, *inter alia*, arguments about the fairness of the trial. The Court declines to base its decision on whether to

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Circuit explained that its decision "amend[ed]" the prior Ninth Circuit policy prohibiting the taking of photographs and radio and television coverage of court proceedings in the district courts. (Id.)

[22] See also Hollingsworth, 130 S. Ct. at 715-17 (Breyer, J., dissenting) (setting forth, as "context" for the Northern District's amendment of its Local Rules, the history of the Ninth Circuit Judicial Council's decision to permit "the use of cameras in district court civil nonjury proceedings" following the 2007 Ninth Circuit Judicial Conference, at which lawyers and judges voted to approve a resolution to that effect "by resounding margins").

United States District Court
For the Northern District of California

unseal the digital recording because of their usefulness before the Ninth Circuit. That is a matter solely for the Ninth Circuit to decide.

Similarly, at the August 29 hearing Defendant-Intervenors argued that, because the digital recording is under seal and arguably must remain so, the Ninth Circuit judges hearing the appeal in this case are prohibited from playing the recording as part of their proceedings as prohibited by this district Local Rule 77-3.[23] The Court does not accept the validity of this argument. Regardless, the Court does not base its decision whether to unseal the recording on the effect that the decision would have on the availability of the recording to the Ninth Circuit. The Court reiterates that the *only* issue it is resolving in this Order is whether the digital recording of the trial should be unsealed pursuant to the common law right of access to court records, given that the recording is a court record.

IV. CONCLUSION

The Court GRANTS Plaintiffs' Motion to Unseal. Subject to the Stay Order issued below, the Clerk of Court is directed to place the digital recording of the trial into the public record.

When the digital recording is placed in the public record, the confidentiality obligations of the Protective Order, as applied to the digital recording of the trial, are LIFTED.

The Clerk of Court is directed to immediately return to Judge Walker the copy of the digital recording that was given to him as part of his judicial papers, which he subsequently lodged with the Court during the pendency of this Motion.[24]

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[23] The Court notes that Defendant-Intervenors mildly withdrew this contention at the end of the August 29 proceeding.

[24] In its April 28, 2011 Order, the Court ordered "[a]ll participants in the trial," including Judge Walker, "who are in possession of a recording of the trial proceedings" to appear at the June 13, 2011 hearing "to show cause as to why the video tapes should not be returned to the Court's possession." (Order Setting Hearing on Motion at 2, Docket Item No. 772.) On May 12, 2011, Judge Walker voluntarily lodged his chambers copy of the digital recording of the trial with the Court, which filed the copy under seal. (See Docket Item Nos. 777, 781.) In its June 14 Order, the Court stated that it "intends to return the trial video tapes to Judge Walker as part of his judicial papers," and invited any party who objects to "articulate its opposition in . . . supplemental briefing." (June 14 Order at 5.) In accordance with the Court's June 14 Order, Defendant-Intervenors filed a supplemental brief opposing the return of the digital recording of the trial to Judge Walker, and requesting that the Court "direct Judge Walker to maintain his copy of the trial video tapes in strict compliance with the . . . terms of the Protective Order" sealing the recording,

The Court STAYS the execution of this Order until **September 30, 2011**. Unless a further stay is granted by the Court on timely motion or by a higher court, on September 30, 2011, the Clerk is ordered to execute this Order.

Dated: September 19, 2011

JAMES WARE
United States District Chief Judge

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should the Court decide to return his copy of the recording to Judge Walker. (See Docket Item No. 806 at 2-3.) However, in light of the Court's disposition of the Motion to Unseal, Defendant-Intervenors' request for an order directing Judge Walker to comply with the Protective Order sealing the recording of the trial is DENIED as moot.

United States District Court
For the Northern District of California

United States District Court
For the Northern District of California

THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:

Alan Lawrence Schlosser aschlosser@aclunc.org
Amir Cameron Tayrani Atayrani@gibsondunn.com
Andrew Perry Pugno andrew@pugnolaw.com
Andrew Walter Stroud stroud@mgslaw.com
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Thomas R. Burke thomasburke@dwt.com
Timothy D Chandler tchandler@telladf.org

Dated: September 19, 2011

Richard W. Wieking, Clerk

By: /s/ JW Chambers
Susan Imbriani
Courtroom Deputy

United States District Court
For the Northern District of California

EXHIBIT 2

REPORT OF THE PROCEEDINGS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

September 17, 1996

The Judicial Conference of the United States convened in Washington, D.C., on September 17, 1996, pursuant to the call of the Chief Justice of the United States issued under 28 U.S.C. § 331. The Chief Justice presided, and the following members of the Conference were present:

First Circuit:

Chief Judge Juan R. Torruella
Chief Judge Joseph L. Tauro,
District of Massachusetts

Second Circuit:

Chief Judge Jon O. Newman
Chief Judge Peter C. Dorsey,
District of Connecticut

Third Circuit:

Chief Judge Dolores K. Sloviter
Chief Judge Edward N. Cahn,
Eastern District of Pennsylvania

Fourth Circuit:

Chief Judge J. Harvie Wilkinson, III
Judge W. Earl Britt,
Eastern District of North Carolina

Fifth Circuit:

Chief Judge Henry A. Politz
Chief Judge William H. Barbour,
Southern District of Mississippi

models discussed in the report, and, where appropriate, adopt more efficient structures for the provision of administrative services.

CAMERAS IN THE COURTROOM

The Judicial Conference approved a Court Administration and Case Management Committee recommendation that it adopt conforming revisions to the "Cameras in the Courtroom" policy and commentary to be printed in Volume I, Chapter III, Part E of the *Guide to Judiciary Policies and Procedures.* These revisions reflect Judicial Conference actions taken in September 1994 (JCUS-SEP 94, pp. 46-47) and March 1996 (JCUS-MAR 96, p. 17).

MISCELLANEOUS FEE SCHEDULES

After undertaking a review of the miscellaneous fees set by the Judicial Conference pursuant to 28 U.S.C. §§ 1913, 1914, 1926, and 1930, the Court Administration and Case Management Committee recommended that the Judicial Conference raise certain miscellaneous fees to account for inflation and rising court costs. The Judicial Conference approved the recommendation to raise miscellaneous fees as set forth below, provided that legislation is enacted to permit the judiciary to retain the resulting increase in fees:

Fee	Current Amount	Raised Amount
Power of Attorney	$ 20	$ 30
Filing and Indexing Misc. Papers	$ 20	$ 30
Misdemeanor Appeal	$ 25	$ 35
Registration of Foreign Judgment	$ 20	$ 30
Tape Duplication	$ 15/tape	$ 20/tape
Microfilm/Microfiche	$ 3/sheet	$ 4/sheet
Mailing Labels	$ 5/page	$ 7/page
Record Search	$ 15	$ 20
Certification	$ 5	$ 7
Returned Checks	$ 25/check	$ 35/check
Reproduction of Record	$ 25	$ 55
Ct. of Fed. Claims Filing Fee	$120	$150
Ct. of Fed. Claims List of Orders/Ops	$ 10	$ 15

EXHIBIT 3

JUDICIAL CONFERENCE OF THE UNITED STATES

WASHINGTON, D.C. 20544

THE CHIEF JUSTICE
OF THE UNITED STATES
Presiding

JAMES C. DUFF
Secretary

July 23, 2009

Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Honorable Jeff Sessions
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman and Senator Sessions:

The Judicial Conference of the United States strongly opposes the "Sunshine in the Courtroom Act of 2009," S. 657 (111th Cong.), because it provides for the use of cameras in federal trial court proceedings. Cameras can affect behavior in court proceedings. Cameras can even affect whether a case goes to trial. Cameras can also affect courtroom security of judges, witnesses, employees, and U.S. marshals. This is of particular concern in light of recent increased threats to federal judges. The Judicial Conference believes that these and other negative affects of cameras in trial court proceedings far outweigh any potential benefit. The Judicial Conference also opposes the legislation because it would empower any appellate court panel to permit cameras in their courtroom rather than retain that power within the management of each circuit.

The Judicial Conference bases its policy and opposition to the use of cameras in the federal trial court proceedings on decades of experience and study. The Conference considered the issue in a number of different situations and contexts – including a pilot project – and concluded that the presence of cameras in federal trial court proceedings is not in the best interest of justice. Federal judges must preserve each citizen's right to a fair and impartial trial. Of course, federal trials have long been open to the media and public. But it is the studied judgment of the Judicial Conference that cameras can

interfere with a fair and impartial trial. Thus, the use of cameras in trial courts would differ substantially from the impact of their use in legislative, administrative, or ceremonial proceedings.

Cameras can interfere with a fair trial in numerous ways. First, broadcasting proceedings can affect the way trial participants behave. Television cameras can intimidate litigants, witnesses, and jurors, many of whom have no direct connection to the proceeding and are involved in it through no action of their own. Witnesses might refuse to testify or alter their stories when they do testify if they fear retribution by someone who may be watching the broadcast.

Second, and similarly, camera coverage can create privacy concerns for many individuals involved in the trial, such as witnesses and victims, some of whom are only tangentially related to the case but about whom very personal and identifying information might be revealed. For example, efforts to discredit a witness frequently involve the revelation of embarrassing personal information. Disclosing embarrassing facts or accusations in a courtroom already creates challenges in court proceedings. Those challenges would be multiplied enormously if that information were aired on television with the additional possibility of taping and replication. This concern can have a material effect on a witness's testimony or on his or her willingness to testify at all.

Third, and as a consequence of the aforementioned points, camera coverage could also become a potent negotiating tactic in pretrial settlement discussions. Parties may choose not to exercise their right to trial because of concerns regarding possible camera coverage. Thus, allowing cameras could cause a "chilling effect" on civil rights litigation; plaintiffs who have suffered sex or age discrimination may simply decide not to file suit if they learn that they may have to relive the incident and have that description broadcast to the public at large. Or, parties litigating over medical issues may not wish to reveal their personal medical history and conditions to a broad audience.

Fourth, the presence of cameras in a trial court will encourage some participants to become more dramatic, to pontificate about their personal views, to promote commercial interests to a national audience, or to lengthen their appearance on camera. Such grandstanding is disruptive to the proceedings and can delay the trial.

The Federal Judiciary is therefore very concerned that the effect of cameras in the courtroom on participants would be to impact negatively the trial process and thereby interfere with a fair trial.

In addition to affecting the fairness of a trial, the presence of cameras in a trial courtroom also increases security and safety issues. Broadcasting the images of judges and court employees, such as court reporters, courtroom deputies, and law clerks, makes them more easily identified as targets by those who would attempt to influence the outcome of the matter or exact retribution for an unpopular court ruling. Threats against judges, lawyers, and other participants could increase even beyond the current disturbing level. Cameras create similar security concerns for law enforcement personnel present in the courtroom, including U.S. marshals and U.S. attorneys and their staffs.

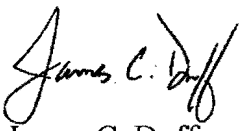
Finally, regarding the courts of appeals, in 1996 the Judicial Conference adopted the position that each circuit may decide for itself whether to permit photographic, radio, and television coverage of appellate arguments, subject to any restrictions in statutes, national and local rules, and such guidelines as the Conference may adopt. This policy ensures consistency within each circuit. The Sunshine in the Courtroom Act of 2009 would allow panels within the circuits to determine whether cameras will be allowed at their proceedings, rather than leaving the initial decision to the circuit's management. This will result in differing treatment of litigants within each circuit. Currently, the circuit-wide policies avoid piecemeal and ad hoc resolutions of the issue among the various panels convened within a court of appeals, and that approach is therefore better than the proposed legislative change.

* * *

For the foregoing reasons, the Judicial Conference of the United States strongly opposes legislation that allows the use of cameras in federal trial court proceedings and permits individual panels to use of cameras in all courts of appeals instead of deferring to each circuit's rules on such use.

Thank you for the opportunity to provide the position of the Judicial Conference on this legislation. The legislation raises issues of vital importance to the Judiciary. If we may be of additional assistance to you, please do not hesitate to contact our Office of Legislative Affairs at 202-502-1700.

Sincerely,



James C. Duff
Secretary

cc: Members, Senate Judiciary Committee

REPORT OF THE PROCEEDINGS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

March 12, 1996

The Judicial Conference of the United States convened in Washington, D.C., on March 12, 1996, pursuant to the call of the Chief Justice of the United States issued under 28 U.S.C. § 331. The Chief Justice presided, and the following members of the Conference were present:

First Circuit:

Chief Judge Juan R. Torruella
Chief Judge Joseph L. Tauro,
District of Massachusetts

Second Circuit:

Chief Judge Jon O. Newman
Chief Judge Peter C. Dorsey,
District of Connecticut

Third Circuit:

Chief Judge Dolores K. Sloviter
Chief Judge Edward N. Cahn,
Eastern District of Pennsylvania

Fourth Circuit:

Chief Judge J. Harvie Wilkinson, III
Judge W. Earl Britt,
Eastern District of North Carolina

Fifth Circuit:

Chief Judge Henry A. Politz
Chief Judge William H. Barbour,
Southern District of Mississippi

CAMERAS IN THE COURTROOM

The Judicial Conference agreed to authorize each court of appeals to decide for itself whether to permit the taking of photographs and radio and television coverage of appellate arguments, subject to any restrictions in statutes, national and local rules, and such guidelines as the Judicial Conference may adopt. The Conference further agreed to—

a. Strongly urge each circuit judicial council to adopt an order reflecting the Judicial Conference's decision to authorize the taking of photographs and radio and television coverage of court proceedings in the United States courts of appeals; and

b. Strongly urge each circuit judicial council to adopt an order pursuant to 28 U.S.C. § 332 (d)(1), reflecting the September 1994 decision of the Judicial Conference (JCUS-SEP 94, pp. 46-47) not to permit the taking of photographs and radio and television coverage of court proceedings in the United States district courts. In addition, the Judicial Conference agreed to strongly urge the judicial councils to abrogate any local rules of court that conflict with this decision, pursuant to 28 U.S.C. § 2071(c)(1).

COMMITTEE ON CRIMINAL LAW

UNIVERSAL PRETRIAL DRUG TESTING

In December 1995, President Clinton directed the Attorney General to develop a "...universal policy providing for drug testing of all federal arrestees before decisions are made on whether to release them into the community pending trial." In February 1996, the Attorney General submitted a pretrial drug testing proposal to the Executive Committee, which referred the matter to the Committee on Criminal Law for recommendation to the March Judicial Conference. Reporting on the proposal to the Conference, the Criminal Law Committee recommended that the issue be referred back to that Committee. The Judicial Conference voted to refer the Attorney General's proposal regarding universal pretrial drug testing to the Criminal Law Committee for expeditious consideration and report to the Executive Committee, which is authorized to act on the matter on behalf of the Conference.

EXHIBIT 4

REPORT OF THE PROCEEDINGS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

September 20, 1994

The Judicial Conference of the United States convened in Washington, D.C., on September 20, 1994, pursuant to the call of the Chief Justice of the United States issued under 28 U.S.C. § 331. The Chief Justice presided, and the following members of the Conference were present:

First Circuit:

Chief Judge Juan R. Torruella
Judge Francis J. Boyle,
District of Rhode Island

Second Circuit:

Chief Judge Jon O. Newman
Judge Charles L. Brieant,
Southern District of New York

Third Circuit:

Chief Judge Dolores K. Sloviter
Chief Judge John F. Gerry,
District of New Jersey

Fourth Circuit:

Chief Judge Sam J. Ervin, III
Judge W. Earl Britt,
Eastern District of North Carolina

Fifth Circuit:

Chief Judge Henry A. Politz
Chief Judge Morey L. Sear,
Eastern District of Louisiana

COMMITTEE ON CODES OF CONDUCT

COMMITTEE ACTIVITIES

The Committee on Codes of Conduct reported that since its last report to the Judicial Conference, it received 47 new written inquiries (including one request for reconsideration) and issued 40 written advisory responses. The average response time was 21 days. The Chairman received and responded to 48 telephonic inquiries. In addition, individual Committee members responded to 72 inquiries from their colleagues.

ETHICS REFORM ACT REGULATIONS

The Judicial Conference approved the recommendations of the Committee to revise the Ethics Reform Act gift regulations. The principal substantive changes include the following: (1) definition of the term "gift" in a new section 3; (2) incorporation in a new section 4 of the existing statutory prohibition on solicitation of gifts; (3) clarification of the reach of sections 4(b) and 5(b) (formerly 3(c) and 3(a)(2)); (4) authorization in a new section 5(h) of the acceptance of *de minimis* gifts by persons other than judges and their personal staffs; (5) revision of section 6 (formerly 3(b)) prohibiting the acceptance of gifts in violation of other statutes and regulations, or where reasonable persons would believe that the public office is being used for private gain; and (6) description in a new section 9 of procedures for the return or disposal of gifts that may not properly be accepted.

Upon recommendation of the Committee, the Judicial Conference approved revisions to the Ethics Reform Act outside employment regulations, to incorporate useful provisions from the Executive Branch regulations and to make technical amendments designed to clarify the application of the regulations.

COMMITTEE ON COURT ADMINISTRATION AND CASE MANAGEMENT

CAMERAS IN THE COURTROOM

The Judicial Conference considered a report and recommendation of the Court Administration and Case Management Committee to authorize the

photographing, recording, and broadcasting of civil proceedings in federal trial and appellate courts. The Committee's report included an evaluation conducted by the Federal Judicial Center of a three-year pilot project in six district and two appellate courts, as well as an analysis of studies conducted in state courts. Based upon the data presented, a majority of the Conference concluded that the intimidating effect of cameras on some witnesses and jurors was cause for concern, and the Conference declined to approve the Committee's recommendation to expand camera coverage in civil proceedings. In light of this action, additional Committee recommendations relating to cameras in the courtroom in civil cases were determined to be moot. No action was taken with regard to the ongoing pilot program, which is scheduled to sunset on December 31, 1994 (see JCUS-MAR 94, p. 15). See also "Criminal Rules," *infra* p. 67.

MISCELLANEOUS FEE SCHEDULES

In September 1993, the Judicial Conference approved an amendment to the miscellaneous fee schedule promulgated under 28 U.S.C. § 1913 to provide a fee for electronic access to court data for the appellate courts, but reserved for future consideration the issue of whether to extend the fee to electronic access to slip opinions (JCUS-SEP 93, pp. 44-45). The Court Administration and Case Management Committee recommended that the Judicial Conference authorize collection of a fee for electronic access to slip opinions by amending the fee schedule to delete the sentence, "No such fee shall be charged for usage of ACES/EDOS." The Judicial Conference approved the amendment, which makes no change in the provision allowing courts to exempt, for good cause, persons or classes of persons from the fees.

In March 1993, the Judicial Conference eliminated the traditional federal agencies' exemption from court fees for electronic access to court data and, in limited circumstances, for reproducing court records and conducting searches of court records (JCUS-MAR 93, p. 11). Federal agencies funded from judiciary appropriations continue to be exempted from fees. On recommendation of the Committee on Court Administration and Case Management, the Conference agreed to a technical amendment of the miscellaneous fee schedules promulgated under 28 U.S.C. §§ 1913, 1914, 1926, and 1930, to clarify that government programs funded from the federal judiciary's appropriations, as well as government agencies so funded, were exempt from fees. The amendment reads as follows (new language is in italics):

EXHIBIT 5

United States Court of Appeals
For The Ninth Circuit
50 W. LIBERTY STREET, SUITE 800
RENO, NEVADA 89501

PROCTER HUG, JR.
Chief Judge
United States Court of Appeals

June 21, 1996

To: All Article III Judges

From: Chief Judge Hug

Re: Judicial Council Policy Regarding the Use of Cameras in the Courtroom

On May 24, 1996, the Judicial Council of the Ninth Circuit voted to adopt the policy of the Judicial Conference of the United States regarding the use of cameras in the courts. Pursuant to 28 U.S.C. § 2071(c)(1), this policy is now binding on all courts within the Ninth Circuit. The policy states:

1. Each court of appeals may decide locally whether or not to permit cameras in the appellate courtrooms, subject to any restrictions in statutes, national and local rules, and such guidelines as the Judicial Conference may adopt.

2. The taking of photographs and radio and television coverage of court proceedings in the United States district courts is prohibited.

JAN 13 2010

EXHIBIT 6

77. DISTRICT COURT AND CLERK

77-1. Locations and Hours

(a) **Locations**

(1) The Office of the Clerk of this Court which serves the San Francisco Courthouse is located at 450 Golden Gate Avenue, San Francisco, California 94102.

(2) The Office of the Clerk of this Court which serves the Oakland Courthouse is located at 1301 Clay Street, Oakland, California 94612.

(3) The Office of the Clerk of this Court which serves the San Jose Courthouse is located at 280 South First Street, San Jose, California 95113.

(b) **Hours**. The regular hours of the Offices of the Clerk are from 9:00 a.m. to 4:00 p.m. each day except Saturdays, Sundays, and Court holidays.

Commentary

See Civil L.R. 5-3 regarding after-hours drop box filing.

77-2. Orders Grantable by Clerk

The Clerk is authorized to sign and enter orders specifically allowed to be signed by the Clerk under the Federal Rules of Civil Procedure and these local rules. In addition, the Clerk may sign and enter the following orders without further direction of a Judge:

(a) Orders specifically appointing persons to serve process in accordance with Fed. R. Civ. P. 4;

(b) Orders on consent noting satisfaction of a judgment, providing for the payment of money, withdrawing stipulations, annulling bonds, exonerating sureties or setting aside a default;

(c) Orders of dismissal on consent, with or without prejudice, except in cases to which Fed. R. Civ. P. 23, 23.1, or 66 apply;

(d) Orders establishing a schedule for case management in accordance with Civil L.R. 16;

(e) Orders relating or reassigning cases on behalf of the Executive Committee; and

(f) Orders taxing costs pursuant to Civil L.R. 54-4.

Cross Reference

See ADR L.R. 4-11(d) "*Nonbinding Arbitration; Entry of Judgment on Award.*"

77-3. Photography and Public Broadcasting

Unless allowed by a Judge or a Magistrate Judge with respect to his or her own chambers or assigned courtroom for ceremonial purposes or for participation in a pilot or other project authorized by the Judicial Council of the Ninth Circuit or the Judicial Conference of the United States, the taking of photographs, public broadcasting or televising, or recording for those purposes in the courtroom or its environs, in connection with any judicial proceeding, is prohibited. Electronic transmittal of courtroom proceedings and presentation of evidence within the confines of the courthouse is permitted, if authorized by the Judge or Magistrate Judge. The term "environs," as used in this rule, means all floors on which chambers, courtrooms or on which Offices of the Clerk are located, with the exception of any space

specifically designated as a Press Room. Nothing in this rule is intended to restrict the use of electronic means to receive or present evidence during Court proceedings.

77-4. Official Notices

The following media are designated by this Court as its official means of giving public notice of calendars, General Orders, employment opportunities, policies, proposed modifications of these local rules or any matter requiring public notice. The Court may designate any one or a combination of these media for purposes of giving notice as it deems appropriate:

(a) **Bulletin Board**. A bulletin board for posting of official notices shall be located at the Office of the Clerk at each courthouse of this district.

(b) **Internet Site**. The Internet site, located at http://www.cand.uscourts.gov, is designated as the district's official Internet site and may be used for the posting of official notices.

(c) **Newspapers**. The following newspapers are designated as official newspapers of the Court for the posting of official notices:

(1) The Recorder; or

(2) The San Francisco Daily Journal; or

(3) The San Jose Post-Record, for matters pending in the San Jose Division, in addition to the newspapers listed in subparagraphs (1) and (2); or

(4) The Times Standard, for matters pending before a Judge sitting in Eureka.

77-5. Security of the Court

The Court, or any Judge, may from time to time make such orders or impose such requirements as may be reasonably necessary to assure the security of the Court and of all persons in attendance.

77-6. Weapons in the Courthouse and Courtroom

(a) **Prohibition on Unauthorized Weapons**. Only the United States Marshal, Deputy Marshals and Court Security Officers are authorized to carry weapons within the confines of the courthouse, courtrooms, secured judicial corridors, and chambers of the Court. When the United States Marshal deems it appropriate, upon notice to any affected Judge, the Marshal may authorize duly authorized law enforcement officers to carry weapons in the courthouse or courtroom.

(b) **Use of Weapons as Evidence**. In all cases in which a weapon is to be introduced as evidence, before bringing the weapon into a courtroom, the United States Marshal or Court Security Officer on duty must be notified. Before a weapon is brought into a courtroom, it must be inspected by the United States Marshal or Court Security Officer to ensure that it is inoperable, appropriately marked as evidence and the assigned Judge notified

77-7. Court Library

The Court maintains a law library primarily for the use of Judges and personnel of the Court. In addition, attorneys admitted to practice in this Court may use the library where circumstances require for actions or proceedings pending in the Court. The library is

EXHIBIT 7

Volume 4

Pages 670 - 990

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, Defendants.	San Francisco, California Thursday January 14, 2010

TRANSCRIPT OF PROCEEDINGS

Reported By: *Katherine Powell Sullivan, CRR, CSR 5812*
Debra L. Pas, CRR, CSR 11916
Official Reporters - U.S. District Court

1 **P R O C E E D I N G S**

2 **JANUARY 14, 2010** **8:42 A.M.**

3

4 **THE COURT:** Very well. Good morning, Counsel.

5 (Counsel greet the Court.)

6 **THE COURT:** Let's see. First order of business, I

7 have communicated to judge -- Chief Judge Kozinski, in light of

8 the Supreme Court's decision yesterday, that I'm requesting

9 that this case be withdrawn from the Ninth Circuit pilot

10 project. And he indicated that he would approve that request.

11 And so that should take care of the broadcasting matter.

12 And we have motions that have been filed on behalf of

13 Mr. Garlow and Mr. McPherson. And the clerk informs me counsel

14 for those parties are here present.

15 **MR. MCCARTHY:** Correct, Your Honor.

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

17 **MR. MCCARTHY:** Vincent McCarthy, Your Honor. I was

18 admitted pro hac vice into this court very recently.

19 **THE COURT:** Yes. I believe I signed that yesterday,

20 or the day before.

21 **MR. MCCARTHY:** I understand.

22 **THE COURT:** Well, welcome.

23 **MR. MCCARTHY:** Thank you.

24 **THE COURT:** You've got quite a lineup of lawyers

25 here.

Q. Okay.

MR. PATTERSON: Your Honor, I would like to request a brief break, if I may?

THE COURT: How much longer do you have with this witness?

MR. PATTERSON: I would say I'm about halfway through, your Honor.

THE COURT: Okay. Maybe a break, like your colleague Mr. Thompson, will reduce the length somewhat.

MR. PATTERSON: Okay.

THE COURT: That I'm sure will be helpful to everybody.

All right. Shall we take until 15 minutes of the hour, or 10:45.

MR. COOPER: Your Honor, just before we break, may I ask one minor housekeeping matter?

THE COURT: Yes.

MR. COOPER: Point of clarification, actually, and it's further to your announcement as we opened the court day, that the Court was asking for withdrawal of this case from the pilot program.

I just ask the Court for clarification, if I may then understand that the recording of these proceedings has been halted, the tape recording itself?

THE COURT: No, that has not been altered.

1 **MR. COOPER:** As the Court knows, I'm sure, we have
2 put in a letter to the Court asking that the recording of the
3 proceedings be halted.
4 I do believe that in the light of the stay, that the
5 court's local rule would prohibit continued tape recording of
6 the proceedings.
7 **THE COURT:** I don't believe so. I read your letter.
8 It does not quote the local rule.
9 The local rule permits remote -- perhaps if we get
10 the local rule --
11 **MR. BOUTROUS:** Your Honor, I have a copy.
12 **THE COURT:** Oh, there we go.
13 (Whereupon, document was tendered
14 to the Court.)
15 **THE COURT:** The local rule permits the recording for
16 purposes the -- of taking the recording for purposes of use in
17 chambers and that is customarily done when we have these remote
18 courtrooms or the overflow courtrooms. And I think it would be
19 quite helpful to me in preparing the findings of fact to have
20 that recording.
21 So that's the purpose for which the recording is
22 going to be made going forward. But it's not going to be for
23 purposes of public broadcasting or televising.
24 And you will notice the local rules states that:
25 "The taking of photographs, public

broadcasting or televising, or recording for those purposes."

So the recording is not being made for those purposes, but simply for use in chambers.

MR. COOPER: Very well, your Honor, and I appreciate that clarification.

THE COURT: All right.

(Whereupon there was a recess in the proceedings from 10:32 a.m. until 10:59 a.m.)

THE COURT: Very well, Mr. Patterson. Please continue.

MR. PATTERSON: Very well, your Honor.

BY MR. PATTERSON:

Q. Dr. Egan, we were speaking about the revenues you project San Francisco weddings, the out-of-state -- or out-of-San Francisco same-sex couples would generate.

And, again, one source of those revenues come from hotel taxes, is that correct?

A. Yes, it is.

Q. And you have basically -- you have assumed how long the non-San Francisco resident same-sex couples would stay in San Francisco when they got married, is that correct?

A. That's correct.

Q. And, once again, you have not done any study of how long non-San Francisco resident same-sex couples actually stay in

EXHIBIT 8

Pages 1 - 94

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, Defendants.	San Francisco, California Wednesday January 6, 2010

TRANSCRIPT OF PROCEEDINGS

Reported By: *Katherine Powell Sullivan, CRR, CSR 5812*
Official Reporter - U.S. District Court

1 couple of other issues.
2 One was the depositions and the scope -- some of the
3 deposition objections. I think the Court had mentioned them in
4 the order. We would like permission to reopen several of the
5 depositions, in light of the Ninth Circuit's amended opinion
6 which puts many documents back on the table, and the objections
7 which we think were baseless during the depositions that have
8 occurred so far.
9 **THE COURT:** Why don't we take that up at the time we
10 address the Swardstrom deposition.
11 **MR. BOUTROUS:** That makes sense, Your Honor.
12 We have a couple of housekeeping matters in
13 connection with the trial that I thought we could maybe raise
14 at the very end of the hearing.
15 **THE COURT:** That will be fine.
16 **MR. BOUTROUS:** Thank you, Your Honor.
17 **THE COURT:** There always are those housekeeping
18 details.
19 Any others? Any other items that we need to discuss
20 this morning, besides those that I mentioned?
21 Well, the first issue is, of course, the issue of
22 recording these proceedings. And you've had a demonstration by
23 the Court's IT manager, Mr. Rico, of what he is prepared to do
24 by way of recording these proceedings.
25 As you know, the Ninth Circuit Court of Appeals,

Ninth Circuit Council, has approved an experimental pilot program to record District Court civil nonjury proceedings that appear to be of public interest.

And this particular case has certainly been identified as a case that is appropriate for that pilot project.

Chief Judge Kozinski has authorized that these proceedings today be recorded and be made available to the Internet through the connection, the government contract that the government has with Google YouTube.

Now, my understanding is that there is no objection, and I think there can be essentially no objection, to the streaming video and audio image of these proceedings into the overflow courtroom, which is the ceremonial courtroom in this building.

My understanding is that the Ninth Circuit would also like that video to go to the Ninth Circuit courthouse here in San Francisco, at 7th and Mission, and would propose to make that available at Ninth Circuit courthouses in Pasadena, Portland, and Seattle.

And my understanding, also, is that the Ninth Circuit has received a request to make that streaming video available to the Northern District of Illinois, at the federal courthouse in Chicago.

I'm not aware, at this time, that there are requests

by any other courts, but it's conceivable there may be.

Those transmissions would, of course, be simultaneous with the proceedings.

The matter which I think probably we have some reason to discuss this morning is the second step of the process, and that is, namely, the transmission of these proceedings on a delayed basis to YouTube, for purposes of posting on the Internet so the proceedings can be made generally available.

My understanding is that the plaintiffs do not object to this. And we have Mr. Burke, from the Media Coalition, who has submitted materials on this. We have some concerns that Mr. Kirk and his clients have raised. And so I'm going to give all parties an opportunity to add to what they have previously submitted on this subject.

So, let me begin you with, Mr. Boutrous. What would you like to add to the materials that have been submitted?

MR. BOUTROUS: Your Honor, first, I would like to say that we strongly support the Court's plan, and the demonstration was very helpful.

And we think that if ever there were a case that would be perfect for this pilot program, it would be this case, because of the extraordinary public interest, the effect on millions of citizens in California and nationwide. It's a constitutional issue.

I think, based on the demonstration, it confirms our

1 thinking that the Court would be able to protect privacy
2 interests to the extent they are raised, some of the concerns
3 that the proponents have raised about witnesses and reluctance
4 to be in a televised trial, with the ability to turn off the
5 camera or otherwise limit coverage as the Court deems
6 appropriate.
7 So we think this is an ideal situation to use this
8 pilot program. And, more broadly, I think the openness in
9 allowing people to see and hear what happens in the case as
10 close to simultaneously as possible really will relieve some of
11 the pressure of people wanting to come and be in the courtroom.
12 And, in the First Amendment context, not talking
13 about cameras specifically, the Supreme Court and the Ninth
14 Circuit have said that the value of openness gives people more
15 confidence in the system, whatever their views of the issues,
16 when citizens can see how things are proceeding in an orderly
17 way, with witnesses testifying, with the Court presiding. It
18 brings a confidence from the public in the results and in the
19 process. And we think that using cameras would foster those
20 values.
21 **THE COURT:** Well, televised court proceedings, of
22 course, have a checkered history.
23 What makes this case different? Why is this case not
24 going to suffer from some of the problems that have attended
25 these other cases that have been televised?

EXHIBIT 9

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January 14, 2010

The Honorable Vaughn R. Walker
Chief Judge
United States District Court for the
Northern District of California
450 Golden Gate Avenue
San Francisco, CA 94102

Re: *Perry v. Schwarzenegger*, No. C-09-2292 VRW (N.D. Cal.)

Dear Chief Judge Walker:

I write on behalf of Defendant-Intervenors ("Proponents") to respectfully request that the Court halt any further recording of the proceedings in this case, and delete any recordings of the proceedings to date that have previously been made.

As the Court will recall, on Monday morning, just before trial commenced, the Court noted that its orders concerning public dissemination had been temporarily stayed by the Supreme Court. In response, Plaintiffs nonetheless asked the Court to record the proceedings for the purpose of later public dissemination if the stay was subsequently lifted:

> Since the stay is temporary and the Supreme Court is going to be considering these issues, and given the importance of the issues in this case, we would request that the Court permit recording and preservation of the proceedings today and through Wednesday …. [G]iven the fact that this is a temporary stay, and the stay order does not mention anything about restricting the ability of the court to capture the images on the cameras and preserve them in the event the stay is lifted and Judge Kozinski issues his order, we think that would be a good solution so then the materials could be posted when those -- those things happen.

Tr. of Proceedings at 14-15 (Jan. 11, 2010) (Attachment A). In response, Proponents objected to the recording of the proceedings as inconsistent with the Supreme Court's temporary stay, *see id.* at 16, but the Court accepted Plaintiffs' proposal.

The Supreme Court yesterday extended the stay indefinitely. *Hollingsworth v. Perry*, 558 U.S. __, No. 09A648, slip op. (Jan. 13, 2010) (*per curiam*). The Supreme Court's ruling removes all question that recording of the proceedings is prohibited. As the Supreme Court explained, prior to this Court's amendment to Local Rule 77-3 (which amendment, the Court concluded, was not properly adopted), Local Rule 77-3 "banned the *recording* or broadcast of court proceedings." *Hollingsworth*, slip op. at 4 (emphasis added). Unamended Local Rule77-3 thus governs these proceedings, and, as the Supreme Court held, it has "the force of law." *Id*. at 8 (quotation marks omitted).

In short, it is now clear that the Supreme Court's stay will remain in place indefinitely, and the prohibition against the recording of these proceedings remains binding. For these reasons, Proponents renew their objection to any further recording of the proceedings in this case, and request that the Court order that any recordings previously made be deleted.

Sincerely,

/s/ Charles J. Cooper

Charles J. Cooper
Counsel for Defendant-Intervenors

Cc: Counsel of Record

EXHIBIT 10

United States District Court
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

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

Plaintiffs,

CITY AND COUNTY OF SAN FRANCISCO,

Plaintiff-Intervenor,

v

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 of the County of Alameda; and DEAN C LOGAN, in his official capacity as registrar-recorder/county clerk for the County of Los Angeles,

Defendants,

DENNIS HOLLINGSWORTH, GAIL J KNIGHT, MARTIN F GUTIERREZ, HAKSHING WILLIAM TAM, MARK A JANSSON and PROTECTMARRIAGE.COM – YES ON 8, A PROJECT OF CALIOFORNIA RENEWAL, as official proponents of Proposition 8,

Defendant-Intervenors.
_____/

No C 09-2292 VRW

NOTICE TO PARTIES

In compliance with the Supreme Court's order in Hollingsworth v Perry, 558 US --, No 09A648 (January 13, 2010), as noted on the record at trial this date, the undersigned has formally requested Chief Judge Kozinski to withdraw this case from the pilot project on transmitting trial court proceedings to remote federal courthouse locations or for broadcast or webcast approved by the Ninth Circuit Judicial Council on December 17, 2009. Transmission of the proceedings to other locations solely within the San Francisco courthouse will continue along with recording for use in chambers, as permitted in Civ LR 77-3.

VAUGHN R WALKER
United States District Chief Judge

United States District Court
For the Northern District of California

EXHIBIT 11

United States District Court
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

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

Plaintiffs,

CITY AND COUNTY OF SAN FRANCISCO,

Plaintiff-Intervenor,

v

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 of the County of Alameda; and DEAN C LOGAN, in his official capacity as registrar-recorder/county clerk for the County of Los Angeles,

Defendants,

DENNIS HOLLINGSWORTH, GAIL J KNIGHT, MARTIN F GUTIERREZ, HAKSHING WILLIAM TAM, MARK A JANSSON and PROTECTMARRIAGE.COM – YES ON 8, A PROJECT OF CALIOFORNIA RENEWAL, as official proponents of Proposition 8,

Defendant-Intervenors.
_____/

No C 09-2292 VRW

ORDER

In the event any party wishes to use portions of the trial recording during closing arguments, a copy of the video can be made available to the party. Parties will of course be obligated to maintain as strictly confidential any copy of the video pursuant to paragraph 7.3 of the protective order, Doc #425. Any party wishing to make use of the video during closing arguments is DIRECTED to inform the court clerk not later than June 2, 2010 at 5 PM PDT.

IT IS SO ORDERED.

VAUGHN R WALKER
United States District Chief Judge

United States District Court
For the Northern District of California

EXHIBIT 12

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

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

Plaintiffs,

v.

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,

Defendants.

CASE NO. 09-CV-2292 VRW (JCS)

AMENDED PROTECTIVE ORDER

(e) court reporters, their staffs, and professional vendors to whom disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

(f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A). Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Protective Order.

(g) the author of the document or the original source of the information.

7.3 Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" only to:

(a) the Receiving Party's Outside Counsel of record in this action, (or in the case of a government entity or government official sued in his or her official capacity, such entity's or official's counsel of record in this action), as well as employees of said Counsel to whom it is reasonably necessary to disclose the information for this litigation and who have signed the "Agreement to Be Bound by Protective Order" that is attached hereto as Exhibit A, provided that it shall not be provided to any Counsel or employee who held an "official position" in any primarily formed ballot committee related to Proposition 8 (*see* http://cal-access.ss.ca.gov/campaign/measures/detail.aspx?id=1302602&session=2007) or now holds an official position in a similar committee that is now circulating petitions for a 2010 ballot initiative to repeal Proposition 8. For purposes of sections 7.3 and 7.5 an "official position" is defined as one which authorizes the holder of said position to contractually bind (either solely or in conjunction with others) the primarily formed ballot committee (or similar committee circulating petitions to place an initiative on the 2010 ballot) with respect to matters relating to communications disseminated by the committee or otherwise to spend funds exceeding $1,000 on behalf of the committee, provided, however, that notice of all such attorneys and employees to whom HIGHLY CONFIDENTIAL – ATTORNEYS'

EYES ONLY information will be disclosed shall be given not less than 24 hours in advance of disclosure to give the other parties the opportunity to object to the disclosure and seek relief from the court on grounds specific to the designated attorney or employee;

(b) Experts (as defined in this Order) (1) to whom disclosure is reasonably necessary for this litigation, (2) who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A), provided that it shall not be provided to any expert who held an "official position" in any primarily formed ballot committee related to Proposition 8 (see http://cal-access.ss.ca.gov/campaign/measures/detail.aspx?id=1302602&session=2007) or now holds an official position in a similar committee that is now circulating petitions for a 2010 ballot initiative to repeal Proposition 8, provided, however, that notice of all such experts to whom HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY information will be disclosed shall be given not less than 24 hours in advance of disclosure to give the other parties the opportunity to object to the disclosure and seek relief from the court on grounds specific to the designated expert;

(c) the Court and its personnel;

(d) court reporters, their staffs, and professional vendors to whom disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A); and

(e) the author of the document or the original source of the information.

7.4 Disclosure Limited to Receiving Party. A Receiving Party shall not disclosure any materials designated "Confidential" or "Highly Confidential – Attorneys' Eyes Only" to any other party to the litigation unless the party has agreed to be bound by this Protective Order.

7.5 Use of Protected Material at Depositions. Before any deposition in which the noticing Party reasonably anticipates using any Protected Materials received in this matter, the noticing Party must inform all other parties. Thereafter, any party who wishes to participate in said deposition must staff the deposition with persons who neither have held an "official position" in any primarily formed ballot committee related to Proposition 8 (see http://cal-access.ss.ca.gov/campaign/measures/detail.aspx?id=1302602&session=2007) nor hold an official position in a similar committee that is now circulating petitions for a 2010 ballot initiative to repeal Proposition 8.

EXHIBIT 13

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

KRISTIN M. PERRY, *et al.*,

Plaintiffs,

and

CITY AND COUNTY OF SAN FRANCISCO,

Plaintiff-Intervenor,

v.

ARNOLD SCHWARZENEGGER, *et al.*,

Defendants,

and

PROPOSITION 8 OFFICIAL PROPONENTS
DENNIS HOLLINGSWORTH, *et al.*,

Defendant-Intervenors.

CASE NO. 09-CV-2292 VRW

NOTICE TO COURT CLERK RE PLAINTIFFS' REQUEST FOR A COPY OF THE TRIAL RECORDING

Trial: January 11-27, 2010

Judge: Chief Judge Vaughn R. Walker
Magistrate Judge Joseph C. Spero

Location: Courtroom 6, 17th Floor

Pursuant to this Court's May 31, 2010 order, Doc #672, Plaintiffs respectfully request a copy of the trial recording for possible use during closing arguments.

Respectfully submitted,

DATED: June 2, 2010

GIBSON, DUNN & CRUTCHER LLP
Theodore B. Olson
Theodore J. Boutrous, Jr.
Christopher D. Dusseault
Ethan D. Dettmer
Matthew D. McGill
Amir C. Tayrani
Sarah E. Piepmeier
Theane Evangelis Kapur
Enrique A. Monagas

By: /s/
Theodore B. Olson

and

BOIES, SCHILLER & FLEXNER LLP
David Boies
Steven Holtzman
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PAUL T. KATAMI, and JEFFREY J. ZARRILLO

EXHIBIT 14

Volume 13

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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, Defendants.	San Francisco, California Wednesday June 16, 2010

TRANSCRIPT OF PROCEEDINGS

Reported By: *Katherine Powell Sullivan, CRR, CSR 5812*
Debra L. Pas, CRR, CSR 11916
Official Reporters - U.S. District Court

With the Court's permission today, during closings Mr. Olson will be playing some of the video clips from the trial proceedings. We propose, if this works for the Court, that at the end of the day we would offer the transcript pages for the record, whenever it's convenient for the Court, rather than doing it for the closings. Then we'll have that for the record.

THE COURT: That would seem to make sense. Does it not, Mr. Cooper?

MR. COOPER: I'm sorry, Your Honor. I'm not sure I followed the proposal.

THE COURT: Maybe you can clarify.

MR. BOUTROUS: I can clarify.

We will be playing video clips from the trial proceedings during the closing arguments. At the end of the day, or whenever it is convenient for the Court, we would offer into the record the transcript pages of the clips that we have played in court, marked as exhibits for the record.

MR. COOPER: I understand. And I see no objection to that, Your Honor.

THE COURT: Fine. That will be fine.

MR. BOUTROUS: Thank you.

THE COURT: Any other housekeeping? Good. Mr. Olson.

EXHIBIT 15

DENNIS J. HERRERA, State Bar #139669
City Attorney
THERESE M. STEWART, State Bar #104930
Chief Deputy City Attorney
DANNY CHOU, State Bar #180240
Chief of Complex and Special Litigation
RONALD P. FLYNN, State Bar #1841867
VINCE CHHABRIA, State Bar #208557
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Attorneys for Plaintiff-Intervenor
CITY AND COUNTY OF SAN FRANCISCO

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

KRISTIN M. PERRY, et al, Plaintiffs, CITY AND COUNTY OF SAN FRANCISCO, Plaintiff-Intervenor vs. ARNOLD SCHWARZENEGGER, in his official capacity as Governor of California, et al Defendants, DENNIS HOLINGSWORTH, as official proponents of Proposition 8, et al, Defendant-Intervenors,	Case No. 09-CV-2292 VRW **NOTICE TO COURT CLERK FROM PLAINTIFF-INTERVENOR CITY AND COUNTY OF SAN FRANCISCO RE USE OF VIDEO** Trial: Jan. 11-27, 2010 Judge: Chief Judge Vaughn R. Walker Location: Courtroom 6, 17th Floor

NOTICE

Please take NOTICE that pursuant to the Court's Order [Doc #672], Plaintiff-Intervenor wishes to obtain a copy of the following portions of the trial video to review for possible use at closing argument:

Trial Date	**Witness**
January 14, 2010	Egan
January 15, 2010	Zia
January 19, 2010	Sanders / Badgett
January 20, 2010	Kendall

Plaintiff-Intervenor will maintain the video as strictly confidential pursuant to paragraph 7.3 of the protective order in this case [Doc #425].

Dated: June 2, 2010

DENNIS J. HERRERA
City Attorney
THERESE M. STEWART
Chief Deputy City Attorney
DANNY CHOU
Chief of Complex & Special Litigation
RONALD P. FLYNN
VINCE CHHABRIA
ERIN BERNSTEIN
CHRISTINE VAN AKEN
MOLLIE M. LEE
Deputy City Attorneys

By: /s/
THERESE M. STEWART

Attorneys for Plaintiff-Intervenor
CITY AND COUNTY OF SAN FRANCISCO

EXHIBIT 16

United States District Court
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

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

Plaintiffs,

CITY AND COUNTY OF SAN FRANCISCO,

Plaintiff-Intervenor,

v

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 of the County of Alameda; and DEAN C LOGAN, in his official capacity as registrar-recorder/county clerk for the County of Los Angeles,

Defendants,

DENNIS HOLLINGSWORTH, GAIL J KNIGHT, MARTIN F GUTIERREZ, HAKSHING WILLIAM TAM, MARK A JANSSON and PROTECTMARRIAGE.COM – YES ON 8, A PROJECT OF CALIOFORNIA RENEWAL, as official proponents of Proposition 8,

Defendant-Intervenors.
_____/

No C 09-2292 VRW

ORDER

The court is in receipt of the letter dated May 18, 2010 from a coalition of media organizations informing the court of the media coalition's interest in recording, broadcasting and webcasting closing arguments in the above-captioned case. Doc #670.

The court removed the case from the Ninth Circuit pilot project on audio-video recording and transmission on January 15, 2010. Doc #463. No further request to include the case in the pilot program is contemplated. The media coalition's request is therefore DENIED.

IT IS SO ORDERED.

VAUGHN R WALKER
United States District Chief Judge

United States District Court
For the Northern District of California

EXHIBIT 17

United States District Court
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

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

Plaintiffs,

CITY AND COUNTY OF SAN FRANCISCO,

Plaintiff-Intervenor,

v

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 of the County of Alameda; and DEAN C LOGAN, in his official capacity as Registrar-Recorder/County Clerk for the County of Los Angeles,

Defendants,

DENNIS HOLLINGSWORTH, GAIL J KNIGHT, MARTIN F GUTIERREZ, HAK-SHING WILLIAM TAM, MARK A JANSSON and PROTECTMARRIAGE.COM – YES ON 8, A PROJECT OF CALIFORNIA RENEWAL, as official proponents of Proposition 8,

Defendant-Intervenors.
_____/

No C 09-2292 VRW

PRETRIAL PROCEEDINGS AND TRIAL EVIDENCE

✦

CREDIBILITY DETERMINATIONS

✦

FINDINGS OF FACT

✦

CONCLUSIONS OF LAW

✦

ORDER

Defendant-intervenors, the official proponents of Proposition 8 under California election law ("proponents"), were granted leave in July 2009 to intervene to defend the constitutionality of Proposition 8. Doc #76. On January 8, 2010, Hak-Shing William Tam, an official proponent and defendant-intervenor, moved to withdraw as a defendant, Doc #369; Tam's motion is denied for the reasons stated in a separate order filed herewith. Plaintiff-intervenor City and County of San Francisco ("CCSF" or "San Francisco") was granted leave to intervene in August 2009. Doc #160 (minute entry).

The court denied plaintiffs' motion for a preliminary injunction on July 2, 2009, Doc #77 (minute entry), and denied proponents' motion for summary judgment on October 14, 2009, Doc #226 (minute entry). Proponents moved to realign the Attorney General as a plaintiff; the motion was denied on December 23, 2009, Doc #319. Imperial County, a political subdivision of California, sought to intervene as a party defendant on December 15, 2009, Doc #311; the motion is denied for the reasons addressed in a separate order filed herewith.

The parties disputed the factual premises underlying plaintiffs' claims and the court set the matter for trial. The action was tried to the court January 11-27, 2010. The trial proceedings were recorded and used by the court in preparing the findings of fact and conclusions of law; the clerk is now DIRECTED to file the trial recording under seal as part of the record. The parties may retain their copies of the trial recording pursuant to the terms of the protective order herein, see Doc #672.

\\

Proponents' motion to order the copies' return, Doc #698, is accordingly DENIED.

PLAINTIFFS' CASE AGAINST PROPOSITION 8

The Due Process Clause provides that no "State [shall] deprive any person of life, liberty, or property, without due process of law." US Const Amend XIV, § 1. Plaintiffs contend that the freedom to marry the person of one's choice is a fundamental right protected by the Due Process Clause and that Proposition 8 violates this fundamental right because:

1. It prevents each plaintiff from marrying the person of his or her choice;

2. The choice of a marriage partner is sheltered by the Fourteenth Amendment from the state's unwarranted usurpation of that choice; and

3. California's provision of a domestic partnership —— a status giving same-sex couples the rights and responsibilities of marriage without providing marriage —— does not afford plaintiffs an adequate substitute for marriage and, by disabling plaintiffs from marrying the person of their choice, invidiously discriminates, without justification, against plaintiffs and others who seek to marry a person of the same sex.

The Equal Protection Clause provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws." US Const Amend XIV, § 1. According to plaintiffs, Proposition 8 violates the Equal Protection Clause because it:

1. Discriminates against gay men and lesbians by denying them a right to marry the person of their choice whereas heterosexual men and women may do so freely; and

2. Disadvantages a suspect class in preventing only gay men and lesbians, not heterosexuals, from marrying.

Plaintiffs argue that Proposition 8 should be subjected to heightened scrutiny under the Equal Protection Clause because gays

b. Tr 1525:1-10: Segura and a colleague, through the Stanford Center for Democracy, operate the American National Elections Studies, which provides political scientists with data about the American electorate's views about politics;

c. Tr 1525:11-19: Segura serves on the editorial boards of major political science journals;

d. Tr 1525:22-1526:24: Segura's work focuses on political representation and whether elected officials respond to the voting public; within the field of political representation, Segura focuses on minorities;

e. PX2330; Tr 1527:25-1528:14: Segura has published about twenty-five peer-reviewed articles, authored about fifteen chapters in edited volumes and has presented at between twenty and forty conferences in the past ten years;

f. PX2330; Tr 1528:21-24: Segura has published three pieces specific to gay and lesbian politics and political issues;

g. Tr 1532:11-1533:17: Segura identified the methods he used and materials he relied on to form his opinions in this case. Relying on his background as a political scientist, Segura read literature on gay and lesbian politics, examined the statutory status of gays and lesbians and public attitudes about gays and lesbians, determined the presence or absence of gays and lesbians in political office and considered ballot initiatives about gay and lesbian issues.

PROPONENTS' WITNESSES

Proponents elected not to call the majority of their designated witnesses to testify at trial and called not a single official proponent of Proposition 8 to explain the discrepancies between the arguments in favor of Proposition 8 presented to voters and the arguments presented in court. Proponents informed the court on the first day of trial, January 11, 2010, that they were withdrawing Loren Marks, Paul Nathanson, Daniel N Robinson and Katherine Young as witnesses. Doc #398 at 3. Proponents' counsel stated in court on Friday, January 15, 2010, that their witnesses

"were extremely concerned about their personal safety, and did not want to appear with any recording of any sort, whatsoever." Tr 1094:21-23.

The timeline shows, however, that proponents failed to make any effort to call their witnesses after the potential for public broadcast in the case had been eliminated. The Supreme Court issued a temporary stay of transmission on January 11, 2010 and a permanent stay on January 13, 2010. See Hollingsworth v Perry, 130 SCt 1132 (Jan 11, 2010); Hollingsworth v Perry, 130 SCt 705 (Jan 13, 2010). The court withdrew the case from the Ninth Circuit's pilot program on broadcasting on January 15, 2010. Doc #463. Proponents affirmed the withdrawal of their witnesses that same day. Tr 1094:21-23. Proponents did not call their first witness until January 25, 2010. The record does not reveal the reason behind proponents' failure to call their expert witnesses.

Plaintiffs entered into evidence the deposition testimony of two of proponents' withdrawn witnesses, as their testimony supported plaintiffs' claims. Katherine Young was to testify on comparative religion and the universal definition of marriage. Doc #292 at 4 (proponents' December 7 witness list) Doc #286-4 at 2 (expert report). Paul Nathanson was to testify on religious attitudes towards Proposition 8. Doc #292 at 4 (proponents' December 7 witness list); Doc #280-4 at 2 (expert report).

Young has been a professor of religious studies at McGill University since 1978. PX2335 Young CV. She received her PhD in history of religions and comparative religions from McGill in 1978. Id. Young testified at her deposition that homosexuality is a normal variant of human sexuality and that same-sex couples possess

EXHIBIT 18

No. _____

In The
Supreme Court of the United States

DENNIS HOLLINGSWORTH, et al.,

Petitioners,

v.

KRISTIN M. PERRY, et al.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

CHARLES J. COOPER
Counsel of Record
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Counsel for Petitioners

April 8, 2010

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order denying the mandamus petition, and remand to the Ninth Circuit with instructions to dismiss the mandamus petition. *See United States v. Munsingwear, Inc.*, 340 U.S. 36 (1950).

I. Petitioners' Mandamus Petition Is Moot

An "actual controversy must be extant at all stages of review." *Alvarez v. Smith*, 130 S. Ct. 576, 580 (2009) (quotation marks omitted). Where there had been but "no longer [is] any actual controversy between the parties," the case is moot. *See id*. at 580-81. The district court's actions subsequent to the Court's issuance of the stay appear to have eliminated the controversy underlying Petitioners' mandamus petition and thus to have rendered that petition moot.

The district court has withdrawn its January 7 order allowing audio-video recording and public broadcast of the trial proceedings and, concomitantly, Chief Judge Kozinski has rescinded his order approving the district court's broadcast order. The district court has also withdrawn the amendment to Local Rule 77-3 that purportedly authorized its broadcast order. Most importantly, the district court repeatedly and unequivocally assured Petitioners that its continued recording of the trial proceedings was not for the purpose of public dissemination, but rather solely for that court's use in chambers. And the district court has stated that it has not requested

authorization to publicly broadcast the closing argument.

As a result of these post-stay actions by the district court, Petitioners have, in effect, obtained the relief they sought through their mandamus petition; namely, preventing the district court from enforcing its order to allow the trial proceedings to be broadcast publicly or to be recorded for later public dissemination. Indeed, Plaintiffs themselves have acknowledged the "fact that these proceedings would not be broadcast to the public in any form" after the district court "withdrew its request to broadcast the proceedings to other federal courthouses and made clear that no such broadcast would take place." App. 26-27.

Petitioners' mandamus petition, therefore, appears to be moot. *See Williams v. Simons*, 355 U.S. 49, 57 (1957) ("By vacating the temporary restraining order and dismissing the complaint, the District Court has brought to pass one alternative of the order petitioners would have this Court issue, thus rendering the petition for all practical purposes moot."); *Cotlow v. Emison*, 502 U.S. 1068 (1992) ("The order of January 10, 1992, having vacated the order from which the appeal is taken, the appeal is dismissed as moot.").

II. The Court Should Vacate the Ninth Circuit's Order Denying the Mandamus Petition and Remand for Dismissal

"The established practice of the Court in dealing with a civil case from a court in the federal system

which has become moot while on its way here or pending [the Court's] decision on the merits is to reverse or vacate the judgment below and remand with a direction to dismiss." *Munsingwear*, 340 U.S. at 39; *see also Alvarez*, 130 S. Ct. at 581; 28 U.S.C. § 2106. Because Petitioners did not "*cause[]* the mootness by voluntary action," the Court "should follow [its] ordinary practice" in this case: vacate the Ninth Circuit's order denying the mandamus petition and remand to the Ninth Circuit with instructions to dismiss the mandamus petition as moot. *Alvarez,* 130 S. Ct. at 582-83 (quotation marks omitted); *see also, e.g.*, *Joint Sch. Dist. No. 241 v. Harris*, 515 U.S. 1154, 1155 (1995) ("The petitions for writs of certiorari are granted. The judgment is vacated and the cases are remanded to the United States Court of Appeals for the Ninth Circuit with directions to dismiss as moot.") (citing *Munsingwear*).

———♦———

EXHIBIT 19

Supreme Court of the United States

No. **09-1238**

DENNIS HOLLINGSWORTH, ET AL.,

Petitioners

v.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA, ET AL.

ON PETITION FOR WRIT OF CERTIORARI to the United States Court of Appeals for the Ninth Circuit.

THIS CAUSE having been submitted on the petition for writ of certiorari and the response thereto.

ON CONSIDERATION WHEREOF, it is ordered and adjudged by this Court that the petition for writ of certiorari is granted. The judgment of the above court is vacated with costs, and the case is remanded to the United States Court of Appeals for the Ninth Circuit with instructions to dismiss the case as moot. See *United States* v. *Munsingwear, Inc.*, 340 U.S. 36 (1950).

IT IS FURTHER ORDERED that the petitioners Dennis Hollingsworth, et al. recover from United States District Court for the Northern District of California, et al. Three Hundred Dollars ($300.00) for costs herein expended.

October 4, 2010

Clerk's costs: **$300.00**

A True copy WILLIAM K. SUTER
Test
Clerk of the Supreme Court of the United States
By: _____

EXHIBIT 20

VAUGHN R WALKER
P O BOX 7880
SAN FRANCISCO, CA 94120
(415) 871-2888

April 14, 2011

Molly Dwyer, Clerk
United States Court Of Appeals
Ninth Circuit
95 7th Street
San Francisco, CA 94103

Dear Ms. Dwyer:

This responds to a motion filed on April 13, 2011, by appellants-defendant-intervenors in Perry v Schwarzenegger, No 10-16696. It should be presented to the panel considering the motion.

Over the last several months, I have on about a half dozen occasions given a lecture or talk on the subject of cameras in the courtroom. These presentations included slides and videos from actual trials and re-enactments of trials. These included the Scopes, Hauptmann, Estes, Simpson and Perry trials. The basic point of the presentations is that videos or films of actual trials are more interesting, informative, compelling and, of course, realistic than re-enactments or fictionalized accounts in portraying trial proceedings.

In preparing to leave the district court earlier this year, I began collecting judicial and personal papers. Most of these now are in digital format, so I asked the head of the court's automation unit to download these to an external disk drive. Because the videos of the Perry trial were used in connection with preparing the findings in that case, the videos were included in the judicial papers downloaded to the disk drive.

In the first several cameras in the courtroom lectures, I used a re-enactment of cross-examination from Perry. When given the disk containing the Perry videos as part of my judicial papers, I decided that in the presentation on February 18 at the University of Arizona it would be permissible and appropriate to use the actual cross-examination excerpt from Perry, instead of the re-enactment. I also used that same excerpt in a talk to a meeting of the Federal Bar Association in Riverside, California on March 8 and in a class I am

teaching at the University of California Berkeley School of Law. I am scheduled to give a similar talk at Gonzaga University Law School next week. The Perry excerpt is three minutes in length.

I should also note that the video of the entire Perry trial was made available to the parties in that case and portions were used in the closing arguments in the district court and made part of the record before the case went on appeal. If the court believes that my possession of the videos as part of my judicial papers is inappropriate, I shall, of course, abide by that or any other directive the court makes.

The Perry case involved a public trial. As Chief Justice Berger observed some years ago, "People in an open society do not demand infallibility in their institutions, but it is difficult for them to accept what they are prohibited from observing."

Respectfully submitted,

Vaughn R Walker /RJJ

Vaughn R Walker

cc: All Counsel

EXHIBIT 21

United States District Court
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

Kristin M. Perry, et al.,

Plaintiffs,

v.

Arnold Schwarzenegger, et al.,

Defendants.

/

NO. C 09-02292 JW

ORDER DENYING MOTION FOR ORDER COMPELLING RETURN OF TRIAL RECORDINGS

Presently before the Court is Defendant-Intervenors' Motion for Order Compelling Return of Trial Recordings.[1] The Court conducted a hearing on June 13, 2011. Based on the papers submitted to date and oral argument, the Court DENIES Defendant-Intervenors' Motion for Order Compelling Return of Trial Recordings.

A. Background

This Motion is related to the trial held by Chief Judge Vaughn Walker (retired) in this case. A detailed summary of the background to the case and its procedural history can be found in the

[1] (Appellants' Motion for Order Compelling Return of Trial Recordings, hereafter, "Motion," Docket Item No. 771-1.) This Motion was originally brought before the Ninth Circuit, which currently has appellate jurisdiction over the merits of the underlying decision in this case, including the judgment. (See Order at 2, Docket Item No. 771.) On April 27, 2011, the Ninth Circuit transferred the Motion to this Court, on the ground that this Court still has jurisdiction over "ancillary matters" associated with this case, such as the protective order regarding the trial recordings at issue in this Motion. (Id. at 2-3.)

United States District Court
For the Northern District of California

Order issued by Judge Walker on August 4, 2010.[2] The Court reviews the procedural history relevant to the present Motion.

On December 21, 2009, a coalition of media companies requested the Court's permission to televise the trial.[3] (See Docket Item No. 313.) On January 6, 2010, the Court held a hearing regarding the recording and broadcasting of the trial at which the Court announced that an audio and video feed of the trial would be streamed to several courthouses in other cities, and that the trial would be recorded for broadcast over the Internet. Hollingsworth, 130 S. Ct. at 708-09. On January 7, 2010, the Court notified the parties that it had made a formal request to Chief Judge Kozinski that the trial be included in the Ninth Circuit's pilot project on audio-video recording and transmission. (See Docket Item No. 358.) On January 8, 2010, Chief Judge Kozinski issued an order approving of real-time streaming of the trial to certain courthouses, pending the resolution of technical difficulties. Hollingsworth, 130 S. Ct. at 709. On January 9, 2010, Defendant-Intervenors applied to the Supreme Court for a stay of the Court's order broadcasting the trial, which the Supreme Court granted on January 13, 2010. See id. at 709-10 (staying the broadcast because the Northern District of California's amendment of its Local Rules to permit broadcast of the trial "likely did not" comply with federal law). On January 15, 2010, the Court notified the parties that, in compliance with the Supreme Court's January 13, 2010 Order, it had formally requested Chief Judge Kozinski to withdraw the case from the pilot project on transmitting trial court proceedings to remote federal courthouse locations or for broadcast or webcast. (See Docket Item No. 463 at 2.) However, the Court notified the parties that it would continue recording the trial "for use in chambers." (Id.)

On May 31, 2010, the Court notified the parties that "[i]n the event any party wishes to use portions of the trial recording during closing arguments, a copy of the video can be made available to the party." (Docket Item No. 672 at 2.) The Court stated that the parties "will of course be

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[2] (See Pretrial Proceedings and Trial Evidence; Credibility Determinations; Findings of Fact; Conclusions of Law; Order, hereafter, "August 4 Order," Docket Item No. 708.)

[3] A detailed discussion of the factual background of the Court's consideration of whether the trial should be recorded or broadcast may be found in the Supreme Court's opinion staying the broadcast of the trial. See Hollingsworth v. Perry, 130 S. Ct. 705 (2010).

United States District Court
For the Northern District of California

obligated to maintain as strictly confidential any copy of the video pursuant to paragraph 7.3 of the protective order."[4] (Id.) On June 2, 2010, both Plaintiffs and Plaintiff-Intervenor City and County of San Francisco requested a copy of the video, pursuant to the Court's May 31, 2010 Order.[5] In its August 4 Order, the Court noted that the "trial proceedings were recorded and used by [the Court] in preparing the findings of fact and conclusions of law," and directed the Clerk to "file the trial recording under seal as part of the record." (August 4 Order at 4.) The Court stated that the "parties may retain their copies of the trial recording pursuant to the terms of the protective order." (Id.)

B. Discussion

Defendant-Intervenors move for an order as follows: (1) directing Judge Walker to cease disclosures of the video recordings of the trial proceedings in this case, or any portion thereof, and that all copies of the trial recordings in the possession, custody or control of Judge Walker be returned to the Court;[6] and (2) directing that all copies of the trial recordings in the possession,

---

[4] On January 12, 2010, the parties entered into an Amended Protective Order. (hereafter, "Protective Order," Docket Item No. 425.) The Protective Order was entered because disclosure and discovery activity in the case would be "likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation would be warranted." (Id. at 1.) Paragraph 7.3 of the Amended Protective Order addresses items that are designated as "HIGHLY CONFIDENTIAL–ATTORNEYS' EYES ONLY," and states that such items may only be disclosed to the parties' counsel of record, certain experts, the Court and its personnel, "court reporters, their staffs, and professional vendors" who have signed an agreement to be bound by the Protective Order, and the author of the item. (Id. at 8-9.) The Protective Order specifies that "[e]ven after the termination of this litigation, the confidentiality obligations imposed by [the Order] shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise directs." (Id. at 2.)

[5] (See Notice to Court Clerk from Plaintiff-Intervenor City and County of San Francisco Re Use of Video, Docket Item No. 674 (stating that Plaintiff-Intervenor "wishes to obtain a copy of [certain portions] of the trial video to review for possible use at closing argument"); Notice to Court Clerk Re Plaintiffs' Request for a Copy of the Trial Recording, Docket Item No. 675 (stating that Plaintiffs "respectfully request a copy of the trial recording for possible use during closing arguments").)

[6] In its April 28, 2011 Order, the Court ordered "[a]ll participants in the trial," including Judge Walker, "who are in possession of a recording of the trial proceedings" to appear at the June 13, 2011 hearing "to show cause as to why the recordings should not be returned to the Court's possession." (Order Setting Hearing on Motion at 2, hereafter, "April 28 Order," Docket Item No. 772.) On May 12, 2011, Judge Walker voluntarily lodged his chambers copy of the video recording with the Court, which filed the copy under seal. (See Docket Item Nos. 777, 781.) Accordingly,

United States District Court
For the Northern District of California

custody or control of any party to this case be returned to the Court and held under seal, because, now that the trial is over, there is "no legitimate reason" for the parties to continue to have a copy of the recording. (Motion at 1, 20.) Plaintiffs respond as follows: (1) because no "prior orders or local rules barred" Judge Walker from disclosing portions of the video, and because Judge Walker's use of the video was "harmless," the Court should not order him to stop disclosing portions of the video or to return his copy to the Court; and (2) because "use of the trial video would aid the parties in connection with any additional proceedings," and because the parties "have dutifully complied with the protective order," the Court should not order the parties to return their copies of the video.[7]

Upon review, the Court does not find good cause to require the parties to return their copies of the video recordings of the trial to the Court. As discussed previously, the Court made copies of the video available to the parties, pursuant to the Protective Order, for use during the trial. Defendant-Intervenors' Motion does not contend that the parties have violated the terms of the Protective Order by disclosing the video recordings of the trial. Because there is no indication that the parties have violated the Protective Order, and because appellate proceedings in this case are still ongoing, the parties may retain their copies of the trial recordings.[8]

Accordingly, the Court DENIES Defendant-Intervenors' Motion for Order Compelling Return of Trial Recordings and discharges its Order to Show Cause regarding the return of the trial recordings.

Defendant-Intervenors' Motion, insofar as it requests an order requiring Judge Walker to return his copy of the video recording, is DENIED as moot. The Court does not reach any issue with respect to Judge Walker's use of the trial recordings.

[7] (Plaintiffs-Appellees' Opposition to Appellants' Motion Regarding Trial Recordings and Plaintiffs-Appellees' Motion to Unseal at 6-11, Docket Item No. 771-4.) In addition, the Opposition contends that the recordings of the trial should be unsealed. (Id. at 9-10.) However, in its April 28 Order, the Court stated that it would "bifurcate Plaintiffs' Cross-Motion to lift the protective order [on the video recordings] until it has the opportunity to resolve the underlying Motion." (April 28 Order at 1.) Accordingly, the Court does not consider at this time Plaintiffs' contention that the recordings should be unsealed. The Court, in conjunction with Plaintiffs' Cross-Motion to lift the Protective Order, will consider any request by Judge Walker for the return of the copy of the video recording that Judge Walker voluntarily returned to the Court.

[8] The video recordings of the trial continue to be subject to the Protective Order, pending the Court's resolution of the Cross-Motion to lift the Protective Order.

United States District Court
For the Northern District of California

C. Conclusion

The Court DENIES Defendant-Intervenors' Motion for Order Compelling Return of Trial Recordings, and orders as follows:

(1) The Court sets **August 29, 2011 at 9 a.m.** for a hearing on Plaintiffs' Cross-Motion to lift the Protective Order on the video recording of the trial.

(2) Although it appears that Plaintiffs' Cross-Motion has been fully briefed at the circuit level, the Court invites anyone who wishes to file further responses to the Cross-Motion to do so in compliance with the following briefing schedule:

(a) On or before **July 15, 2011**, any party desiring to do so shall file their Opposition;

(b) On or before **August 1, 2011**, any party desiring to do so shall file their Reply.

The Court hereby gives notice that it intends to return the trial recordings to Judge Walker as part of his judicial papers. Any party who objects shall articulate its opposition in the supplemental briefing in accordance with the schedule outlined above.

Dated: June 14, 2011

JAMES WARE
United States District Chief Judge

THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:

Alan Lawrence Schlosser aschlosser@aclunc.org
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Dated: June 14, 2011

Richard W. Wieking, Clerk

By: /s/ JW Chambers
Susan Imbriani
Courtroom Deputy

EXHIBIT 22

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May 12, 2011

Chief Judge James Ware
U.S. District Court for the Northern District of California
Courtroom 5, 17th Floor
450 Golden Gate Avenue
San Francisco, California 94110

Re: Perry, et al. V. Schwarzenegger, et al.
Case No.: C-09-02292 JW

Dear Judge Ware:

Hon. Vaughn R. Walker (ret.) ("Walker"), by and through counsel, hereby responds to the Order Setting Hearing on Motion dated April 28, 2011, (U.S. District Court Docket 772). Walker lodges with the court his chambers copy of the video recordings made of the trial herein (Exhibit A) for the purpose of the court's consideration of the Motion for Order compelling Return of Trial Recordings (Docket 770). This is subject to, if necessary, Walker's request for return of the chamber's copy of the recordings. [1]

Having lodged his chambers copy of the video recordings and as a non-party to these proceedings, it appears that Walker has satisfied the April 28 order and we request that insofar as directed to Walker the order be discharged.

We appreciate the Court's attention to this matter.

Very truly yours,

LAW OFFICES OF EPHRAIM MARGOLIN

/s/ Ephraim Margolin
/s/ Vicki H. Young
EPHRAIM MARGOLIN
VICKI H. YOUNG
Attorneys for Vaughn R. Walker

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[1] "The chambers papers of a federal judge remain the private property of that judge or the judge's heirs, and it is the prerogative of the judge or the judge's heirs to determine the disposition of those papers." A Guide to the Preservation of Federal Judges' Papers, Second Edition, Federal Judicial Center (2009).

USDC CAND 3:09-CV-02292

CA9 10-16696, 10-16751

TRIAL VIDEOS

VRW USDC-CAND G:Drive

EXHIBIT A

EXHIBIT 23

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE JAMES WARE, JUDGE

KRISTIN M. PERRY, SANDRA B. STIER, PAUL T. KATAMI and JEFFREY J. ZARRILLO, Plaintiffs,	
v.	No. C 09-2292 JW
EDMUND G. BROWN, JR., in his official capacity as Governor of California; KAMALA D. HARRIS, in her 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 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, Defendants.	San Francisco, California Monday, August 29 2011 (62 pages)

TRANSCRIPT OF PROCEEDINGS

THE COURT: So the narrow issue that you're raising is there's something that would be intimidating by the video of those same words.

MR. THOMPSON: Yes, your Honor.

THE COURT: What?

MR. THOMPSON: One of the things, you know what the person looks like. You know what they sound like. And this is all laid out in our attachments to our Ninth Circuit pleadings where the Judicial Conference of the United States at great length goes through and talks about the special concerns that are implicated by making a video available that aren't implicated where the printed word is made available.

THE COURT: Well, you do raise an issue, because not only -- well, you'll know what they look like and sound like if you're there, and there's no prohibition against this having been in a very large court, and indeed it was connected to other courtrooms, but it's the permanence of it that is different by the video. In other words, that can be displayed repeatedly as opposed to the real time trial of the case.

Anything further?

MR. THOMPSON: Two very quick points. Number 1, as I've been up here, I've been thinking more about whether there would be a prohibition on the Ninth Circuit viewing the videotape, and I'm just not prepared to give you an answer to that, your Honor, as I stand here today. I had not thought

about that before.

THE COURT: No, I won't quote you in my order. It just seems to me that I would have to speak to that because I can't conceive of circumstances where any part of what was placed before the Court for its decision, under seal or not, would be somehow unavailable to the reviewing court. And so I assumed -- and I started the question for another purpose. I was surprised by your answer, but it sounds like you've moved from, It's not available, to, I don't take a position on it at this time.

MR. THOMPSON: Yes, your Honor.

THE COURT: I appreciate that.

MR. THOMPSON: And the last thing, your Honor, is this conclusion: If the Court were to decide to unseal the video, we would ask that a stay of that decision be put in place pending an appeal, or at the very least a stay pending two weeks, such that the appellate courts would have a reasonable opportunity to consider this matter.

And we thank you, your Honor.

THE COURT: Thank you. Any rebuttal?

MR. BOUTROUS: Yes, your Honor. Thank you.

First, I want to start with the last couple -- one of the last points Mr. Thompson made. He said the big difference between the transcript and the video of the trial would be, you wouldn't know how they sounded, you wouldn't know how the

1 witness looked from the transcript. That is the flimsiest
2 argument I could have imagined Mr. Thompson making. As I was
3 going to show, Mr. Blankenhorn is not shy. He is easily
4 accessible. Someone read the transcript -- and in the wide
5 reporting of this case, there are the reenactments. It would
6 take literally two seconds to see Mr. Blankenhorn talk for
7 hours on his views about same-sex marriage. So that's not a
8 compelling reason to keep this secret.
9 Same with Dr. Miller -- Mr. Miller, their other
10 witness. He's online. You can find him speaking at panels and
11 discussing the issues. These are people who speak publicly.
12 They're engaged in public debate.
13 One of the things that's changed from the Supreme
14 Court's ruling is the Court decided the case called *Doe vs.*
15 *Reed*, which the City cited. And Justice Scalia, who joined the
16 stay order in this case, issued his opinion, the concurring
17 opinion. There was ballot initiatives on whether people who
18 signed ballot initiatives to give same-sex partners benefits in
19 Washington could remain anonymous, and Justice Scalia said,
20 When ordinary citizens on the street enter into the public
21 debate about issues, thrust themselves in, then they have to
22 have the courage to be in public debate. There are rules
23 against intimidation and harassment.
24 And that takes me back -- I thought Mr. Thompson would
25 have something, some -- he kept talking about their concerns.

EXHIBIT 24

FILED

JAN 15 2010

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

JUDICIAL COUNCIL

OF THE NINTH CIRCUIT

IN THE MATTER OF PILOT DISTRICT COURT PUBLIC ACCESS PROGRAM APPROVED DECEMBER 16, 2009	No. 2010–3 **ORDER**

KOZINSKI, Chief Judge:

I have received a request from the Chief Judge of the Northern District of California to remove Perry v. Schwarzenegger, No. 3:09-cv-02292-VRW, from this pilot program. The request is granted.

Order No. 2010–2 is rescinded.

EXHIBIT 25

REPORT OF THE PROCEEDINGS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

September 14, 2010

The Judicial Conference of the United States convened in Washington, D.C., on September 14, 2010, pursuant to the call of the Chief Justice of the United States issued under 28 U.S.C. § 331. The Chief Justice presided, and the following members of the Conference were present:

First Circuit:

Chief Judge Sandra L. Lynch
Chief Judge Mark L. Wolf,
District of Massachusetts

Second Circuit:

Chief Judge Dennis Jacobs
Chief Judge William K. Sessions III,
District of Vermont

Third Circuit:

Chief Judge Theodore A. McKee
Chief Judge Harvey Bartle III,
Eastern District of Pennsylvania

Fourth Circuit:

Chief Judge William B. Traxler, Jr.
Judge James P. Jones,
Western District of Virginia

Fifth Circuit:

Chief Judge Edith Hollan Jones
Judge Sim Lake III,
Southern District of Texas

cost-containment initiatives to date and noted that the long-term financial health of the judiciary will be aided by future cost-containment efforts that provide tangible cost savings or avoidances.

COMMITTEE ON CODES OF CONDUCT

COMMITTEE ACTIVITIES

The Committee on Codes of Conduct reported that since its last report to the Judicial Conference in March 2010, the Committee received 17 new written inquiries and issued 17 written advisory responses. During this period, the average response time for requests was 22 days. In addition, the Committee chair responded to 159 informal inquiries, individual Committee members responded to 133 informal inquiries, and Committee counsel responded to 358 informal inquiries.

COMMITTEE ON COURT ADMINISTRATION AND CASE MANAGEMENT

CAMERAS IN THE COURTROOM PILOT PROJECT

On recommendation of the Committee on Court Administration and Case Management, the Judicial Conference authorized a pilot project to evaluate the effect of cameras in district court courtrooms, of video recordings of proceedings therein, and of publication of such video recordings. The pilot project will proceed in accordance with the tenets outlined below, and is subject to definition and review by the Committee. In addition, the Committee will request that a study of the pilot be conducted by the Federal Judicial Center.

a. The pilot will be national in scope and consist of up to 150 individual judges from districts chosen to participate by the Federal Judicial Center, in consultation with the Court Administration and Case Management Committee. The pilot project should include a national survey of all district judges, whether or not they participate in the pilot, to determine their views on cameras in the courtroom.

b. The pilot will last up to three years, with interim reports prepared by the Federal Judicial Center after the first and second years.

c. The pilot will be limited to civil cases only.

d. Courts participating in the pilot will record proceedings, and recordings by other entities or persons will not be allowed.

e. Parties in a trial must consent to participating in the pilot.

f. Recording of members of a jury will not be permitted at any time.

g. Courts participating in the pilot should – if necessary – amend their local rules (providing adequate public notice and opportunity to comment) to provide an exception for judges participating in the Judicial Conference-authorized pilot project.

h. The Court Administration and Case Management Committee is authorized to issue and amend guidelines to assist the pilot participants.

I. The Administrative Office is authorized to provide funding to the courts with participating judges – if needed – for equipment and training necessary to participate in the pilot.

PACER ACCESS TO CERTAIN BANKRUPTCY FILINGS

Under the Judicial Conference policy on privacy and public access to electronic case files, bankruptcy filings should include only the last four digits of filers' social security numbers on their petitions and other public documents (JCUS-SEP/OCT 01, pp. 48-50). However, documents filed prior to implementation of the policy in 2003 are still available on the Public Access to Court Electronic Records (PACER) system and contain the debtors' full social security numbers, creating privacy concerns. To address those concerns, on recommendation of the Committee, the Judicial Conference agreed to amend its privacy policy to restrict public access through PACER to documents in bankruptcy cases that were filed before December 1, 2003 and have been closed for more than one year, with the following conditions:

EXHIBIT 26

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December 28, 2009

The Honorable Vaughn R. Walker
Chief Judge
United States District Court for the
Northern District of California
450 Golden Gate Ave.
San Francisco, CA 94102

Re: *Perry v. Schwarzenegger*, No. C-09-2292 VRW (N.D. Cal.)

Dear Chief Judge Walker:

I write on behalf of Defendant-Intervenors ("Proponents") to reiterate our objections, conveyed in my letter of October 5, to televising the proceedings in this case beyond the confines of the courthouse. *See* Doc. No. 218.

Proponents respectfully submit that photographic or video depiction of the trial proceedings in this case is not authorized, and it would violate this Court's Local Rule 77-3, this Court's General Order No. 58, and the policy of the Judicial Conference of the United States. As explained in detail below, the concerns animating the policy adopted by the Judicial Conference – particularly the unacceptable danger that the right to a fair trial will be undermined and the potential for intimidation of witnesses and litigants – apply with particular force in this case.

The Media Coalition seeks leave to broadcast and webcast the trial proceedings in this case, relying upon a press release issued by the Ninth Circuit on December 17, 2009. *See* Doc # 313. However, the Judicial Council for the Ninth Circuit has not yet issued an order or resolution setting forth the policies and procedures that will govern the pilot program described in the press release (for example, the Ninth Circuit's press release does not specify whether a trial may be broadcast over the objection of one of the parties). More importantly, the Ninth Circuit has not yet provided notice and an opportunity to comment on the pilot program or the (as yet unpromulgated) policies and procedures that will govern it. As explained below, this Court is bound to comply with its Local Rule unless and until it either is amended by this Court following notice and an opportunity to comment or is abrogated by order of the Judicial Council following notice and an opportunity to comment. *See* FED. R. CIV. P. 83(a)(1); 28 U.S.C. § 2071(b) & (c)(1); 28 U.S.C. § 332(d).

1. Current Governing Policy

This Court's Rule 77-3 flatly prohibits the broadcast or webcast of trial proceedings beyond the courthouse: "the taking of photographs, public broadcasting or televising, or recording for those purposes in the courtroom or its environs, in connection with any judicial proceeding, is prohibited." Likewise, this Court's General Order No. 58 provides that the "[p]olicy of the Judicial Conference of the United States prohibits, in both civil and criminal cases in all district courts, broadcasting, televising, recording, or photographing courtroom proceedings for the purposes of public dissemination." *See also* United States District Court for the N.D. Cal., General Information Guide for Journalists at 4 (October 29, 2009) ("Broadcasting of proceedings is prohibited by policy of the Judicial Conference of the United States.").

The Judicial Conference of the United States adopted the current policy in 1996. *See* JCUS-SEP 96, p. 54, *available at* http://www.uscourts.gov/judconf/96-Sep.pdf. The policy is based upon the potentially negative impact that the public broadcast of federal trial court proceedings could have on the administration of justice. After an extensive study of the issue in 1994, the Judicial Conference rejected proposals for public broadcast of trial court proceedings. *See* JCUS-SEP 94, pp. 46-47, *available at* http://www.uscourts.gov/judconf/94-Sep.pdf. "Based upon the data presented, a majority of the Conference concluded that the intimidating effect of cameras on some witnesses and jurors was cause for concern, and the Conference declined to approve the Committee's recommendation to expand camera coverage in civil proceedings." *Id*.

In testimony before Congress in September 2007, the Chair of the Judicial Conference's Court Administration and Case Management Committee explained the Judicial Conference's position, in part, as follows:

> The Judicial Conference position is based on a thoughtful and reasoned concern regarding the impact cameras could have on trial proceedings. [Public broadcast] has the potential to undermine the fundamental rights of citizens to a fair trial. It could jeopardize court security and the safety of trial participants, including judges, U.S. attorneys, trial counsel, U.S. marshals, court reporters, and courtroom deputies. The use of cameras in the trial courts could also raise privacy concerns and produce intimidating effects on litigants, witnesses, and jurors, many of whom have no direct connection to the proceeding.
>
> * * *
>
> Because cameras in trial courts could profoundly and negatively impact the trial process, the Judicial Conference strongly opposes any legislation that would allow the use of cameras in the United States district courts.

Cameras in the Courtroom: The "Sunshine in the Courtroom Act of 2007," H.R. 2128: Hr'g Before the H. Comm. on the Judiciary, 110th Cong. (Sept. 27, 2007) (statement of The Honorable John R. Tunheim, Judge, United States District Court for the District of Minnesota and Chair of the Court Administration and Case Management Committee of the Judicial Conference), *available at* http://www.uscourts.gov/testimony/ Tunheim_cameras092707.pdf.

2. <u>The Position of the Ninth Circuit Judicial Council</u>

Shortly after the Judicial Conference of the United States adopted its policy against the broadcast of federal district court proceedings, the Judicial Council of the Ninth Circuit followed suit, "vot[ing] to adopt the policy of the Judicial Conference of the United States regarding the use of cameras in courtrooms on May 24, 1996." *See* Resolution 1: Instituting a Circuit Rule Permitting Photographing, Recording and Broadcasting in Non-Jury, Civil Cases Before the District Courts at 1 (copy submitted to the Judicial Conference of the United States on May 7, 2009) (attached as part of Exhibit A) at 3.

In July 2007, the Ninth Circuit Judicial Conference adopted a resolution recommending that the Judicial Conference of the United States change its policy to permit the broadcast of civil, non-jury trials. *Id*. at 2. The Ninth Circuit Judicial Conference also recommended that, "to the extent permitted by Judicial Conference [of the United States] procedures, this Circuit should adopt a Rule that would allow the photographing, recording, and broadcasting of non-jury, civil proceedings before the District Courts in the Ninth Circuit." *Id*. Despite these recommendations, no action was taken by the Ninth Circuit Judicial Council for nearly two years.

Finally, in May 2009, the Ninth Circuit Judicial Council forwarded the recommendation to the Judicial Conference of the United States. *See* Letter from Cathy A. Catterson to The Honorable John R. Tunheim (May 7, 2009) (attached as Exhibit A at 1). During the interim, "[t]he Ninth Circuit Judicial Council [had] considered the resolution at a number of meetings following the 2007 Judicial Conference but deferred action to await possible developments at the national level." *Id*. For reasons left unstated, the Ninth Circuit Judicial Council decided in May 2009 "that it is appropriate to forward the resolution now and ask that it [be] considered by [the Committee of the Judicial Conference of the United States on Court Administration and Case Management] at its June meeting." *Id*.

As noted above, the Judicial Conference of the United States has not retreated from its policy against the use of cameras in federal district court proceedings. Indeed, as recently as July 2009, the Judicial Conference of the United States strongly reiterated its concern about cameras in the courtroom in a letter to Congress. The Conference again stressed that "[t]he Federal Judiciary is . . . very concerned that the effect of cameras in the courtroom on participants would be to impact negatively on the trial process and thereby interfere with a fair trial." Letter from

James C. Duff to Senators Patrick J. Leahy and Jeff Sessions (July 23, 2009) (attached as Exhibit B) at 2. Among many other concerns, the Judicial Conference again emphasized its considered judgment that "[t]elevision cameras can intimidate litigants, witnesses, and jurors, many of whom have no direct connection to the proceeding and are involved in it through no action of their own. Witnesses might refuse to testify or alter their stories when they do testify if they fear retribution by someone who may be watching the broadcast." *Id*.

On December 17, 2009, the Ninth Circuit issued a press release announcing that the Ninth Circuit Judicial Council "has approved, on an experimental basis, the limited use of cameras in federal district courts within the circuit." *See* News Release, Ninth Circuit Judicial Council Approves Experimental Use of Cameras in District Courts, *available at* http://www.ce9.uscourts.gov/cm/articlefiles/137-Dec17_Cameras_Press%20Relase.pdf. The press release provided no details as to how the program will be implemented other than to state that "[c]ases to be considered for the pilot program will be selected by the chief judge of the district court in consultation with the chief circuit judge." *Id*. Nor has the Ninth Circuit adopted a Circuit Rule allowing the broadcast of non-jury civil trials as recommended by the 2007 Ninth Circuit Judicial Conference resolution. According to the Office of the Circuit Executive (the contact listed on the press release), there is no resolution, order, or other publicly available information setting forth the policies and procedures that will govern the new pilot program. Nor has the Ninth Circuit Judicial Council taken any action to abrogate this Court's Local Rule 77-3. And it has not yet provided notice and the opportunity to comment concerning the program.

In these circumstances, it is clear that this Court's Local Rule 77-3 "has the force of law," *Weil v. Neary*, 278 U.S. 160, 169 (1929), and therefore remains binding on this Court. *See, e.g.*, *United States v. Yonkers Bd. of Education*, 747 F.2d 111, 112 (2d Cir. 1984) ("So long as [local rule prohibiting television broadcasting of judicial proceedings] do[es] not conflict with rules prescribed by the Supreme Court, congressional enactments, or constitutional provisions, [it has] the force of law. Accordingly, [such local rule is] binding on the district judges until properly amended or repealed.") (citations omitted); *United States v. Hastings*, 695 F.2d 1278, 1279 nn.4-5 (11th Cir. 1983) (district court "was bound by" local rule "prohibit[ing] television cameras in the courtroom").

This Court is, of course, authorized to amend its local rules, but Congress has provided by law that "[a]ny rule prescribed by a court, other than the Supreme Court, under subsection (a) shall be prescribed only after giving appropriate public notice and an opportunity for comment." 28 U.S.C. § 2071(b); *see also* FED. R. CIV. P. 83(a)(1) ("After giving public notice and an opportunity for comment, a district court, acting by a majority of its district judges, may adopt and amend rules governing its practice."). This Court's own rules are to the same effect. *See* Local Rule 83-1 ("The local rules of this Court may be modified or amended by a majority vote of the active Judges of the Court in accordance with the procedures set forth in this rule."); Local Rule 83-3(a) ("Before becoming effective, any proposed substantive modification of the local

rules shall be subject to public comment in accordance with FRCivP 83.”). This Court must also first “appoint an advisory committee for the study of the rules of practice … of such court,” which “shall make recommendations to the court concerning such rules.” 28 U.S.C. § 2077(b); *see also* Local Rule 83-1 (“Any proposed substantive modification or amendment of these local rules must be submitted to a Local Rules Advisory Committee for its review ….”).

The circuit judicial council is authorized to modify or abrogate a district court’s local rules. *See* 28 U.S.C. § 2071(c)(1); FED. R. CIV. P. 83(a)(1). But its authority to do so is limited in two significant respects. First, the Judicial Council is authorized to abrogate this Court’s rules *only* if the Council determines that the rule is “inconsistent” with the Federal Rules of Civil Procedure. Congress has specified that “[e]ach judicial council shall periodically review the rules which are prescribed under section 2071 of this title by district courts within its circuit for consistency with rules prescribed under section 2072 of this title [i.e., the Federal Rules]. Each council may modify or abrogate any such rule found inconsistent in the course of such a review.” 28 U.S.C. § 332(d)(4). Obviously, this Court’s Local Rule 77-3 is entirely consistent with the Federal Rules – indeed, it adopts and applies the policy adopted by the Judicial Conference of the United States.

Second, even if the Ninth Circuit Judicial Council had the substantive authority to abrogate this Court’s Local Rule 77-3, Congress has prescribed specific procedures that must be followed:

> Any general order relating to practice and procedure shall be made or amended only after giving appropriate public notice and an opportunity for comment. Any such order so relating shall take effect upon the date specified by such judicial council. Copies of such orders so relating shall be furnished to the Judicial Conference and the Administrative Office of the United States Courts and be made available to the public.

28 U.S.C. § 332(d)(1); *see also In re Sony BMG Music Entertainment*, 564 F.3d 1, 8 (1st Cir. 2009) (holding that notice and opportunity to comment are not required when circuit judicial council review did not result in resolution “to modify or abrogate any local rule but, rather, endorsed existing practice in the districts within the circuit”).

Because none of these procedures has been followed (indeed, the Ninth Circuit Judicial Council has not as yet even purported to abrogate Local Rule 77-3), the Local Rule remains in force and binding on this Court. In similar circumstances, the First Circuit recently issued a writ of mandamus overturning an order entered by the District Court of Massachusetts permitting a webcast of a trial. *See In re Sony BMG Music Entertainment*, 564 F.3d 1 (1st Cir. 2009). As in this case, the governing Local Rule barred the broadcast. *See id.* at 10 (reprinting rule). The trial court had sought to read into the text discretionary authority to deviate from the rule, but the

First Circuit rejected that effort. In so holding, the Court of Appeals emphasized the importance of the policy adopted by the Judicial Conference of the United States based on its conclusion that " 'the intimidating effect of cameras' in the courtroom presented 'cause for concern.' " *Id*. at 7 (quoting JCUS-SEP 94, p. 46, *available at* http://www.uscourts.gov/judconf/94-Sep.pdf). The First Circuit held that "the Judicial Conference's unequivocal stance against the broadcasting of civil proceedings (save for those few exceptions specifically noted in the policy itself), is entitled to substantial weight." *Id*. The Court stressed its belief that "the district court, institutionally, would construe its rule to avoid a head-on clash with the national standard." *Id*.[1] *See also In re Complaint Against District Judge Billy Joe McDade*, No. 07-09-90083 (7th Cir. Sept. 28, 2009) (Easterbrook, C.J.) (finding that district court judge "engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts" by permitting live broadcast of a civil trial with the agreement of the parties).

3. <u>The Judicial Conference's Fair Trial Concerns Apply With Great Force in This Case</u>

Publicly televising the proceedings in this case would give rise to the Judicial Conference's consistent and oft-repeated concerns "that the effect of cameras in the courtroom on participants would be to impact negatively the trial process and thereby interfere with a fair trial." Letter from James C. Duff to Senators Patrick J. Leahy and Jeff Sessions (July 23, 2009) (attached as Exhibit B) at 2. Most importantly, given the highly contentious and politicized nature of Proposition 8 and the issue of same-sex marriage in general, the possibility of compromised safety, witness intimidation, and/or harassment of trial participants is very real. Indeed, lead counsel for Plaintiffs has acknowledged that "widespread economic reprisals against financial supporters of . . . Proposition 8" resulted from public disclosure of the names of donors during the campaign. Doc #187-1 at 6-7.

And the record of other forms of harassment against Proposition 8 supporters is well documented. *See* Doc #s 187-1, 187-2 at ¶¶ 10-12; 187-9 at ¶¶ 6-8; 187-9 at 12-15; 187-11; 187-12 at ¶¶ 5-6; 187-13 at ¶ 8; *see also* Thomas M Messner, *The Price of Prop 8*, The Heritage Foundation, *available at* www.heritage.org/Research/Family/bg2328.cfm ("expressions of support for Prop 8 have generated a range of hostilities and harms that includes harassment, intimidation, vandalism, racial scapegoating, blacklisting, loss of employment, economic hardships, angry protests, violence, at least one death threat, and gross expressions of anti-

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[1] The *Sony* Court also found support in the 1996 resolution of the First Circuit Judicial Council embracing the position taken by the Judicial Conference. *See Sony BMG*, 564 F.3d at 7-8. The Ninth Circuit Judicial Council adopted a similar resolution in 1996, and has not as yet issued an order or resolution formally rescinding it, though the December 17 press release does indicate that the Council has taken a different stance. As demonstrated above, the press release standing alone is insufficient to override this Court's Local Rule and the policy adopted by the Judicial Conference of the United States.

religious bigotry"). This campaign of harassment and reprisal has often been "targeted and coordinated," *id.*, and the retaliation has often been quite serious. *See, e.g.*, Doc # 187-11 at 81 (Brad Stone, Disclosure, Magnified on the Web, N.Y. Times (Feb. 8, 2009) ("Some donors to groups supporting the measure have received death threats and envelopes containing a powdery white substance….").

Relatedly, as the Judicial Conference has emphasized, televising the trial would impinge upon the privacy interests of witnesses, "some of whom are only tangentially related to the case, but about whom very personal and identifying information might be revealed." Letter from James C. Duff to Senators Patrick J. Leahy and Jeff Sessions (July 23, 2009) (attached as Exhibit B) at 2. Already, one website "takes the names and ZIP codes of people who donated to the ballot measure … and overlays the data on a Google map." Doc # 187-11 at 81. Another website was set up with the name, hometown, home phone numbers, workplace, workplace contact information, and pictures of Prop 8 supporters so that "whenever someone Googles them this [website] will come up." *Id*. at 55, 62, 65-66, 73, 77.

With this background, it is not surprising that potential witnesses have already expressed to Proponents' counsel their great distress at the prospect of having their testimony televised. Indeed, some potential witnesses have indicated that they will not be willing to testify at all if the trial is broadcast or webcast beyond the courthouse.

Finally, permitting the recording and broadcast of these proceedings over Proponents' objections would be particularly unfair in view of the fact that the governing rules unequivocally forbade cameras in the courtroom at the time Proponents voluntarily intervened in this case.

For these reasons, Proponents must respectfully object to any departure from this Court's Rule 77-3 and the policy of the Judicial Conference of the United States.

Sincerely,

/s/ Charles J. Cooper

Charles J. Cooper
Counsel for Defendant-Intervenors

EXHIBIT 27

Exhibit A

No. 08-205

IN THE

Supreme Court of the United States

CITIZENS UNITED,

Appellant,

v.

FEDERAL ELECTION COMMISSION,

Appellee.

On Appeal
From The United States District Court
For The District Of Columbia

REPLY BRIEF FOR APPELLANT

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RULE 29.6 STATEMENT

The corporate disclosure statement included in the Brief for Appellant remains accurate.

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rate-funded electioneering communications. And, as applied to Citizens United, not even the reporting requirement could further the government's enforcement interest (or its purported informational interest, for that matter) because, as the government concedes, Citizens United "already discloses its identify at the website referred to in the advertisements." FEC Br. 51. In this case, then, the government's supposed enforcement interest is pure fiction.

3. The Burdens Imposed By BCRA §§ 201 And 311 Outweigh Any Government Interest In Applying Those Speech Restrictions To Citizens United.

Even if the government did have an informational or enforcement interest in applying BCRA's disclaimer, disclosure, and reporting requirements to Citizens United, those interests would be outweighed by the extraordinary burdens that those requirements impose on First Amendment freedoms—including the risk of harassment and retaliation faced by Citizens United's financial supporters, and the substantial compliance costs borne by Citizens United.

The government dismisses the risk of reprisal against Citizens United's supporters because the record does not document previous acts of retaliation. But the risk of reprisal against contributors to Citizens United—and other groups that espouse controversial ideological messages—has vastly increased in recent years as a result of the same "technological advances" that the government touts in BCRA's defense, which "make it possible . . . for the public to review and even search the [contribution] data with ease." FEC Br. 40-41. The widespread economic re-

prisals against financial supporters of California's Proposition 8 dramatically illustrate the unsettling consequences of disseminating contributors' names and addresses to the public through searchable websites (*see*, *e.g.*, CCP Br. 13; IJ Br. 13)—some of which even helpfully provide those intent upon retribution with a map to each donor's residence. *See* Brad Stone, *Prop 8 Donor Web Site Shows Disclosure Is 2-Edged Sword*, N.Y. Times, Feb. 8, 2009.

The chilling effect on First Amendment expression generated by the specter of retribution is substantiated by empirical studies, which have found that "'[e]ven those who strongly support forced disclosure laws will be less likely to contribute'" where their personal information will be disclosed. IJ Br. 10 (quoting Dick Carpenter, *Disclosure Costs: Unintended Consequences of Campaign Finance Reform* 8 (2007)). And this chilling effect on First Amendment freedoms is compounded by the extreme administrative burdens generated by BCRA's disclosure requirements, which are notoriously difficult to implement for even the lawyers and accountants who advocacy groups are inevitably required to retain to monitor their disclosure obligations. *See id.* at 19 (discussing an empirical study in which none of the 255 participants was able to comply successfully with campaign disclosure requirements).

The fact that the record does not explicitly document the burdens that BCRA's disclaimer, disclosure, and reporting requirements impose on Citizens United's First Amendment rights is not a sufficient basis for discounting these very real impositions on Citizens United's freedom of expression. In this as-applied challenge, it is the *government* that bears the burden of establishing that BCRA's speech restrictions are compatible with the First Amendment

(*WRTL II*, 127 S. Ct. at 2664 (opinion of Roberts, C.J.))—and it therefore falls to the government to demonstrate that BCRA does not intolerably restrict Citizens United's First Amendment freedoms. The government has not met that burden.

CONCLUSION

The judgment of the district court should be reversed.

Respectfully submitted.

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March 17, 2009

Ex. A-1

(Brief of Amicus Curiae Center for Competitive Politics in Support of Appellant, No. 08-205, Cited in Reply Brief for Appellants)

No. 08-205

IN THE

Supreme Court of the United States

CITIZENS UNITED,
Appellant,
v.
FEDERAL ELECTION COMMISSION,
Appellee.

On Appeal from the United States District Court for the District of Columbia

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Mandatory disclosure in ballot-initiative and referenda campaigns also carries heavy burdens for citizens that would participate, but unlike candidate races, doesn't even further the ability of citizens to monitor the performance of their elected officials. "[T]he invasion of privacy of belief may be as great when the information sought concerns the giving and spending of money as when it concerns the joining of organizations, for '[f]inancial transactions can reveal much about a person's activities, associations, and beliefs.'" *Buckley,* 424 U.S. at 66 (internal citations omitted).

For example, in the wake of voting on California's controversial Proposition 8 to prohibit same sex marriage, Scott Eckern, formerly the artistic director of the California Musical Theatre was forced to resign "amid controversy over a donation he made to the Proposition 8 campaign." Niesha Lofing, *CMT artistic director quits in fallout from Prop. 8 support,* SACRAMENTO BEE, Nov. 12, 2008 (available at <http://www.sacbee.com/1089/story/1391705.html>). The theatre board "thanked Eckern for '25 years of invaluable service to the organization and the advancement of musical theatre as an art form.'" *Id.* Eckern gave $1,000 to support Proposition 8, "a donation that sparked criticism from theater workers and the gay, lesbian, bisexual and transgender community." *Id.* Eckern "'honestly had no idea' that the contribution would spark such outrage and made the donation … on his belief [that] the traditional definition of marriage be preserved." *Id.* Eckern said he is "disappointed that my personal convictions have cost me the opportunity to do what I love most … to

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prohibit same-sex marriage. These are the people who donated in order to pass it."

continue enriching the Sacramento arts and theatre community." *Id.*

In another example, after Proposition 8 passed, dozens of "activists descended on the El Coyote restaurant with signs and placards. They chanted 'Shame on you,' cussed at patrons and began a boycott of the cafe." Jim Carlton, *Gay Activists Boycott Backers of Proposition 8,* WALL ST. J., Dec. 27, 2008, at A3. "The restaurant's crime: A daughter of the owner donated $100 to support Prop 8." *Id.*

Richard Raddon, former director of the Los Angeles Film Festival, resigned after "being at the center of controversy" for giving "$1500 to Proposition 8." Rachel Abramowitz, *Film fest director resigns; Richard Raddon steps down over reaction to his support of Prop. 8.*, L.A. TIMES, Nov. 26, 2008, at E1. Raddon, a Mormon, gave for religious reasons. *Id.* After Raddon's contribution was "made public online," Film Independent was "swamped with criticism from No on 8 supporters," and "in the blogosphere." *Id.* One fellow board member noted, "Someone has lost his job and possibly his livelihood because of privately held religious beliefs." *Id.* Since Proposition 8 has passed, "Hollywood has been debating whether and how to publicly punish those who supported the … amendment," including boycotts of the "Cinemark theater chain, whose chief executive, Alan Stock, donated $9,999 to 'Yes on 8.'" *Id.*

These are not isolated examples. In the aftermath of Proposition 8, numerous blacklists are now being established, and those establishing them note that the existence of reliable data over the internet makes such lists easier to compile. "Years ago we would never have been able to get a blacklist that fast and quickly," said one opponent of Proposition 8. Richard

Abowitz, *Where's the Outrage? Online.*, LAS VEGAS WEEKLY, Jan. 8, 2009 (available at <http://www.lasvegasweekly.com/news/2009/jan/08/wheres-outrage-online/>). While citizens have a right to organize boycotts that do not violate anti-trust or non-discrimination laws, the government does not have a compelling interest in making political preferences public so that citizens who support the "wrong" side can be subjected to harassment and blacklisting. This harassment emphasizes *Amicus'* point, *see* Section II, *supra*, that, unlike information on donations to candidates, once a ballot initiative has been enacted, mandatory public disclosure of financial donors serves no anti-corruption purpose because it does not allow citizens to evaluate the performance and character of their elected officials. But it does allow for efforts to chill and intimidate speakers in the future.

Even worse, mandatory disclosure for issue advocacy has the danger of intimidating funding and supporters away from issues, not just candidates and campaigns.

For example, in a letter[6] to ExxonMobil CEO Rex Tillerson, Senators Olympia Snowe and Jay Rockfeller "urge[d]" the company to end its support of what the Senators called "climate change denial front groups" like the Competitive Enterprise Institute, and said the company "should repudiate its climate change denial campaign and make public its funding history." Editorial, *Nobles and Knaves*, WASH. TIMES, Nov. 11, 2006, at A12; Editorial, *Political Science,*

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[6] The letter is available at <http://snowe.senate.gov/public/index.cfm?FuseAction=PressRoom.PressReleases&ContentRecord_id=9acba744-802a-23ad-47be-2683985c724e>.

Ex. A-2

(Brief of The Institute for Justice as Amicus Curiae in Support of Appellant, Citizens United, No. 08-205, Cited in Reply Brief for Appellants)

No. 08-205

In The
Supreme Court of the United States

CITIZENS UNITED,

Appellant,

v.

FEDERAL ELECTION COMMISSION,

Appellee.

**On Appeal From
The United States District Court
For The District Of Columbia**

BRIEF OF THE INSTITUTE FOR JUSTICE AS AMICUS CURIAE IN SUPPORT OF APPELLANT, CITIZENS UNITED

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B. Fear Of Political Reprisal Is Both Real and Reasonable

In the most recent election cycle, supporters of California's Proposition 8, relating to same-sex marriage, found themselves subject to reprisals in a variety of forms following the proposition's success. *See* Steve Lopez, *A Life Thrown in Turmoil by $100 Donation for Prop. 8*, Los Angeles Times, December 14, 2008 (describing the experience of a restaurant manager who made a personal donation in support of Proposition 8, ultimately resulting in the boycott of her restaurant); John R. Lott, Jr. and Bradley Smith, *Donor Disclosure Has Its Downsides: Supporters of California's Prop. 8 Have Faced a Backlash*, Wall St. J., Dec. 26, 2008 (summarizing examples of individuals who faced economic retaliation for donations in support of Proposition 8); Amy Bounds, *Gay rights advocates picket Boulder Cineplex*, Rocky Mountain News, November 30, 2008 (business picketed and boycotted based on CEO's personal donation). In fact, a website recently appeared providing an interactive map with pinpoint locations, names, addresses, and donation amounts for individuals and entities that supported Proposition 8 – in this circumstance, access to this personal information regarding political activities is even easier. *See* www.eightmaps.com (last visited January 12, 2009).

The experience of Proposition 8 supporters in 2008 is by no means unique. Exacting political retribution for individuals' support or opposition of particular candidates or causes specifically based on data

gleaned from campaign finance reports is becoming a new field of battle in politics. *See* Michael Luo, *Group Plans Campaign Against G.O.P. Donors*, N.Y. Times, August 8, 2008 (describing the planned campaign of liberal nonprofit group Accountable America, which planned "to confront donors to conservative groups, hoping to create a chilling effect that will dry up contributions"); *see also* Associated Press, *John Kerry Grills Belgium Ambassador Nominee Over Swift Boat Donation*, FoxNews.com, February 28, 2007 ("A Senate hearing that began with glowing tributes to a St. Louis businessman and his qualifications to become ambassador to Belgium turned bitterly divisive Tuesday after he was criticized for supporting a controversial conservative group.").

The rising acceptance of this type of political retribution is already generating anecdotal evidence of a chilling effect on political speech and association. For instance, in West Virginia's most recent race for state attorney general, a newcomer challenged the incumbent, a man described by the Wall Street Journal as "a case study of abuse in office." Kimberley A Strassel, *Challenging Spitzerism at the Polls*, Wall St. J., August 1, 2008. Because of the effect of mandatory reporting requirements, the challenger alleged he faced a significant uphill battle in fundraising:

> [Incumbent Attorney General Darrell McGraw's] other main asset is fear. [Challenger] Mr. Grear admits a big hurdle is fund

> raising, even among a business community that is desperate to throw out Mr. McGraw. "I go to so many people and hear the same thing: 'I sure hope you beat him, but I can't afford to have my name on your records. He might come after me next.'" This is a frightening example of how the power of an attorney general can corrupt even the electoral process.

Id.

Reprisals for political contributions can also come in forms unrelated to the donation itself. Gigi Brienza discovered this when her name and address appeared on the website of an animal-rights organization, which had culled FEC records for donors whose employers perform animal testing. *See* Gigi Brienza, *I Got Inspired. I Gave. Then I Got Scared.*, Wash. Post, July 1, 2007 at B03.

Quite simply, the easy accessibility of information about one's political leanings, address, employer, and occupation suggests that it is time for this Court to reexamine its conclusions about the cost of mandatory disclosure rules. In 2009, a person wishing to harass citizens with a different viewpoint no longer needs to visit a government office to sift by hand through published data to access political information. Now, data regarding one's political leanings, address, employer, and occupation are searchable from any computer, day or night. In such an environment, it is perfectly understandable that

reasonable individuals fear the implications of publicizing their political positions.

C. The FEC's Regulations Violate the First Amendment

In *McIntyre v. Ohio Elections Commission*, this Court struck down a law that required the disclosure of one's identity on written election communications. 514 U.S. 334, 357 (1995). This Court held that individuals have a right to anonymous speech and that a law requiring them to disclose their views on controversial issues did so in violation of that right. *Id.* "[A]n author's decision to remain anonymous, like other decisions concerning omissions or additions to the content of a publication, is an aspect of the freedom of speech protected by the First Amendment." *Id.* This Court also emphasized the importance of anonymity in protecting rights to speech and association. "Anonymity is a shield from the tyranny of the majority" which "exemplifies the purpose behind the Bill of Rights, and of the First Amendment in particular: to protect unpopular individuals from retaliation – and their ideas from suppression – at the hand of an intolerant society." *Id.*

Disclosure Costs (supra), the first study to question the general presumption that mandatory disclosures are cost-free, demonstrates that this Court's conclusions in *McIntyre* were not only correct, they

Ex. A-3

(*Prop 8 Donor Web Site Shows Disclosure Law is 2-Edged Sword*, NY Times, Cited in Reply Brief for Appellants)

The New York Times

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February 8, 2009

SLIPSTREAM

Prop 8 Donor Web Site Shows Disclosure Law Is 2-Edged Sword

By BRAD STONE

FOR the backers of Proposition 8, the state ballot measure to stop single-sex couples from marrying in California, victory has been soured by the ugly specter of intimidation.

Some donors to groups supporting the measure have received death threats and envelopes containing a powdery white substance, and their businesses have been boycotted.

The targets of this harassment blame a controversial and provocative Web site, eightmaps.com.

The site takes the names and ZIP codes of people who donated to the ballot measure — information that California collects and makes public under state campaign finance disclosure laws — and overlays the data on a Google map.

Visitors can see markers indicating a contributor's name, approximate location, amount donated and, if the donor listed it, employer. That is often enough information for interested parties to find the rest — like an e-mail or home address. The identity of the site's creators, meanwhile, is unknown; they have maintained their anonymity.

Eightmaps.com is the latest, most striking example of how information collected through disclosure laws intended to increase the transparency of the political process, magnified by the powerful lens of the Web, may be undermining the same democratic values that the regulations were to promote.

With tools like eightmaps — and there are bound to be more of them — strident political partisans can challenge their opponents directly, one voter at a time. The results, some activists fear, could discourage people from participating in the political process altogether.

That is why the soundtrack to eightmaps.com is a loud gnashing of teeth among civil libertarians, privacy advocates and people supporting open government. The site pits their cherished values against each other: political transparency and untarnished democracy versus privacy and freedom of speech.

"When I see those maps, it does leave me with a bit of a sick feeling in my stomach," said Kim Alexander, president of the California Voter Foundation, which has advocated for open democracy. "This is not really the intention of voter disclosure laws. But that's the thing about technology. You don't really know where it is going to take you."

Ms. Alexander and many Internet activists have good reason to be queasy. California's Political Reform Act of 1974, and laws like it across the country, sought to cast disinfecting sunlight on the political process by requiring contributions of more than $100 to be made public.

Eightmaps takes that data, formerly of interest mainly to social scientists, pollsters and journalists, and publishes it in a way not foreseen when the open-government laws were passed. As a result, donors are exposed to a wide audience and, in some cases, to harassment or worse.

A college professor from the University of California, San Francisco, wrote a $100 check in support of Proposition 8 in August, because he said he supported civil unions for gay couples but did not want to change the traditional definition of marriage. He has received many confrontational e-mail messages, some anonymous, since eightmaps listed his donation and employer. One signed message blasted him for supporting the measure and was copied to a dozen of his colleagues and supervisors at the university, he said.

"I thought what the eightmaps creators did with the information was actually sort of neat," the professor said, who asked that his name not be used to avoid becoming more of a target. "But people who use that site to send out intimidating or harassing messages cross the line."

Joseph Clare, a San Francisco accountant who donated $500 to supporters of Proposition 8, said he had received several e-mail messages accusing him of "donating to hate." Mr. Clare said the site perverts the meaning of disclosure laws that were originally intended to expose large corporate donors who might be seeking to influence big state projects.

"I don't think the law was designed to identify people for direct feedback to them from others on the other side," Mr. Clare said. "I think it's been misused."

Many civil liberties advocates, including those who disagree with his views on marriage, say he has a point. They wonder if open-government rules intended to protect political influence of the individual voter, combined with the power of the Internet, might be having the opposite effect on citizens.

"These are very small donations given by individuals, and now they are subject to harassment that ultimately makes them less able to engage in democratic decision making," said Chris Jay Hoofnagle, senior fellow at the Berkeley Center for Law and Technology at the University of California.

THANKS to eightmaps.com, the Internet is abuzz with bloggers, academics and other pundits

offering potential ways to resolve the tension between these competing principles. One idea is to raise the minimum donation that must be reported publicly from $100, to protect the anonymity of small donors.

Another idea, proposed by a Georgetown professor, is for the state Web sites that make donor information available to ask people who want to download and repurpose the data to provide some form of identification, like a name and credit card number.

“The key here is developing a process that balances the sometimes competing goals of transparency and privacy,” said the professor, Ned Moran, whose undergraduate class on information privacy spent a day discussing the eightmaps site last month.

“Both goals are essential for a healthy democracy,” he said, “and I think we are currently witnessing, as demonstrated by eightmaps, how the increased accessibility of personal information is disrupting the delicate balance between them.”

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EXHIBIT 28

Exhibit B

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* Admitted *pro hac vice*

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KRISTIN M. PERRY, SANDRA B. STIER, PAUL T. KATAMI, and JEFFREY J. ZARRILLO, Plaintiffs, v. 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.	CASE NO. 09-CV-2292 VRW **DECLARATION OF RONALD PRENTICE IN SUPPORT OF DEFENDANT-INTERVENORS' MOTION FOR A PROTECTIVE ORDER** Date: September 25, 2009 Time: 10:00AM Judge: Chief Judge Vaughn R. Walker Location: Courtroom 6, 17th Floor

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,

Defendants,

and

PROPOSITION 8 OFFICIAL PROPONENTS DENNIS HOLLINGSWORTH, GAIL J. KNIGHT, MARTIN F. GUTIERREZ, HAK-SHING WILLIAM TAM, and MARK A. JANSSON; and PROTECTMARRIAGE.COM – YES ON 8, A PROJECT OF CALIFORNIA RENEWAL,

Defendant-Intervenors.

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I, Ronald Prentice, make the following declaration pursuant to 28 U.S.C. § 1746:

1. I am a resident of California over 18 years of age, and my statements herein are based on personal knowledge.

2. The California ballot measure in 2008 known as Proposition 8 had five "Official Proponents" pursuant to California law, Cal. Elec. Code §342. Those five Proponents are Defendant-Intervenors in this case: Dennis Hollingsworth, Gail J. Knight, Martin F. Gutierrez, Hak-Shing William Tam, and Mark A. Jansson ("the Proponents").

3. The Proponents endorsed ProtectMarriage.com – Yes on 8, a Project of California Renewal ("Protect Marriage"), a "primarily formed committee" under the California Political Reform Act, Cal. Gov. Code § 82047.5, as the official Proposition 8 campaign committee. Protect Marriage was designated to receive all contributions and to disburse expenditures for the Proposition 8 campaign.

4. For purposes of state law, Protect Marriage has a single officer responsible for filing required disclosures. David Bauer serves as that officer.

5. Unofficially, Protect Marriage was and is supported by many volunteers with varying levels of involvement and input, including an ad hoc "executive committee" consisting of several individuals. Some of those individuals served as agents for other organizations with an interest in the qualification and passage of Proposition 8, and the marriage debate generally. I serve as chairman of the ad hoc executive committee.

6. The ad hoc executive committee was often advised by an attorney, who was retained to serve as Protect Marriage's general counsel.

7. Protect Marriage employed a public relations firm to serve as the Proposition 8 campaign manager.

8. Volunteers of Protect Marriage corresponded with each other, with the public relations firm, with various vendors and independent contractors, and with other third parties about political beliefs, campaign strategy, personal beliefs, and much else relating to Proposition 8.

9. As chairman of the ad hoc executive committee, I had extensive dealings with Protect Marriage's donors and volunteers. Many of the donors were quite concerned that publicly-disclosed affiliation with Protect Marriage would lead to retaliation against them. They were specifically concerned with the scope of information that would be revealed, and for some donors the determining factor in favor of donating was that the only information that would be publicly disclosed was the amount of their contribution and their name, address, occupation and employer.

10. I am aware of many instances of harassment and retaliation against Protect Marriage's donors and volunteers that occurred after their affiliation with Protect Marriage became public. The names of donors to Proposition 8 were widely distributed on the Internet, and many donors experienced boycotts of their businesses. I am aware of several individuals who chose to resign from their employment in order to escape the harassment and intimidation brought upon them and their employers. Volunteers who made a public stand in support of Proposition 8 by holding signs or distributing materials were victims of physical assaults such as being spat upon and having hot coffee thrown on them by passengers in passing automobiles. Several reports of vandalism to property came from volunteers who placed Yes on 8 bumper strips on their cars.

11. Widespread retaliation and harassment against donors and volunteers had a negative effect on participation in the campaign in favor of Proposition 8. As acts of harassment against Proposition 8 donors and volunteers became public, donors expressed concern over being publicly identified and placing themselves, their family members, and their employees at possible risk. Potential donors contacted me to ask how donations could be made without publicly disclosing their identity, and when campaign finance disclosure laws were explained to those donors, many declined to make any contribution. After receiving significant media attention and public protests, several major donors to the Proposition 8 campaign refused to make further contributions.

12. I personally experienced harassment and retaliation due to my affiliation with Protect Marriage. While the physical addresses of my residence and office locations were not public , I received harassment on a regular basis via E-mails, letters, and phone calls. Derisive name-calling and statements of hatred toward me became commonplace. Attacks on my character and integrity were also attempted, with bogus claims regarding the fiscal management of the organization I direct.

13. Some donors to Protect Marriage conditioned their donation on being privy to the political strategy, polling, opinion research, and internal workings of the campaign in favor of Proposition 8. Some donors communicated to Protect Marriage their thoughts about the election, about the marriage debate generally, and/or ideas for campaign strategy.

14. If I had known that the non-public communications of Protect Marriage, its donors and volunteers would be subject to disclosure, I would have communicated differently with other volunteers of Protect Marriage, with its donors, and with others associated with the campaign and/or the marriage debate. I would have been more guarded, and fearful that my communications could later be distorted, utilized for purposes of intimidation, or utilized to learn my personal beliefs of the political strategies I thought advisable. Also, I would have warned donors, volunteers, and affiliates that by nature of participation in the political campaign, anything they communicate to any party regarding Proposition 8 or the marriage debate generally could be subject to compelled disclosure in a lawsuit.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

Executed on: September 15, 2009

Ronald Prentice

Ronald Prentice

EXHIBIT 29

Exhibit I

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* Admitted *pro hac vice*

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KRISTIN M. PERRY, SANDRA B. STIER, PAUL T. KATAMI, and JEFFREY J. ZARRILLO, Plaintiffs, v. 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.	CASE NO. 09-CV-2292 VRW **DECLARATION OF FRANK SCHUBERT IN SUPPORT OF DEFENDANT-INTERVENORS' MOTION FOR A PROTECTIVE ORDER** Date: September 25, 2009 Time: 10:00 a.m. Judge: Chief Judge Vaughn R. Walker Location: Courtroom 6, 17th Floor

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,

Defendants,

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PROPOSITION 8 OFFICIAL PROPONENTS DENNIS HOLLINGSWORTH, GAIL J. KNIGHT, MARTIN F. GUTIERREZ, HAK-SHING WILLIAM TAM, and MARK A. JANSSON; and PROTECTMARRIAGE.COM – YES ON 8, A PROJECT OF CALIFORNIA RENEWAL,

Defendant-Intervenors.

Additional Counsel for Defendant-Intervenors

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* Admitted *pro hac vice*

I, Frank Schubert, make the following declaration pursuant to 28 U.S.C. § 1746:

1. I am a resident of the State of California over 18 years of age, and my statements herein are based upon personal knowledge and experience and upon my personal review of the document requests served by Plaintiffs on Defendant-Intervenors in this case.

2. This declaration is made in support of Defendant-Intervenors' motion for a protective order.

3. I am the President of Schubert Flint Public Affairs, a full-service, public affairs and communications consulting firm based in Sacramento, California, with clients across the United States. I have twice been named the country's most valuable public affairs professional by the American Association of Political Consultants (AAPC). I am the only person in the association's history to have won this prestigious award twice. I have served on the AAPC Board of Directors for over ten years. On three occasions, the AAPC has honored me for assembling and managing the Pubic Affairs Team of the Year, including last year for my management of the Yes on Proposition 8 campaign. I have received the Lifetime Achievement Award from the International Association of Business Communicators (Sacramento Chapter). I have over 30 years of experience in this field. I have managed 34 statewide ballot initiative campaigns in nine states including acting as Campaign Manager for Protect Marriage.com in the Proposition 8 campaign in 2008.

4. I and my firm were hired by Protect Marriage.com in June 2008 to serve as Campaign Manager. I worked with the volunteer chairman of Protect Marriage.com, Ron Prentice, and with an ad hoc executive committee. My responsibilities included, subject to approval of the executive committee, developing the campaign's strategy, selecting vendors to work on the campaign, developing messages for delivery to voters, overseeing voter and issue research, developing and overseeing a grassroots plan, developing advertisements and other communications to voters, and working with donors, volunteers, supporters, and the press, among other duties.

5. I am submitting this Declaration in Support of the Proposition 8 Proponents' Motion for a Protective Order because I know, based on personal experience, the harm that will result if Protect Marriage.com's, its volunteers', donors', members', vendors', consultants', etc., and/or the Proposition 8 official proponents', personal, non-public communications are found to be an appropriate subject of discovery in this matter. It is my professional opinion that if the Protective Order is not granted, the Court will thrust not a dagger, but a sword, into the People's precious right of initiative and referendum. The harms that would flow from requiring these communications—which reflect political views and opinions, moral views and opinions, religious beliefs, legislative and political strategy, political speech, and associational activity—to be produced in discovery are several-fold.

6. First, a significant and real threat exists that individuals identified in these communications, their families and associates, and/or their businesses will be targeted for retaliation by groups and persons who disagree with the views being expressed therein. Throughout the Proposition 8 campaign, I and my company were personally subject to severe harassment and attempts at intimidation because of our involvement in the Yes on 8 Campaign. For example:

- I received hundreds of hate emails and telephone calls, many with threatening overtones—including suggestions that the world would be better off if I were dead.
- Activists descended upon my office with camera crews in tow in an effort to publicly confront me over my position on Proposition 8.
- A distant gay relative posted on Facebook an "apology" to the homosexual community that her relative was managing the Proposition 8 campaign, and offered to provide my home address to anyone who wanted it. One No-on-Prop-8 supporter publicly asked for the information.
- I was the subject of continuous taunting, insults, and harassment on countless blogs.

- My address and those of thousands of other supporters of Prop 8 were posted on the Internet through a "Google map" that allowed people to type in an address and see all the contributors to ProtectMarriage in their area (including a contributor's name, address, profession, employer, and donation level). A sampling of the maps available on that website (http://www.eightmaps.com) is attached as an exhibit to this declaration. That website is still functional and publically accessible as of today. The message is unmistakable: "here's where they live. Go get them."
- The open house for our office in southern California became a cause célèbre for activists who organized an elaborate attempt to infiltrate the reception and not only confront me, but also our clients to inform them that our firm was allegedly bigoted and discriminatory.
- Because of this harassment, the campaign was forced to provide security at our offices for several weeks in order to protect our staff and ensure that activists were not allowed to enter the office and cause harm to me or my staff. Protect Marriage was also forced to pay for private security for a two-week bus tour throughout California. The committee continues to provide security for me and members of the legal team in high profile appearances, including when they appear before this Court.
- To this day, I continue to receive hate email and threats because of the positions I advocated.

7. I am also aware of many other instances of harassment, retaliation, and threats against supporters of the Yes on 8 Campaign. I know from both experience and interaction with these supporters that they will be much less willing to contribute to and/or participate in a campaign in the future. During the campaign there was a noticeable decline in some donors' willingness to donate to, and some volunteers' willingness to continue participating in, the campaign after they were subjected to threats and harassment. Certain vendors would no longer work on the campaign

because of the retaliation against them by activists. Even now, some of our larger contributors continue to face calls for boycotts and economic sanctions. I know of several donors who had their businesses boycotted and protested, their employees harassed, and who received hundreds of threatening emails and phone calls. I am personally aware of at least two supporters who were physically assaulted because of their position on Proposition 8. I have witnessed video footage of roaming bands of thieves stealing hundreds of our signs and then displaying them as if they were a trophy. I have seen photos of our supporters' homes and automobiles defaced. One supporter had his automobile keyed with a swastika and the words, "gay sex is love," scratched into the paint down to the raw metal. Another supporter had a van parked in front of his home painted with the words, "bigots live here." I know of many churches that were defaced. Several of our supporters were forced from their jobs when demonstrators decided to target their place of employment. I know of donors to Protect Marriage whose employers were called to ask about the employer's non-discrimination policy and to inform them that they had an alleged bigot in their employ.

8. These are not isolated incidents. The harassment of supporters of Proposition 8 was incessant, continuous, and organized. To this day, several websites exist specifically for the purpose of harassing supporters of traditional marriage, including the so-called "Californians Against Hate," which continues to promote boycotts and reprisals against supporters of Proposition 8 and traditional marriage. The harassment is also not limited to fringe groups or over-zealous supporters of same-sex marriage. One major national group that petitioned the Court for permission to intervene in this case (National Center for Lesbian Rights), recently issued a press statement condemning the California Bar Association's decision to host a meeting at a business associated with one of Proposition 8's supporters.

9. Second, an equally serious and real threat exists that the disclosure of the non-public communications of the Yes on 8 campaign—whether those communications are between volun-

teers of Protect Marriage and their consultants, contractors, and vendors (such as Schubert Flint), or between Schubert Flint as campaign manager and donors, supporters, vendors, etc.—will significantly suppress the future participation in, and course of, initiative and referendum campaigns. Personally, speaking on behalf of Schubert Flint, I can state with certainty that I and my firm will change the way we engage in political speech and campaigning if the broad discovery demanded in this case is permitted. Further, based on my experience working on 34 statewide ballot initiative campaigns like the Proposition 8 campaign, I believe that if involvement with a contentious ballot initiative causes supporters, donors, volunteers, vendors, consultants, etc., to run the risk that not only their identities, but also their personal, non-public communications, might be subject to discovery, it will be significantly harder to recruit supporters, volunteers, donors, etc. It will be significantly harder to get vendors to agree to work on the campaign for fear that their involvement will hurt them professionally. As importantly, the risk that internal communications regarding such things as political strategy and political or religious views might be disclosed will mean there will be significantly less of this type of speech and activity in the future. Campaign strategists, volunteers, and voters will avoid candid associational speech, as well as candid speech about political views and strategy, in an effort to avoid later exposure or mischaracterization in a lawsuit over which they have no control.

10. Third, the scope of the discovery requests in this case opens the floodgates for Plaintiffs and their allies to learn not only the identity of donors, but also the identity of individual volunteers and supporters, as well as the private reasons some such individuals might have for getting involved in a campaign. Protect Marriage and Schubert Flint possess information on many individual volunteers, including their names, addresses, and contact information. Protect Marriage and Schubert Flint also possess communications to and from some of these volunteers about the Proposition 8 campaign and the marriage issue generally. Based on my experience in this and

other campaigns, I know that individuals often have very private and personal reasons for getting involved in an initiative campaign. They may feel passionately about an issue. They may fear the consequences for themselves, their family, or society as a whole if an initiative passes or fails. They may have an economic interest in the outcome of an initiative election. They may have spiritual, political, personal, or familial reasons for their point of view. Whatever their personal, subjective reasons for taking a position on an initiative, my experience demonstrates that if those reasons are put on trial and/or exposed through compelled discovery there will be a very real risk that future political participation will thereby be severely curbed.

11. The types of communications at issue in this case include all of the types of communications the exposure of which would lead to the types of chilling referenced above. For example, one activity conducted by the campaign—for the purpose of planning and implementing a campaign to petition the government and engaging in political speech—was to compile a database that collected information on how voters in California intended to vote on Proposition 8. Plaintiffs' broad discovery requests would seemingly require Protect Marriage to turn over this information and thereby violate one of the most highly protected and deeply cherished First Amendment rights—the right to a secret ballot. Protect Marriage and Schubert Flint also possess information on the privately expressed position of over one million voters. If the Plaintiffs' discovery requests are allowed to proceed, the privately expressed opinions of over one million voters will become public.

12. Another specific example of communications that are implicated by Plaintiffs' discovery requests are all of the communications I or others at Schubert Flint have had with either official Proponents or volunteers of Protect Marriage involving political and religious viewpoints. Even to the extent that it is public information, for example, that major backing for the Yes on 8 campaign came from certain religiously affiliated groups, the private religious views expressed by

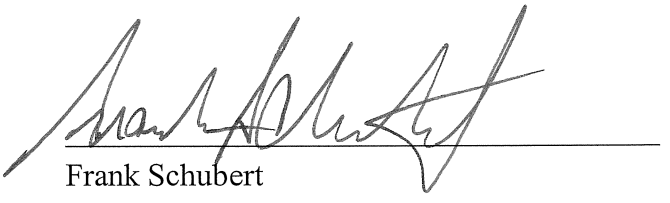
those groups or their members in communications with the campaign is not publically known and would be revealed if the Motion for Protective Order is not granted.

13. As noted above, the harm from disclosure has not subsided simply because the election on Proposition 8 is over. For one thing, prior disclosed affiliation with or support for the Yes on 8 campaign is still resulting in harassment, reprisal, and other repercussions. Moreover, the debate over the marriage issue is far from settled. Multiple groups have attempted or are attempting to place another ballot initiative on this issue before the electorate of California. If sweeping discovery into the private communications of participants in the last such ballot effort is allowed here, I believe, based on my professional experience and my experience specifically in the Proposition 8 campaign, that participants in future such efforts will alter their associational and political behavior to account for the likelihood of disclosure in later lawsuits.

14. Additionally, the harm that would come from revealing the types of communications at issue here would not fall on supporters of Prop. 8 alone, or even on participants in the marriage debate generally. Ballot initiatives have a long history in California and they occur during nearly every election. If—in the absence of an allegation of fraud or other illegal tactic by a campaign—sweeping discovery into the campaigns surrounding such ballot measures is permitted, such campaigns will be conducted very differently. Volunteers and donors will be harder to recruit, as will the services of vendors, strategists, and other contractors. Also, other associations that zealously protect their anonymity will be far less likely to join cause with a ballot measure campaign.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

Executed on 15 September 2009



Frank Schubert

I-1

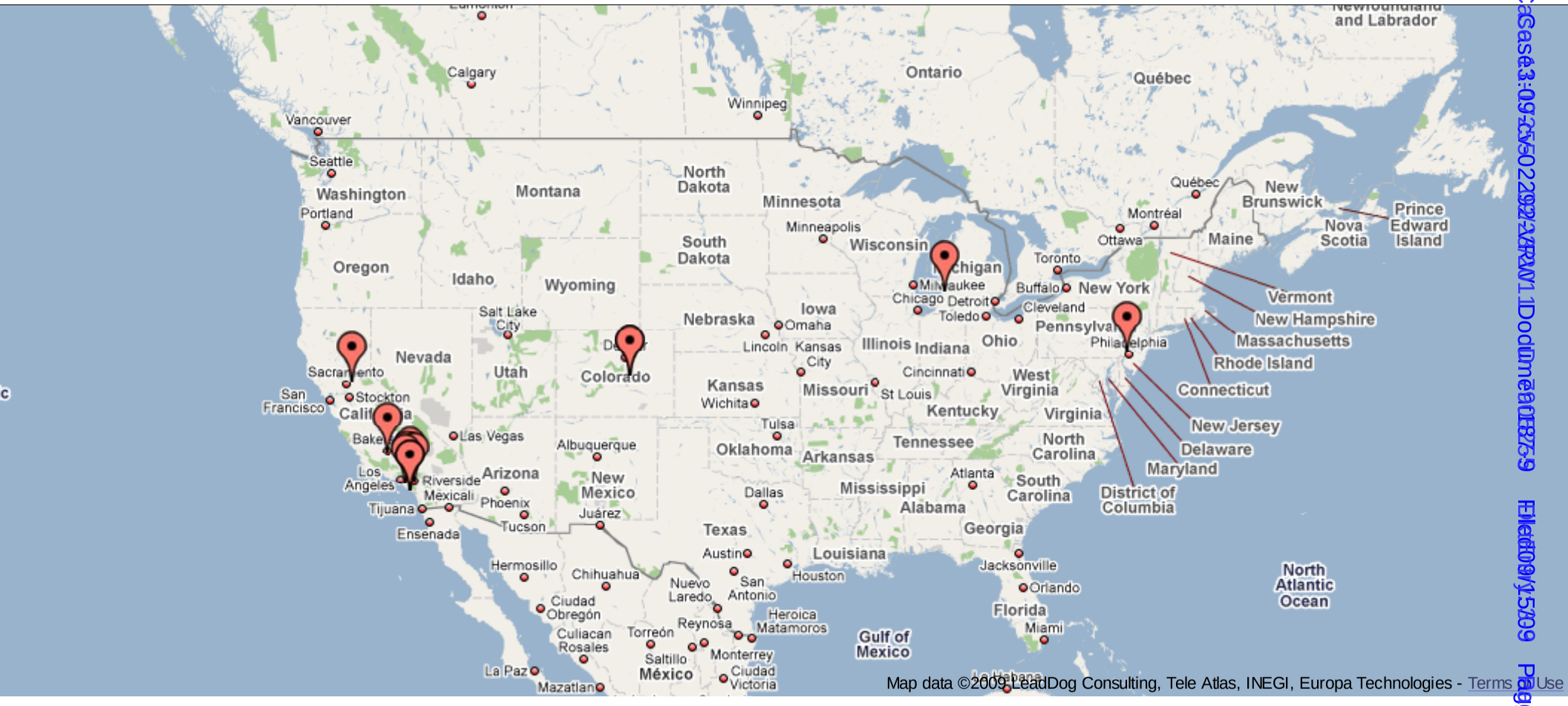
PROP 8 MAPS

A mash-up of Google Maps and Prop 8 Donors.

Proposition 8 changed the California state constitution to prohibit same-sex marriage. These are the people who donated in order to pass it.

Location Search

Jump to San Francisco, Salt Lake City , or Orange County.



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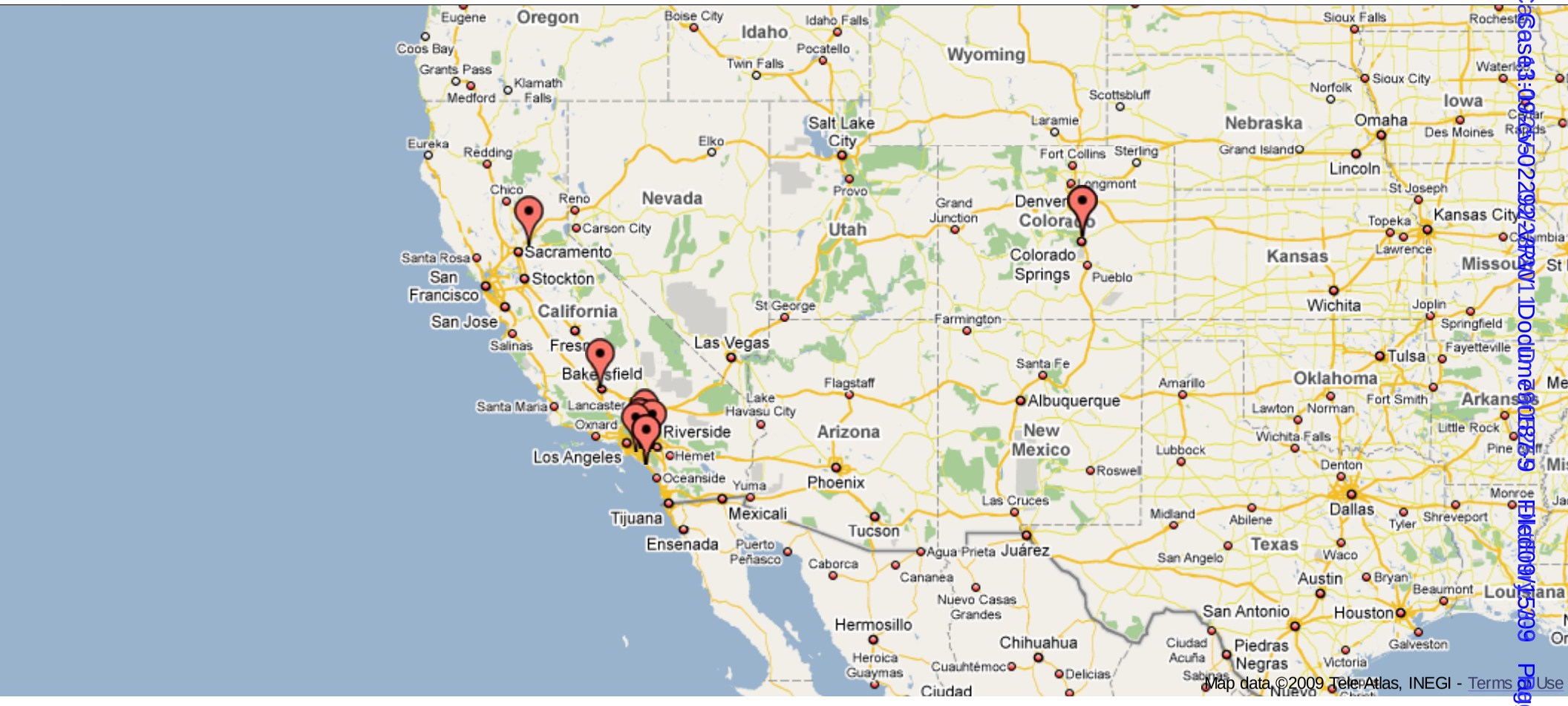

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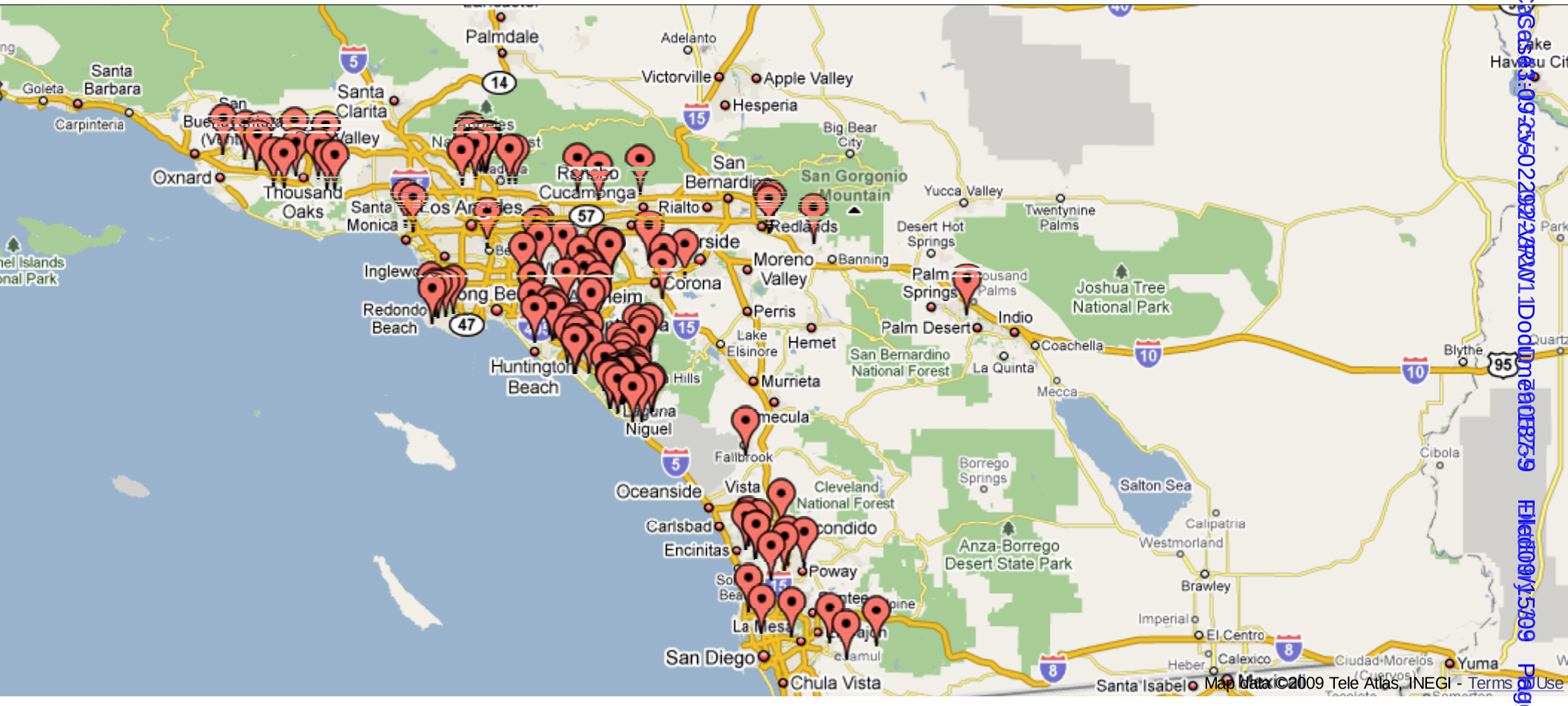

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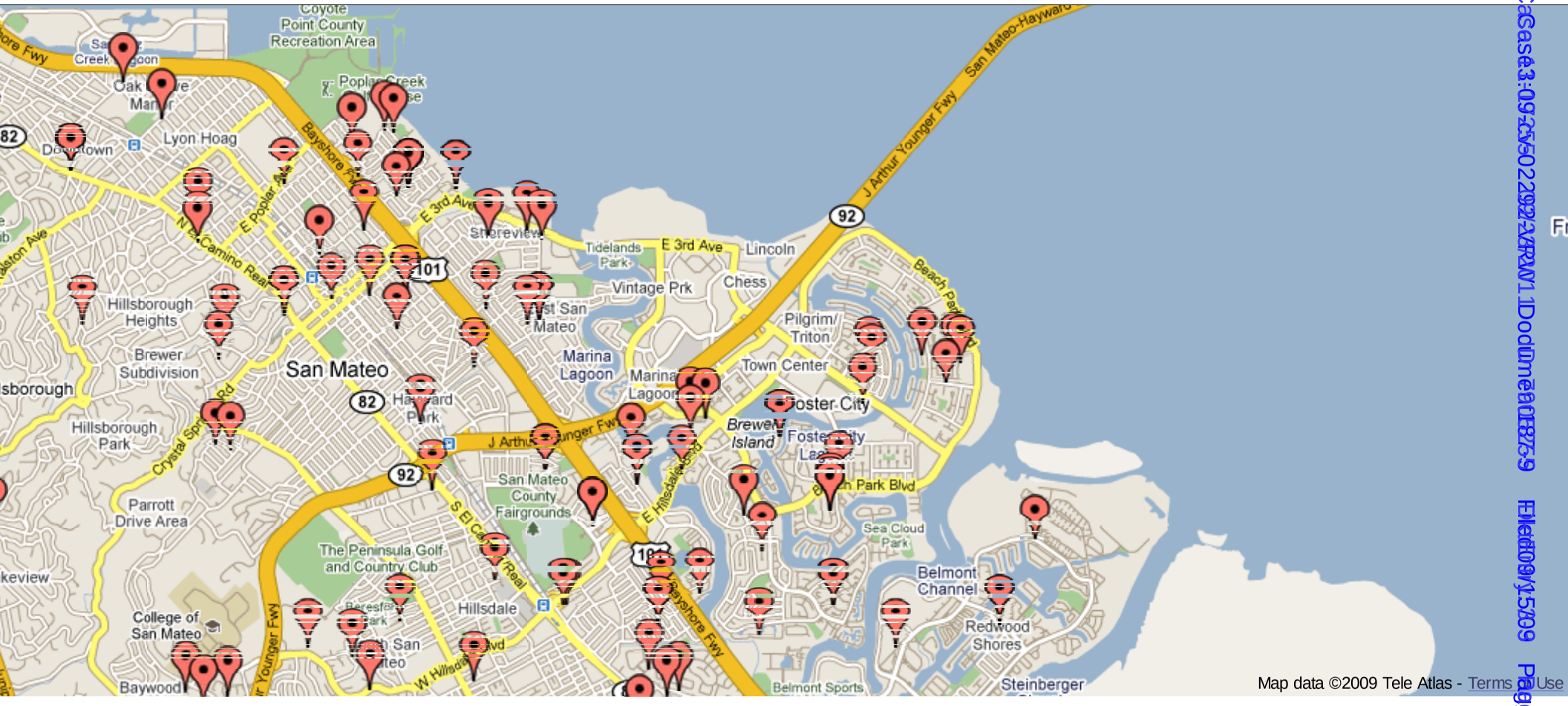

EXHIBIT 30

Exhibit K

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* Admitted *pro hac vice*

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KRISTIN M. PERRY, SANDRA B. STIER, PAUL T. KATAMI, and JEFFREY J. ZARRILLO, Plaintiffs, v. 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 Direc-	CASE NO. 09-CV-2292 VRW **DECLARATION OF NICOLE MOSS IN SUPPORT OF DEFENDANT-INTERVENORS' MOTION FOR A PROTECTIVE ORDER** Date: September 25, 2009 Time: 10:00 a.m. Judge: Chief Judge Vaughn R. Walker Location: Courtroom 6, 17th Floor

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Defendants,

and

PROPOSITION 8 OFFICIAL PROPONENTS DENNIS HOLLINGSWORTH, GAIL J. KNIGHT, MARTIN F. GUTIERREZ, HAK-SHING WILLIAM TAM, and MARK A. JANSSON; and PROTECTMARRIAGE.COM – YES ON 8, A PROJECT OF CALIFORNIA RENEWAL,

Defendant-Intervenors.

Additional Counsel for Defendant-Intervenors

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* Admitted *pro hac vice*

I, Nicole J. Moss, make the following declaration pursuant to 28 U.S.C. § 1746:

1. I am a resident of the state of North Carolina over 18 years of age, and my statements herein are based on personal knowledge.

2. This declaration is made in support of Defendant-Intervenors' Motion for a Protective Order.

3. The articles listed below and attached hereto as Exhibit K-1 through K-71 are true and correct copies of articles that I or my staff have accessed online since September 12, 2009, each of which documents one or more incidents relating to people who supported Proposition 8:

Discussing Negative Effects of Public Disclosure

Exhibit K-1: John R. Lott, Jr. and Bradley Smith (Opinion), *Donor Disclosure Has Its Downsides: Supporters of California's Prop 8 have faced a backlash*, Wall Street Journal, Dec. 26, 2008, *available at* http://online.wsj.com/article/SB123025779370234773.html (last visited Sept. 14, 2009).

Exhibit K-2: Steve Lopez (Opinion), *Readers Have Choice Words (Pro and Con) on Prop. 8*, L.A. Times, Dec. 17, 2008, *available at* http://articles.latimes.com/2008/dec/17/local/me-lopez17 (last visited Sept. 14, 2009).

Death Threats, Physical Violence, and Threats of Physical Violence

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Exhibit K-16: Colleen Carroll Campbell, *Attacks on Miss California reveal intolerance of gay-rights activists Point of Biew: Beauty queen is latest target of a campaign to silence critics of same-sex marriage*, St. Louis Post-Dispatch, April 30, 2009, at A17.

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Exhibit K-68: Jeff McDonald, *Clinton won't cancel talk at boycotted hotel; Owner supported gay-marriage ban*, San Diego Union-Tribune, Feb. 13, 2009, at B1.

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Exhibit K-71: Nancy Dillon, *Artist Draws Gays' Ire for Same-Sex Nups Ban Support*, Daily News, Feb. 3, 2007, at 8.

4. The websites listed below are websites that I or my staff have accessed online since September 14, 2009, each of which lists donors to Proposition 8 and encourages taking some form of action against the listed donors or groups who supported Proposition 8:

http://www.mormonsstoleourrights.com

http://californiansagainsthate.com

http://www.boycottmanchesterhotels.com

http://boycotta-1selfstorage.com

5. The document attached hereto as Exhibit K-72 is a true and correct copy of an editorial note explaining a student newspaper's decision to allow an article to be published anonymously because of the author's fear of retaliation because of his support for Proposition 8.

6. The websites listed below are websites that I or my staff have accessed since September 14, 2009, each of which, as of September 14, 2009 contained video footage of incidents targeting supporters of Proposition 8:

http://abclocal.go.com/kfsn/video?id=6545349 (Fresno mayor and pastor receive death threats because of support for Proposition 8)

http://cbs2.com/video/?id=81887@kcbs.dayport.com (same)

http://nbclosangeles.com/news/local/Protestors_Signal_Battle_over_Same_Sex_Marriage_Not_Over.html (several videos on left side of page showing Opponents of Proposition 8 blocking streets outside and LDS Temple in Los Angeles)

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT

Executed this 15th day of September, 2009, in North Carolina.

Nicole J. Moss

Nicole J. Moss

K-1

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OPINION | DECEMBER 26, 2008

Donor Disclosure Has Its Downsides

Supporters of California's Prop. 8 have faced a backlash.

By JOHN R. LOTT JR. and BRADLEY SMITH

How would you like elections without secret ballots? To most people, this would be absurd.

We have secret balloting for obvious reasons. Politics frequently generates hot tempers. People can put up yard signs or wear political buttons if they want. But not everyone feels comfortable making his or her positions public -- many worry that their choice might offend or anger someone else. They fear losing their jobs or facing boycotts of their businesses.

And yet the mandatory public disclosure of financial donations to political campaigns in almost every state and at the federal level renders people's fears and vulnerability all too real. Proposition 8 -- California's recently passed constitutional amendment to outlaw gay marriage by ensuring that marriage in that state remains between a man and a woman -- is a dramatic case in point. Its passage has generated retaliation against those who supported it, once their financial support was made public and put online.

For example, when it was discovered that Scott Eckern, director of the nonprofit California Musical Theater in Sacramento, had given $1,000 to Yes on 8, the theater was deluged with criticism from prominent artists. Mr. Eckern was forced to resign.

Richard Raddon, the director of the L.A. Film Festival, donated $1,500 to Yes on 8. A threatened boycott and picketing of the next festival forced him to resign. Alan Stock, the chief executive of the Cinemark theater chain, gave $9,999. Cinemark is facing a boycott, and so is the gay-friendly Sundance Film Festival because it uses a Cinemark theater to screen some of its films.

A Palo Alto dentist lost patients as a result of his $1,000 donation. A restaurant manager in Los Angeles gave a $100 personal donation, triggering a demonstration and boycott against her restaurant. The pressure was so intense that Marjorie Christoffersen, who had managed the place for 26 years, resigned.

These are just a few instances that have come to light, and the ramifications are still occurring over a month after the election. The larger point of this spectacle is its implications for the future: to intimidate people who donate to controversial campaigns.

The question is not whether Prop. 8 should have passed, but whether its supporters (or opponents) should have their political preferences protected in the same way that voters are protected. Is there any reason to think that the repercussions Mr. Eckern faced for donating to Prop. 8 would be different if it were revealed that instead of donating, he had voted for it?

Indeed, supporters of Prop. 8 engaged in pressure tactics. At least one businessman who donated to "No on 8," Jim Abbott of Abbott & Associates, a real estate firm in San Diego, received a letter from the Prop. 8 Executive Committee threatening to publish his company's name if he didn't also donate to the "Yes on 8" campaign.

In each case, the law required disclosure of these individuals' financial support for Prop. 8. Supposedly, the reason for requiring disclosure of campaign contributions is to allow voters to police politicians who might otherwise become beholden to financiers by letting voters know "who is behind the message." But in a referendum vote such as Prop. 8, there are no office holders to be beholden to big donors.

Does anyone believe that in campaigns costing millions of dollars a donation of $100, or even $1,000 or $10,000 will give the donor "undue" influence? Over whom? Meanwhile, voters learn little by knowing the names and personal information of thousands of small contributors.

Besides, it is not the case that voters would have no recourse when it comes to the financial backers of politicians or initiatives. Even without mandatory disclosure rules, the unwillingness to release donation information can itself become a campaign issue. If voters want to know who donated, there will be pressure to disclose that information. Possibly voters will be most concerned about who the donors are when regulatory issues are being debated. But that is for them to decide. They can always vote "no."

Ironically, it has long been minorities who have benefited the most from anonymous speech. In the 1950s, for example, Southern states sought to obtain membership lists of the NAACP in the name of the public's "right to know." Such disclosure would have destroyed the NAACP's financial base in the South and opened its supporters to threats and violence. It took a Supreme Court ruling in *NAACP v. Alabama* (1958) to protect the privacy of the NAACP and its supporters on First Amendment grounds. And more recently, it has usually been supporters of gay rights who have preferred to keep their support quiet.

There is another problem with publicizing donations in political elections: It tends to entrench powerful politicians whom donors fear alienating. If business executives give money to a committee chairman's opponent, they often fear retribution.

Other threats are more personal. For example, in 2004 Gigi Brienza contributed $500 to the John Edwards presidential campaign. An extremist animal rights group used that information to list Ms. Brienza's home address (and similarly, that of dozens of co-workers) on a Web site, under the ominous heading, "Now you know where to find them." Her "offense," also revealed from the campaign finance records, was that she worked for a pharmaceutical company that tested its products on animals.

In the aftermath of Prop. 8 we can glimpse a very ugly future. As anyone who has had their political yard signs torn down can imagine, with today's easy access to donor information on the Internet, any crank or unhinged individual can obtain information on his political opponents, including work and home addresses, all but instantaneously. When even donations as small as $100 trigger demonstrations, it is hard to know how one will feel safe in supporting causes one believes in.

Mr. Lott, a senior research scientist at the University of Maryland, is the author of "Freedomnomics" (Regnery, 2007). Mr. Smith, a former Federal Election Commission commissioner, is chairman of the Center for Competitive Politics and professor of law at Capital University in Columbus, Ohio.

Please add your comments to the Opinion Journal forum.

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K-2

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Readers have choice words (pro and con) on Prop. 8

By STEVE LOPEZ
December 17, 2008

When you write a column for a living, you get called lots of names on a regular basis. Moron, liar and sellout, to name a few.

I'm in no position to complain, though, since I occasionally use the same words to describe public officials and captains of industry.

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But I've never been called a bigot so many times as I have since I wrote in my Sunday column about the boycott of El Coyote, the Los Angeles cantina whose Mormon manager donated $100 to Proposition 8, the successful November ballot initiative to ban gay marriage.

"Your article defending" the manager "is making the rounds on gay boards, which means that you're becoming notorious for your bigotry," wrote someone named Laight.

"You should be ashamed of yourself," wrote Amy.

About two-thirds of the roughly 400 readers who sent e-mails took similar positions. They said I was too sympathetic to Margie Christoffersen in writing about how business at her mother's margarita mill is way down, thanks in part to an organized boycott, and how Christoffersen is so distraught she has taken a leave of absence.

"Oh, poor Margie," was a popular line among angry readers, as was, "Cry me a river."

So did I get it wrong?

To summarize the column, I said I was opposed to Prop. 8 and to the ugly campaigns against gay marriage by organized religion. I also wrote that Christoffersen is entitled to her views no matter how objectionable they are to me or anyone else, and that 89 El Coyote employees shouldn't be hurt by their manager's politics.

I'm not taking any of it back, and that goes for my comments about organized religion, which ruffled the feathers of another flock of readers. But there's room for honest disagreement on the many issues wrapped into this story, and I thought a lot of responses from readers were worth sharing.

T. Miyashiro-Sonoda wrote: "All couples (of any combination) should apply for a civil union license and have a civil ceremony. This would have all of the legal rights that are now granted by what we recognize as a 'marriage.' If the couple would like this union blessed or recognized by a church, synagogue, temple or any place of worship as a 'marriage,' another ceremony could be performed there. That way, any church, synagogue, temple or place of worship would have the right to recognize the union or not. What do you think?" I think I like it.

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Readers have choice words (pro and con) on Prop. 8

By STEVE LOPEZ
December 17, 2008

Marc Pattavina wrote: "Saying that she has no problems with gay people and loves them like everyone else but donates money to [Prop. 8] is no different than me saying I have no problems with Mexicans or blacks and then giving money to the Minutemen or the KKK. . . . If Margie was a real friend to the gay community she'd step up for her friends and not let herself be herded like a sheep by the Mormon Church. If they told her to jump off a bridge would she do that as well?"

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My guess is yes.

Tim O'Shaughnessy wrote: "Those who supported this proposition for religious reasons committed the ultimate betrayal of Jesus Christ's prime directive: 'Judge not lest ye be judged.' They reap what they sow."

OK, Tim, but doesn't that work both ways?

Jeff Dannels wrote: "Homophobia is not just another point of view. It's not some harmless 'I like Coke, he likes Pepsi' difference of opinion. It is hateful and it is harmful."

Agreed. But there's been steady progress, and one day in California, gay marriage will be legal. It doesn't surprise me that at least half the population isn't there yet, and I don't think blacklisting those who still aren't comfortable with gay marriage advances the cause. But don't take my word for it.

J. Greg Veneklasen wrote: "As a gay man I am VERY unhappy with reverse discrimination of the anti-8 crowd. Their reactionary strategy is definitely too much, too late. Where was this organization before the election, when it could have had an impact...Not a way to win over hearts and minds, guys."

Good point. If the yes-on-8 campaign seemed unconscionable, the no-on-8 campaign seemed uninspired.

John A. Blue wrote: "I went to three same-sex marriages last summer, and the joy I saw at each is just indescribable. It absolutely boggles my mind that anyone, let alone any persons claiming to follow the teachings of Jesus Christ, could want to destroy that joy. . . . In civil society, actions have to have consequences. Otherwise we are in a Malthusian world where life is nasty, brutish and short. I contributed to the No on 8 campaign, and if that persuades some Christians that they should not patronize me or my law firm, well, I will live with it. . . . I'd just as soon not provide my legal services to someone who thinks it's OK to take away civil rights from a fellow citizen."

A noble position.

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Readers have choice words (pro and con) on Prop. 8

By STEVE LOPEZ
December 17, 2008

April (no last name) wrote: "The issue is that she likes to make money from gays and anyone else willing to spend a buck in her restaurant. Despite being a Mormon, she serves alcohol -- to make money. Guess her faith is kinda flexible, but it's okay when she's anti-gay rights because of her faith?"

Also a fair point.

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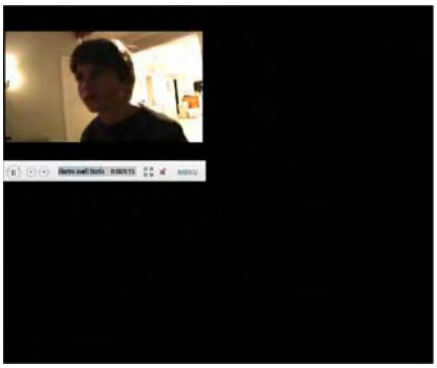

Maria Elena Hernandez wrote: "Tell Ms. Christoffersen to save her hankies and tissues for those of us whose wedding vows may be negated and to those who will have to wait until we have equal rights across the nation. My years of tears certainly outweigh hers."

Hard to argue.

Richard Adkins wrote: "I am disappointed in our gay leaders who failed to identify the Mormon component in this election and use it to assist in the proposition's defeat. . . . I will go to El Coyote on a Thursday night because I don't think anyone should lose their livelihood over an opinion. . . . Any supporters of a political ideal need to be aware that they can become what they oppose."

Don't eat your fajitas in silence, Richard. Tell Margie how you feel about that opinion of hers.

Robert Barrone wrote: "Although I voted against Prop 8, and can only hope to understand the frustration in the gay community, I am reminded of [the famous quote]: 'I disagree with what you say, but I defend to the death your right to say it.' "

That was Evelyn Beatrice Hall describing the French philosopher Voltaire's beliefs. And speaking of Voltaire, isn't he the one who said: "Prejudices are what fools use for reason?"

steve.lopez@latimes.com

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K-3

Proposition 8 Death Threats

Last Update: 10/31/2008 9:20 am

The Fresno Police Department is providing security for Fresno Mayor Alan Autry and Pastor Jim Franklin of Fresno's Cornerstone Church after both men received death threats.

Police say the threats are in response to their support of Proposition 8. The state ballot measure would define marriage as only between a man and a woman.

Earlier this week, Franklin's home, church and church office were egged but now he says someone has gone too far.

Pastor Franklin said, "Here we have a side that talks about tolerance and just let people do what they want to do. But then we get these types of reaction that would threaten people's lives who are simply exercising their freedom of speech."

Fresno Mayor Alan Autry declined to talk on camera about the death threats but Fresno Police Chief Jerry Dyer says investigators are taking the situation seriously and they're close to making an arrest in the case.

Fresno Police Chief Jerry Dyer said, "The information we did receive, we felt serious enough that we would conduct a criminal investigation that's led up to a search warrant. We're going to be making an arrest, I would imagine, in the near future."

Both Franklin and Autry strongly support Proposition 8, which would amend the California Constitution to define marriage as between one man and one woman only.

Pastor Franklin said, "I think without a doubt, just by the nature of the threat as it was related to me, that there's no doubt that it was tied to our support of Proposition 8."

Despite the threats, Franklin says he has no plans to stop speaking out. Franklin said, "It's emboldened us to do even more and to work harder, to get Prop 8 yes."

K-4

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LOCAL

Prop 8 Death Threats

Friday, October 31, 2008 | 10:18 AM

By Amanda Perez

Fresno, CA, USA (KFSN) -- The fight over proposition 8 is taking a dangerous turn as Fresno Police investigate death threats against the mayor and a prominent valley pastor.

Police Chief Jerry Dyer said the written threats against Mayor Alan Autry and Cornerstone Pastor Jim Franklin were very detailed and mentioned their participation in a pro-proposition 8 rally this weekend. That's the California ballot initiative that would ban same sex marriage. "We have significant information regarding threats against Mayor Autry and Pastor Franklin and it's as a result as their participation on the "Yes on 8" that occurred here recently," said Dyer.

Pastor Franklin says the threat came into the mayor's office and he learned of it Wednesday afternoon. The threat comes just days after someone egged Franklin's home and church. They never prepare you for this at seminary. You never think that just because you express your opinion, you participate in the political process in a passionate issue that people will take it to this extent," said Franklin.

Dyer said the Fresno Police Department is taking the case very seriously and they're taking extra steps to protect the two men as they investigate. "We've already served a search warrant regarding the threats and I have no doubt that we're going to be making an arrest in the very near future," said Dyer.

Story continues below

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Thursday night, "No on 8" organizer Jason Scott condemned the threats. "This is something we don't want to see happening. "We just need to let each person have their own opinion on this issue and give them their space to exercise their first amendment right on it," said Scott.

With just days to go until Election Day, emotions are high on both sides of the issue. "No on 8" supporters say they've also had a lot of hate calls during the last week and 'yes' and 'no' signs are disappearing all over town.

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K-5

Track the storm with the ABC 30 Street-Level Interactive Radar Map | Click here ..

LOCAL

Proposition 8 Email Threats

Friday, November 07, 2008 | 7:52 PM

By John-Thomas Kobos

Fresno, CA, USA (KFSN) -- Action News has obtained a statement of probable cause which includes the disturbing email. In it, Autry and Franklin are described as "bigots," "racists," and "hate mongers." We learned the email threatened anyone who supported Prop 8.

| **Download the Life Threatening Email** |

On Sunday October 26th, Fresno Mayor Alan Autry spoke in favor of Proposition 8 outside of City Hall.

Autry said, "And that should marriage remain between one man and one woman."

Three days later Fresno Police investigators say the mayor's life was threatened through an email. Part of it reads: "Hey Bubba, you really acted like a real idiot at the Yes of Prop 8 Rally this past weekend. Consider yourself lucky. If I had a gun I would have gunned you down along with each and every other supporter."

Story continues below

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Action news has not changed the spelling or wording of this email to preserve it.

The email continues, "Anybody who had a yes on Prop 8 sign or banner in front of their house or bumper sticker on the car in Fresno is in danger of being shot or firebombed."

A Fresno County search warrant lists this northwest Fresno house as the most likely origin of the email. We knocked. But no one was home. Darrel Palmer was surprised to hear his neighbor could be involved.

Darrel Palmer said, "So he would be that last person that you would think of?" Yeah, because they would always keep to themselves."

According to the warrant investigators discovered a large water-cooled homemade computer with five external hard drives inside.

Palmer said, "So kind of a tech wizard? Yeah, he was a pretty smart guy. I'm sure he's pretty smart. Like I said he did most of the renovation work inside his house."

Pastor jim franklin was also at the yes on 8 rally outside city hall. He too was mentioned in the email. It reads: "I've also got a little surprise for Pastor Franklin and his congregation of lowlife's in the coming future. Keep letting him preach hate and he'll be sorry. He will be meeting his maker sooner than expected."

Yesterday Action News spoke with Pastor Franklin about the threat. He said he felt confident in the police investigation.

Pastor Jim Franklin said, "It is real. It's a shame that it's come to that and we've seen that even now escalate now that the election has taken place."

No arrests have been made and no charges have been filed. Police told Action News they no longer believe the message was sent by the man listed in the original affidavit.

But investigators believe someone may have sent the message from the man's computer or using his Internet Protocol Address.

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K-6

O'Reilly Alone Reports Gay Attack on Christians

Homosexuals enraged over Prop. 8 physically and sexually assault a group of religious believers innocently praying in a public place, and this isn't news?

By Colleen Raezler
Culture and Media Institute
November 19, 2008

Printer-friendly version

Bill O'Reilly of Fox News is boldly reporting what no other media outlets are touching – physical assaults, and an attempted sexual assault, of praying Christians by enraged homosexuals in San Francisco's Castro District.

A mob of hundreds gathered Friday, Nov. 14 when a small group of evangelical Christians made their weekly trek to San Francisco's homosexual neighborhood. The residents sexually and verbally assaulted the Christians as they prayed and sang hymns on the sidewalk.

According to the personal account of one of the members of the group:

> We began to sing "Amazing Grace," and basically sang that song the whole night. (At some points we also sang "Nothing but the Blood of Jesus" and "Oh the Blood of Jesus.") At first, they just shouted at us, using crude, rude, and foul language and calling us names like "haters" and "bigots." Since it was a long night, I can't even begin to remember all of the things that were shouted and/or chanted at us. Then, they started throwing hot coffee, soda and alcohol on us and spitting (and maybe even peeing) on us.
>
> Then, a group of guys surrounded us with whistles, and blasted them inches away from our ears continually. Then, they started getting violent and started shoving us. At one point a man tried to steal one of our Bibles. Chrisdene noticed, so she walked up to him and said, "Hey, that's not yours, can you please give it back?" He responded by hitting her on the head with the Bible, shoving her to the ground, and kicking her. I called the cops, and when they got there, they pulled her out of the circle and asked her if she wanted to press charges. She said, "No, tell him I forgive him." Afterwards, she didn't rejoin us in the circle, but she made friends with one of the people in the crowd, and really connected heart to heart.

As of November 19, O'Reilly is the only mainstream media figure to cover the story. He aired video clips during the November 18 *O'Reilly Factor* in which police escorted the prayer group out of the neighborhood. An angry protester appears in the video yelling, "And we don't ever want them coming back, ever. Do you understand that other Christians? Do you understand that, other Mormons? I'm talking to you people, yes, you. Stay out of our neighborhood if you don't like us. Leave us alone!" Sharp, piercing whistles can be heard in the background.

Christian actor Kirk Cameron discussed the Castro district attack with O'Reilly

and defended traditional marriage and Proposition 8:

> KIRK CAMERON: Well, I say that it really comes down to who defines marriage. I certainly don't define marriage, and neither does anybody else. Marriage is not a new institution. It's been around for thousands of years, if not longer. And it's defined by God. None of us have the opportunity to redefine that without coming into -- up against serious consequences and unraveling the fabric of our society.
>
> …
>
> [W]e can make laws in our country based on what the majority of people say. And the majority of people in our country say that marriage is worth fighting for, and they did. And the definition of it stays.
>
> …
>
> For me, marriage is -- it's a theological issue. It's a moral issue. It's a family issue. And marriage is what it is. And we understand what it is. And when we start playing with that, there is going to be serious consequences for it.

On November 17, O'Reilly also aired video in which radical homosexual activists stormed a church in Lansing, Michigan, during the November 9 Sunday services and declared, "Jesus is a homo!" and tossed condoms at the congregation. Same-sex couples also proceeded to make out with each other at the front of the church. Again, O'Reilly's show was the only mainstream media outlet to report the event.

Austin Nimock, senior counsel of the Christian legal organization Alliance Defense Fund told O'Reilly:

> It's quite clear that the pretense of tolerance is over. I mean, the advocates in this country for redefining marriage for years have built their campaign on the pretense of tolerance. And what you have here, is tolerance – or no tolerance, I should say, for anybody who dares to disagree with their viewpoint. The opposite of tolerance, Bill, is tyranny.

These are not the only attacks directed at at supporters of Prop. 8, and virtually ignored by the establishment media. Homosexual activists at a "No on Prop. 8" rally in Palm Springs, California, snatched a cross out of the hands of a peaceful counter-protester and stomped on it in full view of a television camera crew. Only a local TV station covered the incident.

Life Site News reported last week that protestors shouted racial slurs, including the n-word, at African-Americans due to the high levels of African-American support for Prop. 8. A higher percentage of blacks, 70 percent, supported Prop. 8 than any other ethnic group.

The Associated Press reported on November 13 that Mormon temples in Los Angeles and Salt Lake City received envelopes containing white powder.

A Nexis search revealed that the three broadcast networks – ABC, CBS, and NBC – and the three cable news channels – CNN, Fox News and MSNBC – collectively aired 75 stories on the Prop 8 protests between November 5 and November 17. Incidents in which homosexuals attacked Prop. 8 backers were largely ignored by the television news.

None of the stories mentioned the use of the n-word by homosexual activists. On November 13, O'Reilly quoted homosexual activist Wayne Besen's saying that he found African-American support for Prop. 8 "galling and repugnant" from "people who have felt the sting of discrimination [and] turn around and step on another minority." CNN reported on comedienne Roseanne Barr's observation that African-Americans who support traditional marriage are "as bigoted and ignorant as their white Christian right-wing counterparts."

Only NBC aired a brief report of the white powder sent to the Mormon temples. ABC reported on it in an article on their Web site.

CMI previously noted that the majority of the coverage following California's vote to pass Proposition 8, which defines marriage as between one man and one woman, focused almost exclusively on the opponents of traditional marriage. News reports highlighted the protests and the plight of the 18,000 same-sex "marriages" performed after California's state Supreme Court ruled last May that the state must allow same-sex couples to "marry," but barely acknowledged the victory traditional values scored in one of the most liberal states in the country.

Colleen Raezler is a research assistant at the Culture and Media Institute, a division of the Media Research Center.

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K-7

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Anger Over Prop. 8 Erupts In San Francisco

Posted: 10:40 pm PST November 14, 2008Updated: 11:57 pm PST November 14, 2008

SAN FRANCISCO -- In San Francisco's Castro District, people on both sides of the same-sex marriage controversy confronted each other on Friday night, as police tried to keep the peace. Proposition 8 passed in a close vote and eliminated the right of same-sex couples to marry.

Members of the gay community said that almost every Friday night, a Christian group meets at the corner of Castro and 18th Streets. They try to convert gays and lesbians into a straight lifestyle.

This Friday night, the message didn't go over well. Some gays and lesbians reacted by trying to chase the group out of the Castro.

"Their rights were respected," said Joe Schmitz, an opponent of Prop 8. "They got a chance to go ahead and pray on the sidewalk and I had the opportunity to express my freedom of speech which is telling them to get out of my neighborhood."

San Francisco Police officers in riot gear formed a line and escorted the religious group into a van to safely get them out of the area.

Members of the gay community insisted that their reaction to the Christian group was spontaneous. "It was not an organized thing. We're tired of it. It's not religious. It's not a racial thing. It's about hate. We're trying to send a message across the world that we're standing up and we don't want this to go on anymore," said Adam Quintero.

Supporters of same-sex marriage plan on Saturday to stage a national day of protest against Prop 8. Some demonstrators told KTVU that they are planning on more than protests. They say they plan to break away and carry out acts of civil disobedience.

In San Francisco, the demonstration is scheduled to take place outside City Hall. Other demonstrations are planned in Oakland and Walnut Creek, and in New York, Washington, Chicago and other U.S. cities.

Supporters of Prop 8 include the Mormon and Catholic churches. They say the passage of the measure was the will of the people and that they are being unfairly targeted.

Don Eaton, the public affairs representative of the Church of Jesus Christ of the Latter Day Saints in the Bay Area said, "The church only encourages people to vote their conscience. The church also reminded us what our doctrine is with regards to marriage between a man and a woman." He also said that some members of the church gave money to the No on 8 campaign, and they weren't punished by the church.

A non-profit group called the Equal Justice Society joined the legal battle against Prop 8 on Friday. It and the NAACP, the Asian Pacific American Legal Center and Mexican American Legal Defense jointly filed a lawsuit. They are asking the California Supreme Court to invalidate Prop 8, arguing that it takes away civil rights.

"People of color need to stand up for the LGBT community," said Eva Paterson of the Equal Justice Society. "We

think civil rights groups that represent people of color say it's very dangerous for the California electorate to take away constitutionally guaranteed rights."

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K-8

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Prop 8 supporter attacked while distributing signs

Man was passing out Yes on 8 signs

By DAVID MARKLAND

Updated 2:02 PM PDT, Wed, Oct 22, 2008

Gay marriage debate becomes violent

A Modesto man was attacked while passing out Yes On Prop 8 signs last Sunday.

Jose Nunez, 37, who became a U.S. citizen two months ago, was outside St. Stanislaus Catholic Church when an unidentified man grab about 75 of the signs and ran. Nunez took chase, and when he caught up the man punched him the face.

Proposition 8 supporters, who are fighting to overturn gay marriage in California by changing language in the state Constitution, describe this incident as part of "a wave of intimidation and violence up and down the state."

> According to Chip White, Californians from around the state have reported being harassed by people who are against Prop. 8. Among the incidents he related were: verbal harassment of Prop.8 supporters on the freeway, including obscene gestures; the theft of yard signs; and a woman in Riverside, California who had her garage sprayed with graffiti. [Catholic News Agency]

The Bay Area Reporter, a gay community targeted news source, says the Prop 8 debate has become "ugly on both sides":

> In Fair Oaks, a suburb of Sacramento, sheriff's deputies were called to a home Saturday after it was reported that a neighborhood teenager burned No on 8 yard signs. The teenager was taken

into custody for a 72-hour psychological evaluation. While the youth was in custody, a third sign was stolen from the same home.

Comments: 9

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First Published: Oct 17, 2008 6:03 PM PDT

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K-9

Deseret News

Powder scares at 2 LDS temples, Catholic plant

No evidence to link threats to Prop. 8 opponents, FBI says

By Ben Winslow
Deseret News
Published: Friday, Nov. 14, 2008 12:00 a.m. MST

Envelopes containing a suspicious white powder were mailed to two LDS temples and a Catholic fraternity, prompting a hazardous materials response and a federal investigation into who is behind it.

The white powder scares were reported Thursday at Salt Lake City's Temple Square, the LDS Church's temple in Los Angeles and at a printing plant belonging to the Knights of Columbus in New Haven, Conn.

"Our mailroom employees discovered an envelope that had been mailed to us from California shortly before noon," Pat Korten, vice president of communications for the Knights of Columbus, told the Deseret News late Thursday. "When they opened it some white powder escaped."

The Church of Jesus Christ of Latter-day Saints and the Knights of Columbus are both major backers of the controversial Proposition 8, which banned same-sex marriage in California. However, the FBI cautioned late Thursday there is no evidence to link the threats to Prop. 8 opponents.

"We've got to follow the evidence and at this point we have not received anything that would lead us to believe the opponents of Prop. 8 are behind any kind of terroristic activity," FBI Special Agent Juan Becerra said from the agency's Salt Lake City office. "It would be irresponsible to say that at this point."

LDS Church security officials called Salt Lake police and firefighters about 4 p.m. Thursday when an employee in the recorder's office inside the Salt Lake Temple annex opened a manila envelope.

"When the employee opened it up and looked inside it, there was actually another white envelope inside that had a white powdery substance in it," Salt Lake Fire spokesman Scott Freitag said.

The employee who opened it immediately set the envelope down and called church security officials, who came over wearing a respirator and plastic gloves. They sealed the envelope inside a plastic bag, Freitag said.

Three employees in the room at the time were quarantined. Security denied access to the room and shut off the air vents.

"They are not complaining of any injury or illness," Freitag said, adding that they did not have to undergo a decontamination process.

Hazardous materials teams sanitized the substance to ensure it was not a biological agent like anthrax.

On the Main Street plaza, missionaries and other church employees were allowed to come and go. A lone LDS security official stood behind the temple gates. He opened the gate for firefighters, then closed and locked it behind them.

A pair of FBI agents left Temple Square with the envelope in a black plastic bag. The envelope was taken to a lab to be tested.

"We are working to find out what it is and hopefully it's harmless," Becerra told the Deseret News.

Firefighters said they did not see anything of a threatening nature with the envelope.

Because the annex is a separate building, the temple itself was not evacuated. However, church

security did not allow anyone to come or go while hazmat teams were there. A portion of North Temple was also closed to traffic.

"At first, we thought it was maybe picketing again," said Poulsen Udall, who was inside the temple at the time.

He was referring to mass protests outside Temple Square last week against the LDS Church's backing of Prop. 8. Similar demonstrations were held outside LDS temples in California and New York.

"It's a sad thing that all of this is going on," said Udall's wife, Pauline.

At the LDS Church's temple in Westwood, Calif., the grounds were closed Thursday afternoon after an employee there opened an envelope similar to the one at church headquarters in Salt Lake City.

"They received an envelope with a suspicious white powdery substance," Los Angeles police officer Karen Smith told the Deseret News. "It's been cleared and there was no hazardous material."

In New Haven, Conn., workers at a printing plant for the Knights of Columbus opened the envelope containing white powder. Hazardous materials teams responded, Korten said, and took it to a lab to be tested.

"We do not yet know what was in that envelope," he said.

The Knights of Columbus did not know if it had been targeted over Prop. 8.<

"We've got a great deal of pretty vulgar communication from people who are not happy with our role to help pass Prop. 8," Korten said. "Whether this has any connection or not, we don't know."

The LDS Church declined to speculate on whether Prop. 8 had a role in the hazardous materials scares.

"We're working with local law enforcement and the FBI," church spokesman Scott Trotter said.

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Prop 8 Protesters March Into Night

Protests continue into second day

By JOHN CADIZ KLEMACK, PATRICK HEALY and JON LLOYD

Updated 7:49 AM PDT, Fri, Nov 7, 2008

LOOK
Getty Images

LOS ANGELES -- More than 2,000 people protesting California's new ban on same-sex marriage marched through Westside Los Angeles streets Thursday, snarling afternoon rush-hour traffic as hundreds of police officers monitored the situation.

Two people were arrested after a confrontation between the crowd and an occupant of a pickup truck that had a banner supporting Proposition 8, the ballot measure that banned same-sex marriage. Seven arrests occurred during Los Angeles-area street marches late Wednesday.

Some spectators cheered from apartment balconies; one person threw eggs at the marchers.

The demonstration began at a Mormon temple complex in Westwood where marchers protested the church's support of Proposition 8, which won 52 percent support Tuesday for its definition of marriage as a heterosexual union. Same-sex marriage had only been allowed in California for a matter of months since a state Supreme Court decision earlier this year.

LOOK

Protestors March Outside Mormon Temple

Prop 8 Opponents March at Mormon Temple

WATCH

Prop 8 Opponents March at Mormon Temple

March at Temple Lasts Into Night

WATCH

March at Temple Lasts Into Night

The march was noisy, with chants of "Separate church and state" and "What do we want? Equal rights." Some waved signs saying "No on H8" or "I didn't vote against your marriage," and many equated the issue with the civil rights struggle.

"I'm disappointed in the Californians who voted for this," said F. Damion Barela, 43, a Studio City resident who married his husband nearly five months ago. "I understand the African-American and Latino communities voted heavily in favor of Proposition 8. To them I say, shame on you because you should know what this feels like."

Brief violence erupted when marchers surrounded the pickup bearing a pro-Proposition 8 sign. Protesters ripped the sign, and an occupant of the vehicle got out and knocked down a protester. A demonstrator, Maurice Carriere, 27, of Studio City, ended up with a bloody nose in the fracas. He told police he didn't see the punch coming. Officers arrested two people and put them in a patrol car.

Organizers said another protest is planned for this weekend in Silver Lake's Sunset Junction area.

Thursday's march initially focused on the Mormon temple because same-sex rights advocates claim the Church of Jesus Christ of Latter-day Saints spent millions to air deceptive advertisements in support of Proposition 8, and the church should lose its tax-exempt status.

"No one's religious beliefs should be used to deny fundamental rights to others," said Lorri L. Jean, chief executive officer of the L.A. Gay & Lesbian Center. "Our civil rights are inalienable.

"It is a travesty that the Mormon Church bought this election and used a campaign of lies and deception to manipulate voters in the great state of California," Jean said. "Today we will send a message to (church President Thomas Monson) that we will not tolerate being stripped of our equal rights in the name of religious bigotry. They're entitled to their beliefs, but not to impose them upon the constitution or laws of California. Let's flood the Mormon Temple in Salt Lake City with postcards."

Jean announced the creation of a Web site at www.InvalidateProp8.org, where people can donate to the legal fight to overturn the proposition. For every donation of $5 or more, the L.A. Gay & Lesbian Center will send a postcard to Monson.

Campaign finance records show the Utah-based church made an in-kind donation of $2,078.97 to ProtectMarriage.com, a coalition of faith organizations and conservative groups that supported Proposition 8. Church spokeswoman Kim Farah in Salt Lake City said the donation covered travel of church leaders who went to California to meet with the coalition.

"By law, the church is required to report when it uses any expenses to travel in support of things like this," Farah said.

Farah dismissed the tax-exemption issue.

"It's a civics 101 lesson. Churches by law are allowed to speak on moral issues," Farah said. "It does not jeopardized the church's tax- exemption status and to suggest otherwise is ridiculous."

The Church, in a written statement on its Web site had this to say: "Allegations of bigotry or persecution made against the Church were and are simply wrong. The issue for the Church has always been about the sacred and divine institution of marriage -- a union between a man and a woman. While the Church does not endorse candidates or platforms, it does reserve the right to speak out on important issues."

The full text of the LDS Church's statement is available here: www.newsroom.lds.org.

Police estimated the protest drew 2,500 people. The event did not have a permit or approved march route.

Demonstrators spilled into the lanes of Santa Monica Boulevard, and then marched around the sprawling temple complex before taking off through the heavily traveled streets of Westwood and, as night fell, toward Beverly Hills.

Among the marchers was Ryan Suffern, 31, who said he and his wife came to support gay friends.

"I find it preposterous, this concept of protecting the sanctity of marriage, when -- looking at divorce -- marriage is a coin toss," he said.

Also demonstrating was Rakefet Abergel, 29, who married her partner of seven years the day gay marriage became legal this year.

"We just want to have the same rights as everyone else gets. We're tired of being second-class citizens when we are citizens of America," she said. "You don't have to agree with us but you have to let us be."

Demonstrator Taylor Miller, 28, was perplexed by the victory of Proposition 8 in the same election that swept Democrat Barack Obama into the presidency.

"It's strange because with Obama winning there's been a surge of really motivated liberalism," she said. "This is just ignorance and ignorance is so last presidency."

First Published: Nov 6, 2008 3:28 AM PDT

Find this article at:
http://www.nbclosangeles.com/news/local-beat/Protestors_Signal_Battle_over_Same_Sex_Marriage_Not_Over.html

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K-11

Deseret News

Protests over Proposition 8 outcome getting personal

By Jennifer Garza
McClatchy Newspapers
Published: Thursday, Nov. 13, 2008 12:08 a.m. MST

SACRAMENTO, Calif. — Supporters of Proposition 8 won the election but now are frustrated because they are still fighting for their cause.

A week after the majority of voters passed the controversial measure to ban same-sex marriage, the conflict continues — in the courts, at protests and in personal attacks.

"I'm frustrated by what's going on," said Dave Leatherby, owner of the Leatherby Family Creamery in Sacramento, commenting on the protests and court battles.

"Let's move on. I always told my children that once a rule was made, you have to abide by it. I think it should be the same in this circumstance."

Leatherby and his family donated about $20,000 for the passage of Proposition 8. A devout Catholic and father of 10, Leatherby supported the measure for religious reasons. He said his business has been targeted by bloggers as a result, and that he is particularly confused because his business has participated in the annual gay pride Rainbow Festival.

"It saddens me that all this is happening," he said.

The battle over same-sex marriage will not end anytime soon. This week, 44 state legislators filed a friend-of-the-court brief on behalf of opponents of the gay-marriage ban. They maintain the initiative process was used improperly. The California Supreme Court could rule as early as this week on a lawsuit that seeks to invalidate Proposition 8, said court spokeswoman Lynn Holton.

Proposition 8 opponents said they will continue to fight for their civil rights.

"For them to say the voters have spoken and no one should question it is a bit disingenuous," said West Sacramento Mayor Christopher Cabaldon. He cited repeated attempts to pass other initiatives. "They believe in the justice of their causes, that's why they return over and over again with the same proposal on parental notification."

Cabaldon was referring to Proposition 4, which would have required parental notification before a minor could have an abortion. It was defeated for the third time last week.

Since the election, thousands have protested on the steps of the state Capitol and in some cities at temples of The Church of Jesus Christ of Latter-day Saints and other sites. Gay marriage advocates said they were planning nationwide demonstrations this weekend in more than 175 cities and outside the U.S. Capitol.

Also, a fire outside an LDS church in Littleton, Colo., is being investigated as a bias-motivated arson that may have stemmed from the church's position on Proposition 8. Arapahoe County sheriff's deputies responded to the building about 7:15 p.m. Tuesday, some three hours after a church member found a burning copy of the Book of Mormon on a doorstep. No damage to the church was reported.

Wednesday night hundreds carried protest signs in front of the LDS Church's Manhattan meetinghouse, which also houses a temple. Several people held signs asking, "Did you cast a ballot or a stone?" while other signs read "Love not H8."

LDS Church spokesman Michael Otterson said while citizens have the right to protest, he was "puzzled" and "disturbed" by the gathering given that the majority of California's voters had approved the amendment.

"Protesting is a time-honored American tradition," said Ned Dolejsi, executive director of the California Catholic Conference. Catholic leaders were active in the "Yes on 8" campaign. "But it's unfortunate when it steps over into religious bigotry or harassment."

Some Proposition 8 supporters say a minority of protesters have gone too far by targeting individuals. Opponents of the measure have called for a boycott of the California Musical Theatre after revelations that artistic director Scott Eckern, a member of the LDS Church, donated $1,000 to the "Yes on 8" Campaign.

On Wednesday, Eckern resigned his position. He released a statement saying that he quit "after prayerful consideration to protect the organization and to help the healing in the local theater-going and creative community."

Others who supported Proposition 8 said they have also been targeted. Scott Purves, of Purves & Associates, a Davis insurance company, said a protester carrying a sign reading "Purves Family Supports Homophobia" picketed his business Monday.

"If this had gone the other way, I can't imagine the backlash if people protested and called the other side names," said Purves. "People would be angry and rightfully so. ... It makes me sad that this would happen when a majority of people supported this measure."

Opponents of Proposition 8 issued a statement last week asking those disheartened by the passage of the initiative not to target those who voted the other way. "We achieve nothing if we isolate the people who did not stand with us in this fight," the statement said. "... We know people of all faiths, races and backgrounds stand with us in our fight to end discrimination, and will continue to do so."

Other ballot initiatives that have been approved by voters have faced legal challenges.

"When it comes to social initiatives, it can become very emotional," said Douglas Kmiec, professor of constitutional law at Pepperdine University.

He cited two initiatives that were approved by voters and later challenged in the courts. One was Proposition 209, the 1996 ballot measure that eliminated racial preferences at California agencies and public institutions; the other was Proposition 187, the 1994 measure that proposed barring undocumented children from schools and most health care.

"Although there were bumps along the way, Prop. 209 eventually passed, but 187 was ultimately invalidated," said Kmiec.

For now, Leatherby said, Proposition 8 should stand. "If they want to win me over," he said. "That's not how to do it."

Contributing: Marcus Franklin, Associated Press

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K-12

Radical Gay Activists Seek to Intimidate Christians

Wednesday, 19 November 2008 12:20 AM EST News - Featured News

Since Nov. 4, Christians have reported increased incidences of church vandalism and sometimes-violent attacks for their support of traditional marriage.

0 tweets

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[11.19.08] The Nov. 4 passage of constitutional amendments banning gay marriage in California, Arizona and Florida has evoked a sometimes-violent response from radical gay activists who have vandalized churches, mobbed intercessors and disrupted a worship service in Michigan.

Intercessors with a house of prayer in San Francisco said they feared they might be killed Friday night during a routine prayer walk through the area's Castro district, which has a large gay community. They said a crowd who thought they were marriage amendment demonstrators shouted lewd remarks, pushed them, threw hot coffee on their faces and threatened the prayer group leader with death. (See related video.)

One man reportedly hit an intercessor on the head with her Bible before shoving her to the ground and kicking her. Before police arrived, another house of prayer member said someone repeatedly tried to pull his pants down.

"We hadn't preached, we hadn't evangelized," one of the intercessors said after the incident. "We worshipped God in peace, and we were about to die for it."

Police eventually escorted the group to their van, telling the intercessors they had to leave if they wanted to make it out, one witness said.

"These are the nicest kids," said TheCall founder Lou Engle, who knows many of the young intercessors involved in the incident. "That night they were doing only worship. They weren't trying to aggravate anything."

"I think what's happening is an exposure of what's really there and an underbelly of this [radical gay] movement," Engle added. "I think the church has to really reveal what's going on there so the nation gets a clue about what they're making an alliance with."

In Michigan, where voters in 2004 approved an amendment defining marriage as the union of one man and one woman, a Chicago-based gay rights organization called Bash Back interrupted a Nov. 9 service at an Assemblies of God congregation in Lansing. (See related video.)

After staging a demonstration outside Mount Hope Church to draw most of the security staff away from the worship service, protestors masked as congregants stood up in the middle of the service, "declared themselves fags and began screaming loudly," Bash Back leaders said in a statement posted online.

The protestors pulled the fire alarm and threw thousands of fliers into the congregation, while a gay couple rushed to the front and began kissing in front of the pastor. "Let it be known: So long as bigots kill us in the streets, this pack of wolves will continue to BASH BACK!" the group said in a statement about the incident.

Bash Back leaders said Mount Hope was targeted because it is "complicit in the repression of queers" by working to "institutionalize transphobia and homophobia" through "repulsive" ex-gay conferences and hell house plays, "which depict queers, trannies and womyn [sic] who seek abortions as the horrors."

In a statement posted on Mount Hope's Web site, church leaders said they don't "attempt to identify the church as anti-homosexual, anti-choice, or right wing" but do "take the Bible at face value and believes what the Bible says to be the truth."

Mount Hope spokesman David J. Williams Jr., said the sheriff's department had launched an investigation into the incident. "We're really asking for prayer for the people that did this," Williams said. "They need Jesus; they need to know His love."

Attorney John Stemberger, who chaired Florida's marriage amendment campaign, said many gay protestors want to intimidate

the public into silence. “Their goal is to create an intense climate of intimidation and hostility within the culture to try and deter people from supporting traditional marriage and other pro-family initiatives in the future,” Stemberger said. “We will not be bullied into silence, indifference or inaction.”

In Palm Springs, Calif., a 69-year-old woman planned to file charges against protesters who reportedly pushed the woman and spit on her during a Nov. 8 rally opposing the passage of Proposition 8, which amends the state constitution to define marriage as the union of one man and one woman. Phyllis Burgess said authorities convinced her to press charges against the attackers.

Nationwide, gay rights advocates protested marriage bans on Saturday, pointing particularly to California’s Proposition 8, which defined marriage as between one man and one woman and overturned a state Supreme Court ruling that had legalized gay marriage. Many of the demonstrations were peaceful, according to Associated Press (AP) reports, with participants waving rainbow-colored flags and holding signs saying “Don’t Spread the H8.”

But pastors across the country, particularly in California, say incidents of vandalism and theft have increased since Nov. 4. One California pastor said a minister in his state received death threats for his support of Proposition 8.
According to reports from California’s Protect Marriage campaign:

· At Messiah Lutheran Church in Downey, Calif., a “Yes on 8” sign was wrapped around a heavy object and used to smash the window of the pastor’s office.

· Several “Yes on 8” yard signs were stolen from Calvary Chapel Ventura, as well as a large banner displaying the church’s name and service times.

· Park Community Church in Shingle Springs, Calif., received harassing phone calls and has been threatened with lawsuits by Proposition 8 opponents.

· Bloggers targeted Yorba Linda, Calif., pastor Jim Domen, who is open about his past struggle with same-sex attraction, and his girlfriend for harassment after seeing the couple’s photo in news reports about the passage of Proposition 8.

· The words “No on 8” were spray-painted on a Mormon church in Orangevale, Calif.

· A brick was thrown through the window of Family Fellowship Church in Hayward, Calif., and at Trinity Baptist Church in Arcata, Proposition 8 opponents vandalized the church’s marquee, which encouraged support for the marriage amendment; stole the church’s flags; and committed other acts of vandalism totaling $1,500.

· Eggs thrown on the building of San Luis Obispo Assembly of God and toilet paper was strewn across the property, while a Mormon church in the same city had adhesive poured onto a doormat, a keypad and a window.

The Mormon Church, headquartered in Salt Lake City, Utah, has also become a target of gay rights activists because it provided major funding to the Proposition 8 campaign and encouraged its members to support the marriage amendment, which passed with 52 percent of the vote.

Some gay rights advocates have called for a boycott of the state of Utah, and Bash Back leaders admitted to vandalizing Mormon churches there, as well as in Washington state and California. A Mormon temple in Salt Lake City reported receiving a letter containing a white, powdery substance that forced the facility to close while police launched an investigation.

"The hypocrisy, hatred, and intolerance shown by the gay rights movement isn't pretty,” said Randy Thomasson, president of the Campaign for Children and Families, a leading California-based pro-family group. “While claiming to be against hate and for tolerance and choice, the homosexual activists are revealing their hatred of voters and religion and showing their intolerance of people's personal choices to support man-woman marriage. By attacking the people's vote to protect marriage in the state constitution, homosexual activists have declared war on our republic and our democratic system."

Christian leaders say the backlash is likely to continue and may worsen. “It’s actually desperation time for us all across the nation to be praying,” Engle said. “They’re calling [Christians] haters when all they’re doing is simply saying there’s a higher authority. It’s a raging against Christ and His loving, foundational laws. It is becoming an anti-Christ rage. They are creating a Jesus of their own mind, a Jesus who lets everybody do whatever they want.

“I think the church has to be prepared [for religious persecution],” he added. “Our allegiance is to God and His Word, and if that means imprisonment and martyrdom, so be it.” -- **Adrienne S. Gaines**

K-13

Back to Message | **Print Thread**

Bob Knoke of Mission Viejo, Amanda Stanfield of Monrovia, Jim Domen of Yorba Linda, and J.D. Gaddis of Yorba Linda are hateful bigots!

Posted by Phyllis Rogers Stone *2008-11-05 12:41:06.0*

Voters approve Proposition 8 banning same-sex marriages

Rick Loomis / Los Angeles Times

Bob Knoke, of Mission Viejo, Amanda Stanfield, of Monrovia, Jim Domen, of Yorba Linda, and J.D. Gaddis, of Yorba Linda, celebrate returns for Proposition 8 at an Irvine hotel.

There. Now whenever someone Googles them this will come up.

---

re: Bob Knoke of Mission Viejo, Amanda Stanfield of Monrovia, Jim Domen of

Posted by Calvin *2008-11-05 12:42:30.0*

Whee! Reposting from the other thread:

Indeed. Let's go get 'em.

I'll take the Jack Warden lookalike. PRS, you take the beer-bellied guy dancing to YMCA. The heil Hitler guy in the dark suit is up for grabs, plus we need a female volunteer to take the doped up girl.

---

re: Bob Knoke of Mission Viejo, Amanda Stanfield of Monrovia, Jim Domen of

Posted by Phyllis Rogers Stone *2008-11-05 12:44:21.0*

I nominate BigFatBlonde.

---

re: Bob Knoke of Mission Viejo, Amanda Stanfield of Monrovia, Jim Domen of

Posted by BigFatBlonde *2008-11-05 12:50:37.0*

Don't tempt me.

I'm having a hard enough time fighting the urge to put on my construction boots, hop on a plane and kick some right-wing ass!

---

re: Bob Knoke of Mission Viejo, Amanda Stanfield of Monrovia, Jim Domen of

Posted by mejusthavingfun *2008-11-05 12:54:47.0*

Odd not a black person in that photo. I guess they were busy carrying bags or something.

---

re: Bob Knoke of Mission Viejo, Amanda Stanfield of Monrovia, Jim Domen of

Posted by Calvin *2008-11-05 12:55:15.0*

Look at Jim Domen's MySpace page. He's a Jesus nut who likes to dress like Zorro.

Link

---

re: Bob Knoke of Mission Viejo, Amanda Stanfield of Monrovia, Jim Domen of

Posted by JoeKv99 *2008-11-05 12:59:29.0*

I just can't understand how a person not in the least bit affected by this law could celebrate it's demise so gleefully.

---

re: Bob Knoke of Mission Viejo, Amanda Stanfield of Monrovia, Jim Domen of

Posted by mejusthavingfun *2008-11-05 13:01:07.0*

Well Jim obviously doesn't like bears too much.

---

re: Bob Knoke of Mission Viejo, Amanda Stanfield of Monrovia, Jim Domen of

Posted by madbrian *2008-11-05 13:01:22.0*

Wow, that's an awfully big closet to hold all those people.

---

re: Bob Knoke of Mission Viejo, Amanda Stanfield of Monrovia, Jim Domen of

Posted by StockardFan *2008-11-05 13:02:48.0*

I can take out the doped up chick, no problem.

---

re: Bob Knoke of Mission Viejo, Amanda Stanfield of Monrovia, Jim Domen of

Posted by DottieD'Luscia *2008-11-05 13:03:00.0*

What vile people.

---

re: Bob Knoke of Mission Viejo, Amanda Stanfield of Monrovia, Jim Domen of

Posted by DayDreamer *2008-11-05 13:14:07.0*

Let this be a call to renewed activism.

---

re: Bob Knoke of Mission Viejo, Amanda Stanfield of Monrovia, Jim Domen of

Posted by Phyllis Rogers Stone *2008-11-05 13:16:45.0*

FEDERAL issue!

---

re: Bob Knoke of Mission Viejo, Amanda Stanfield of Monrovia, Jim Domen of

Posted by madbrian *2008-11-05 15:18:58.0*

Phyllis is correct. This needs to go up to the SCOTUS, where they should decide that the 14th Amendment applies, and marriage equality should be granted to all.

Having said that, the religious aspect is a non-trivial one, both culturally and legally. My opinion is that no church should be compelled to grant same-sex marriage rights, however there may be legal implications if they don't.

---

re: Bob Knoke of Mission Viejo, Amanda Stanfield of Monrovia, Jim Domen of

Posted by Enjolras77 *2008-11-05 16:25:16.0*

Who's gonna take the woman on the far right side, the one obstructed by the "heil Hitler" guy, who could possibly be giving the finger to the camera?

---

re: Bob Knoke of Mission Viejo, Amanda Stanfield of Monrovia, Jim Domen of

Posted by StockardFan *2008-11-05 16:30:49.0*

She looks old. I could probably take both her and the doped up chick.

---

re: Bob Knoke of Mission Viejo, Amanda Stanfield of Monrovia, Jim Domen of

Posted by Calvin *2008-11-05 16:33:03.0*

Somebody also needs to claim Mr. Clean hiding behind dopey.

---

re: Bob Knoke of Mission Viejo, Amanda Stanfield of Monrovia, Jim Domen of

Posted by StockardFan *2008-11-05 16:35:39.0*

I'm not sure I can handle all three of them.....

---

re: Bob Knoke of Mission Viejo, Amanda Stanfield of Monrovia, Jim Domen of

Posted by TheatreDiva90016 *2008-11-05 16:42:58.0*

Jim is also on Facebook. He blocked his account on MySpace... loser.

Send him a message on Facebook!

I did.

Name: Jim Domen Networks: Orange County, CA Azusa Pacific Alum

---

re: Bob Knoke of Mission Viejo, Amanda Stanfield of Monrovia, Jim Domen of

Posted by StockardFan *2008-11-05 16:57:26.0*

ugh, I don't have a facebook account. I wonder if these idiots' phone numbers are listed.

---

re: Bob Knoke of Mission Viejo, Amanda Stanfield of Monrovia, Jim Domen of

Posted by TheatreDiva90016 *2008-11-05 17:05:52.0*

I've been trying to locate them...

---

re: Bob Knoke of Mission Viejo, Amanda Stanfield of Monrovia, Jim Domen of

Posted by Phyllis Rogers Stone *2008-11-05 17:08:55.0*

What a f*cking p*ssy. If he's that excited to see the prop fail, you'd think he wouldn't want to hide.

---

re: Bob Knoke of Mission Viejo, Amanda Stanfield of Monrovia, Jim Domen of

Posted by TheatreDiva90016 *2008-11-05 17:12:55.0*

A Stanfield
home
street address not available
Monrovia, CA
(626) 305-5205

---

re: Bob Knoke of Mission Viejo, Amanda Stanfield of Monrovia, Jim Domen of

Posted by StockardFan *2008-11-05 17:14:55.0*

ooooh, who's going to call her first? I have vonage so I have free long distance. If someone tells me something witty to say, I'll call her!

---

re: Bob Knoke of Mission Viejo, Amanda Stanfield of Monrovia, Jim Domen of

Posted by Schmerg_The_Impaler *2008-11-05 17:15:27.0*

Mejusthavingfun-- I can't believe didn't get your 'bear' joke until the second time I read this thread... heh...

Unless that wasn't intended as a joke and this site has COMPLETELY rewired my young virgin mind!

---

re: Bob Knoke of Mission Viejo, Amanda Stanfield of Monrovia, Jim Domen of

Posted by Phyllis Rogers Stone *2008-11-05 17:16:06.0*

Diva's a regular stalker! (and I mean that as a compliment)

---

re: Bob Knoke of Mission Viejo, Amanda Stanfield of Monrovia, Jim Domen of

Posted by StockardFan *2008-11-05 17:17:11.0*

Schmergie, where the heck have you been all day? I don't really get the bear joke myself.

---

re: Bob Knoke of Mission Viejo, Amanda Stanfield of Monrovia, Jim Domen of

Posted by Calvin *2008-11-05 17:17:51.0*

Ha. Call her and tell her she's won the publisher's clearinghouse grand prize (she looks like the type who would send in an entry for that). And then give her the address of a gay bar as the place to claim it.

---

re: Bob Knoke of Mission Viejo, Amanda Stanfield of Monrovia, Jim Domen of

Posted by Schmerg_The_Impaler *2008-11-05 17:18:59.0*

Dude, I've been in school all day! We had yesterday and the day before off, but now I'm back to the same old routine...

But I'm not TOO upset, because Hugh Panaro's coming to my school, and I'm excited about that...

---

re: Bob Knoke of Mission Viejo, Amanda Stanfield of Monrovia, Jim Domen of

Posted by StockardFan *2008-11-05 17:21:29.0*

Dude....you know I'm a girl right? LOL!

That would be funny Calvin! Should I do it? Maybe I should do it on her machine while she's at work. I guess I need to find the address for a gay bar in her area....

---

re: Bob Knoke of Mission Viejo, Amanda Stanfield of Monrovia, Jim Domen of

Posted by Schmerg_The_Impaler *2008-11-05 17:25:06.0*

I call my mom 'dude'... and my (female) pastor... and my teachers...

Which is not to say that they appreciate that...

---

re: Bob Knoke of Mission Viejo, Amanda Stanfield of Monrovia, Jim Domen of

Posted by StockardFan *2008-11-05 17:27:49.0*

I know, I'm just teasing you!!!

re: Bob Knoke of Mission Viejo, Amanda Stanfield of Monrovia, Jim Domen of

Posted by Mister Matt *2008-11-05 17:30:20.0*

SrockardFan - If she's married, ask her if she's getting remarried since the last few weeks obviously must have nullified their union completely. If she says she's still married, tell her not to worry and we'll work on taking her rights away as soon as possible. If she says she's never been married, tell her it's too bad because proposition 8 pretty much killed her chances.

re: Bob Knoke of Mission Viejo, Amanda Stanfield of Monrovia, Jim Domen of

Posted by TheatreDiva90016 *2008-11-05 17:45:38.0*

It's her number.

I just left a message.

Posted by LePetiteFromage *2008-11-05 17:46:56.0*

re: Bob Knoke of Mission Viejo, Amanda Stanfield of Monrovia, Jim Domen of

Posted by TheatreDiva90016 *2008-11-05 17:50:58.0*

"Hi this is Amanda, blah blah blah"

Beep.

"Hi Amanda, I just wanted to call and let you know what a great picture that was of you and the other Nazi's in the newspaper. It's nice to see you getting out and supporting discrimination. Don't worry though, we have plans for you and your friends. When you have one of your basic rights taken away from you, you'lll know how is feels to be discriminated against.

I hope you rot in hell, you fckuing c**t."

re: Bob Knoke of Mission Viejo, Amanda Stanfield of Monrovia, Jim Domen of

Posted by StockardFan *2008-11-05 18:09:11.0*

You go girl!!!!

Posted by LePetiteFromage *2008-11-05 18:13:51.0*

re: Bob Knoke of Mission Viejo, Amanda Stanfield of Monrovia, Jim Domen of

Posted by ndshep *2008-11-05 19:37:48.0*

Voters approve Proposition 8 banning same-sex marriages

Email Picture

Rick Loomis / Los Angeles Times

Bob Knoke, of Mission Viejo, Amanda Stanfield, of Monrovia, Jim Domen, of Yorba Linda, and J.D. Gaddis, of Yorba Linda, celebrate returns for Proposition 8 at an Irvine hotel.

Here's Amanda Stanfield's Work Voicemail. She works at a super religious Christian School.

Amanda Stanfield, M.A.
Assistant Director, Graduate Center Client Services
Azusa Pacific University
(626) 815-4560

If they disconnect her number, call her boss:
Graduate Center
Azusa Pacific University
PO Box 7000, Azusa, CA 91702-7000
Phone: (626) 815-4570
Fax: (626) 815-4545
http://www.apu.edu/graduatecenter/

Source:
http://www.surveymonkey.com/s.aspx?sm=saUttZjgdoWxUHxoVi2YJg_3d_3d

Amanda Stanfield

---

re: Bob Knoke of Mission Viejo, Amanda Stanfield of Monrovia, Jim Domen of

Posted by TheatreDiva90016 *2008-11-05 19:56:44.0*

It's just too bad that the others have to hide.

Well except for the Jim on Facebook.

I called and left a message for Amanda at her work as well.

---

re: Bob Knoke of Mission Viejo, Amanda Stanfield of Monrovia, Jim Domen of

Posted by Calvin *2008-11-05 19:58:01.0*

OK, this is all going a bit overboard now. It kinda feels like that scene in "Last Supper" when they poisoned the mousy woman just because she wanted to ban "Catcher in the Rye."

Oh wait -- no one saw that movie.

---

re: Bob Knoke of Mission Viejo, Amanda Stanfield of Monrovia, Jim Domen of

Posted by TheatreDiva90016 *2008-11-05 20:59:31.0*

I never said any harm should come to her, I just wanted her to know that she's a biggot and she discriminates, and to have yourself surrounded by the same type of people just makes you worse.

Like a Nazi.

---

re: Bob Knoke of Mission Viejo, Amanda Stanfield of Monrovia, Jim Domen of

Posted by Calvin *2008-11-05 21:22:14.0*

I wasn't referring to you, Diva, but to a brand new member who immediately popped up with information not immediately available through a simple Google search.

Oh, hear they are praying together:

Eww! Those two guys' hands are touching!

---

re: Bob Knoke of Mission Viejo, Amanda Stanfield of Monrovia, Jim Domen of

Posted by StickToPriest *2008-11-05 23:42:30.0*

what about this lady?

http://www.latimes.com/news/local/la-me-prop8-pg,0,3589438.photogallery?index=6

---

re: Bob Knoke of Mission Viejo, Amanda Stanfield of Monrovia, Jim Domen of

Posted by Calvin *2008-11-05 23:48:11.0*

Why are Mormons such horrible dressers?

And what is this Irvine hotel everyone was at? Did they spend all their money on the campaign so they were forced to cram into a Super 8 that night? With whitebread sandwiches and Aquafina?

---

re: Bob Knoke of Mission Viejo, Amanda Stanfield of Monrovia, Jim Domen of

Posted by Phyllis Rogers Stone *2008-11-05 23:59:32.0*

Only elite fags drink bottled water.

---

re: Bob Knoke of Mission Viejo, Amanda Stanfield of Monrovia, Jim Domen of

Posted by Phyllis Rogers Stone *2008-11-06 00:05:37.0*

Her gay son is hiding his head in shame.

---

re: Bob Knoke of Mission Viejo, Amanda Stanfield of Monrovia, Jim Domen of

Posted by Wanna Be A Foster *2008-11-06 00:15:26.0*

Diva, I love you.

---

re: Bob Knoke of Mission Viejo, Amanda Stanfield of Monrovia, Jim Domen of

Posted by StockardFan *2008-11-06 07:26:57.0*

Yeah, Diva rocks!!!!!

---

re: Bob Knoke of Mission Viejo, Amanda Stanfield of Monrovia, Jim Domen of

Posted by Calvin *2008-11-06 13:08:03.0*

Just wanted to mention that if you google "Jim Domen," this thread is third on the results.

Hope he's googling himself today!

---

re: Bob Knoke of Mission Viejo, Amanda Stanfield of Monrovia, Jim Domen of

Posted by Phyllis Rogers Stone *2008-11-06 13:12:55.0*

Awesome.

---

re: Bob Knoke of Mission Viejo, Amanda Stanfield of Monrovia, Jim Domen of

Posted by ndshep *2008-11-06 13:31:02.0*

More phone numbers!

UPDATE: A few friendly readers wrote in with contact information for the horrible Bob Knocke, Jim Domen and Amanda Starfield pictured in the above photo. Please give them a call or email them and let them know how you feel.

Bob Knocke (949) 472-1249
Louis Kanoke (949) 472-1249
25292 Campina Dr, Mission Viejo, CA 92691
His church: http://www.stkilianchurch.org/

Jim Domen, Catalyst Pastor at Rose Drive Friends Church, jimd@rdf.org 714.528.6496 ext. 130
Rose Drive Friends Church. Jim LeShana, Sr. Pastor 4221 Rose Drive, Yorba linda, CA 92886. 714-528-6496
http://rdf.org/
http://tinyurl.com/63o69j
http://tinyurl.com/65yvk4

Amanda Stanfield, M.A.
Assistant Director, Graduate Center Client Services
Azusa Pacific University
(626) 815-4560

If they disconnect her number, call her boss:
Graduate Center
Azusa Pacific University
PO Box 7000, Azusa, CA 91702-7000
Phone: (626) 815-4570
Fax: (626) 815-4545
http://www.apu.edu/graduatecenter/

Contact Jim Domen

---

re: Bob Knoke of Mission Viejo, Amanda Stanfield of Monrovia, Jim Domen of

Posted by TheatreDiva90016 *2008-11-06 14:51:45.0*

Why does Bob look like he's ready to gobble a knob?

And thanks for the other numbers, now I have something to do today!

---

re: Bob Knoke of Mission Viejo, Amanda Stanfield of Monrovia, Jim Domen of

Posted by TheatreDiva90016 *2008-11-06 15:09:51.0*

Kirk Wasson
home
12907 Crossmont Pl
Moreno Valley, CA 92553
(951) 653-6173Type: Land Line
Provider: Verizon
Location: Moreno, CA
Household: Lisa Wasson

---

re: Bob Knoke of Mission Viejo, Amanda Stanfield of Monrovia, Jim Domen of

Posted by Phyllis Rogers Stone *2008-11-06 15:28:59.0*

You know, it's just now that I see what those signs say in the background. Are they effing kidding me? I'm actually so enraged right now I want to go punch a Mormon.

Even by the standards of the most crazed zealot, how in the name of the hateful god of Abraham does this proposition equal religious freedom? How?

---

re: Bob Knoke of Mission Viejo, Amanda Stanfield of Monrovia, Jim Domen of

Posted by TheatreDiva90016 *2008-11-06 15:32:22.0*

PRS,

GET OUT OF ME!

I was thinking the same thing!

It's got NOTHING to do with religion.

Are the Morons...uhm, Mormons worried that they may not be able to marry more than one woman?

Oh, and the above folks have a block on their phone so you have to call froma number that shows up for them. I'm going down to the payphone.... Be back soon!

---

re: Bob Knoke of Mission Viejo, Amanda Stanfield of Monrovia, Jim Domen of

Posted by Calvin *2008-11-06 15:33:42.0*

You know, for someone who bikes and runs so much in his photos, why is Jim Domen still such a fat-ass?

---

re: Bob Knoke of Mission Viejo, Amanda Stanfield of Monrovia, Jim Domen of

Posted by doodlenyc *2008-11-06 15:34:42.0*

That bicycle picture is the gayest thing I've seen in awhile.

---

re: Bob Knoke of Mission Viejo, Amanda Stanfield of Monrovia, Jim Domen of

Posted by Calvin *2008-11-06 15:35:38.0*

I notice his myspace page is now set to private and his Facebook page is gone entirely.

Awwwwww. Did someone hurt his wittle feelings?

---

re: Bob Knoke of Mission Viejo, Amanda Stanfield of Monrovia, Jim Domen of

Posted by Phyllis Rogers Stone *2008-11-06 15:36:47.0*

I mean, I know they always equate it with their religion and crap, but I've never once seen anyone actually answer the damn question. No one is going to force your stupid effing church (no offense to believers) to perform gay marriages.

But again - even plenty of non-religious folks are grossed out by the thought of two men doing it. As it always has been, as it always shall be, it seems.

I'd love to be able to find out if any of these people whose names and joyous faces were splattered all over

the papers have ever been divorced.

---

re: Bob Knoke of Mission Viejo, Amanda Stanfield of Monrovia, Jim Domen of

Posted by TheatreDiva90016 *2008-11-06 18:14:55.0*

Well, the pay phone at the store wouldn't go through either, so it's a good thing the manager of the store is very kind and she let me place the call from her office phone.

I told them that in the picture, their son was hanging his head in shame because he can't belive his parents are such biggots.

It's nice to have friends that will let you use their phone to scream at ignorant people...

---

re: Bob Knoke of Mission Viejo, Amanda Stanfield of Monrovia, Jim Domen of

Posted by ndshep *2008-11-06 20:06:59.0*

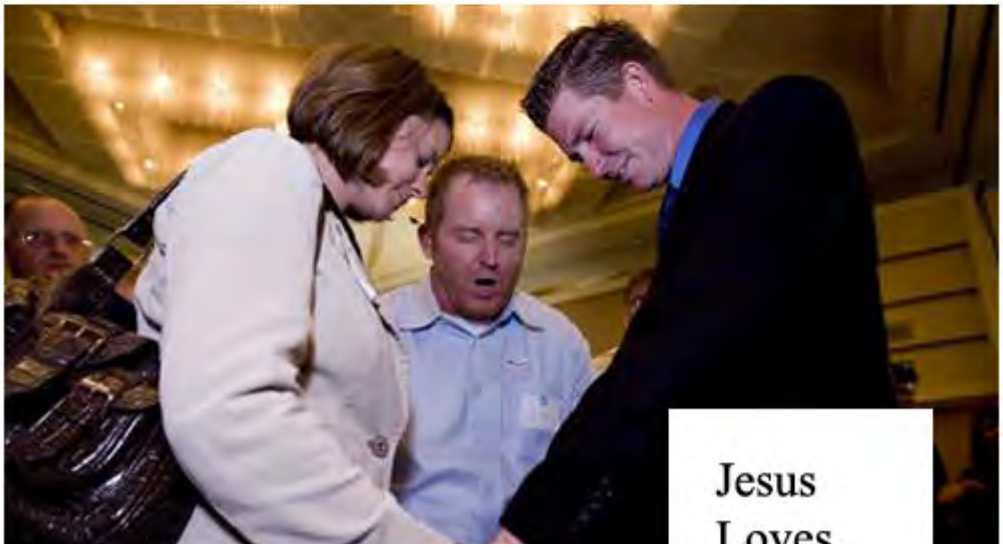
BIGOTRY
4
JESUS

Voters approve Proposition 8 banning same-sex marriages

Email Picture

Rick Loomis / Los Angeles Times

Bob Knoke, of Mission Viejo, Amanda Stanfield, of Monrovia, Jim Domen, of Yorba Linda, and J.D. Gaddis, of Yorba Linda, celebrate returns for Proposition 8 at an Irvine hotel.



Amanda Stanfield, Jim Domen, JD Gaddis

---

re: Bob Knoke of Mission Viejo, Amanda Stanfield of Monrovia, Jim Domen of

Posted by Schmerg_The_Impaler *2008-11-06 20:09:31.0*

Is 'asteem' a pun or a typo?

---

re: Bob Knoke of Mission Viejo, Amanda Stanfield of Monrovia, Jim Domen of

Posted by KathyGriffinLovesYou *2008-11-06 20:12:05.0*

Up until now I wanted to be a actor. I've taken a gazillion classes and have been in a gazillion shows.

The past couple of weeks have helped me decided I want to get into politics.

---

re: Bob Knoke of Mission Viejo, Amanda Stanfield of Monrovia, Jim Domen of

Posted by Calvin *2008-11-07 01:26:07.0*

I think we need a new version of this song.

Ha

---

re: Bob Knoke of Mission Viejo, Amanda Stanfield of Monrovia, Jim Domen of

Posted by WestVillage *2008-11-07 13:19:25.0*

Curious .. besides TheatreDiva, is anyone contacting these ignorant and despicable people?

And thanks for posting the contact information.

---

re: Bob Knoke of Mission Viejo, Amanda Stanfield of Monrovia, Jim Domen of

Posted by TheatreDiva90016 *2008-11-07 13:56:43.0*

Cricket

cricket.

Also, has anyone else, besides PJ, reported the LDS to the IRS?

Subject: Take Action Against LDS

If it upsets you that a church can meddle with another state's political statutes, here's something simple you can do:

To report the LDS Church to the IRS, simply take 5 minutes to print these articles out and any others you can find:

http://www.sltrib.com/ci_10839546 http://www.sltrib.com/news/ci_10842051

Then print, sign and send the attached form (already completed) or download a blank and fill it out yourself at

http://www.irs.gov/pub/irs-pdf/f3949a.pdf

List the taxpayer as:

Thomas S. Monson, et al
50 East North Temple
Salt Lake City, Utah 84150

List his occupation as President and the business as The Church of Jesus Christ of Latter-Day Saints.
Check the boxes for False Exemption and Public/Political Corruption.
Then in the Comments section demand that the LDS Church be fined and their tax-exempt status revoked for repeated and blatant violations of the IRS's separate of church and state rules, and for conspiring to interfere with a state's political process.
Check Yes under "Are books/records available?" and write in "campaign finance records." You don't have to provide any of your own personal info.

Mail the form and the printed articles to:
Internal Revenue Service
Fresno, CA 93888

---

re: Bob Knoke of Mission Viejo, Amanda Stanfield of Monrovia, Jim Domen of

Posted by ndshep *2008-11-07 14:16:25.0*

Dear West Village,

I have indeed contacted both Amanda and Jim's workplaces with emails and calls letting them know how I feel. I've also copied everyone from their organization that I could dig up online. I'm sure that their coworkers are in the same mindset as the offending party, so I'm not sure it's much use to "embarrass" them. Heck, they'll probably get even more credit.

Please see mailing lists below.

astanfield@apu.edu, graduatecenter@apu.edu, alumni@apu.edu, universityrelations@apu.edu, jwallace@apu.edu, provost@apu.edu, bmccarty@apu.edu, kcleveland@apu.edu, Lawrence@apu.edu, jramos@apu.edu, bodell@apu.edu, gpine@apu.edu, slehman@apu.edu, jrutter@apu.edu, dbahruth@apu.edu, jferris@apu.edu, sgeiss@apu.edu, psvagdis@apu.edu, rruiz@apu.edu, jleslie@apu.edu, ahaggins@apu.edu, thardeman@apu.edu, ckausrud@apu.edu, vsantacruz@apu.edu, bwillmer@apu.edu, jdarnell@apu.edu, pwolf@apu.edu, dblomquist@apu.edu, jsurrell@apu.edu, dwood@apu.edu, cwebber@apu.edu, jwoods@apu.edu, lshimasaki@apu.edu, rfleming@apu.edu, mbohren@apu.edu, tholmes@apu.edu, mbarnett@apu.edu, kreid@apu.edu, ckeife@apu.edu, jreinsch@apu.edu, areed@apu.edu, kduskin@apu.edu, gfung@apu.edu, jpearce@apu.edu, ddacus@apu.edu, ibezjian@apu.edu, junderwood@apu.edu, cfaber@apu.edu, hbutler@apu.edu, sbmgrad@apu.edu, BMcHenry@apu.edu

There are More white people in this church staff than you can shake a stick at!

http://www.rdf.org/cgi-bin/gx.cgi/AppLogic+FTContentServer?pagename=FaithHighway/10000/6000/246RO/staff1

jimd@rdf.org, jiml@rdf.org, chriss@rdf.org, bobbig@rdf.org, mikeb@rdf.org, jerryc@rdf.org, irisf@rdf.org, billg@rdf.org, jimk@rdf.org, heidim@rdf.org, greggp@rdf.org, murielt@rdf.org, craigd@rdf.org, jenniferp@rdf.org, zachs@rdf.org, mandip@rdf.org, jasonm@rdf.org, Chrisc@rdf.org, robinr@rdf.org, jenniferm@rdf.org, tresam@rdf.org, janab@rdf.org, conniek@rdf.org, kariw@rdf.org, rickk@rdf.org, larryl@rdf.org, sandyp@rdf.org

Contact Jim Domen

---

re: Bob Knoke of Mission Viejo, Amanda Stanfield of Monrovia, Jim Domen of

Posted by WestVillage *2008-11-07 14:33:05.0*

Thanks ... I'm going to send out some emails as well. Amanda's home phone # is "no longer in service; I guess that means she was getting lots of angry calls. I'm glad it caused some disruption in her life.

---

re: Bob Knoke of Mission Viejo, Amanda Stanfield of Monrovia, Jim Domen of

Posted by ndshep *2008-11-07 14:57:03.0*

Uh oh!

Got an Angry sounding reply from Rose Drive Friends Church:

From: Chris Steiger
Subject: RE: Jim Domen's Bigotry
To: jimd@rdf.org, jiml@rdf.org, bobbig@rdf.org, mikeb@rdf.org, jerryc@rdf.org, irisf@rdf.org, billg@rdf.org, jimk@rdf.org, heidim@rdf.org, greggp@rdf.org, murielt@rdf.org, craigd@rdf.org, jenniferp@rdf.org, zachs@rdf.org, mandip@rdf.org, jasonm@rdf.org, Chrisc@rdf.org, robinr@rdf.org, jenniferm@rdf.org, tresam@rdf.org, janab@rdf.org, conniek@rdf.org, kariw@rdf.org, rickk@rdf.org, larryl@rdf.org,

sandyp@rdf.org
Date: Friday, November 7, 2008, 2:30 PM

Staff,

This is one of the many emails that Jim has received I am getting his website email instead of him for a short period of time. Please DO NOT respond to this or any email like this. We will be reporting these emails to the web domain host.

Chris

---

re: Bob Knoke of Mission Viejo, Amanda Stanfield of Monrovia, Jim Domen of

Posted by WestVillage *2008-11-07 15:23:45.0*

HeHe! I just fired one off to all the email address that ndshep listed. Lets make some noise people!

---

re: Bob Knoke of Mission Viejo, Amanda Stanfield of Monrovia, Jim Domen of

Posted by Phyllis Rogers Stone *2008-11-07 16:09:43.0*

Y'all are crazy! But I'm laughing my ass off.

---

re: Bob Knoke of Mission Viejo, Amanda Stanfield of Monrovia, Jim Domen of

Posted by ndshep *2008-11-07 17:29:24.0*

YES ON PROPOSITION 8
ZIP Code Supervisors for the Glendale, CA Area

(Glendale, La Canada, La Crescenta, Verdugo Hills, Sunland, Tujunga)

The following is the list of ZIP CODE SUPERVISORS you can contact.

Zip Codes
Zip Code
Supervisor
Phone
E-mail

90012
Christian Sampsen
310-971-8480
Christian_Sampson@hotmail.com

90026
John Christiansen
818-247-6748

90031
Roger and Dianne Skelton

818-353-1994
rsroger@aol.com

90039
Matt and Lisa Woodruff
818-952-8771
Mattywoody@yahoo.com

90041
Shannon Syphus
808-781-1616
shannonterry10@gmail.com

90042
Adam Minson
818 468 7138
a_minson@yahoo.com

90065
Steve and Carol Bush
818-957-2037

91011
Micke and Stan Nielson
818-952-7940
mickienielson@sbcglobal.net

91020
Deb Milam
818-248- 1761
milam@earthlink.net

91040
Alice and Lee Watson
818-353-1502
alicewteach@yahoo.com

91042
Brent Peterson
818-952-1815
bcp4949@earthlink.net

91105
Marta Viera
818-241-2313

91201
Suzie and Brian Kelley
818-415-4078 (cell),
213 944 8888 (cell)
Suziq1@dslextreme.com

91202
Clyde Condie
818-248-8270
ccondie@aeoinc.us

91203

Michael Milam
818-248- 1761
milam@earthlink.net

91204
Humberto Barillas
818 352-4338
Hbarillas@aol.com

91205
Jon Sommer
818-244-4242
jgsommer@earthlink.net

91206
Susan Jones
323 257 5562
Suzig1@dslextreme.com

91207
James Pak
213 792 7162
jamesbpak@gmail.com

91208
Marty Newton
818-790-2895

91214
Terri and Richard Lonas
818 957-2213
MrsLonas1@aol.com

---

re: Bob Knoke of Mission Viejo, Amanda Stanfield of Monrovia, Jim Domen of

Posted by TheatreDiva90016 *2008-11-08 20:54:38.0*

Is ANYONE else doing ANYTING besides posting?

You should be ashamed.

---

re: Bob Knoke of Mission Viejo, Amanda Stanfield of Monrovia, Jim Domen of

Posted by FindingNamo *2008-11-08 21:30:43.0*

"Catalyst Pastor"?

Are they freaking KIDDING with that title?

---

re: Bob Knoke of Mission Viejo, Amanda Stanfield of Monrovia, Jim Domen of

Posted by ndshep *2008-11-13 15:52:44.0*

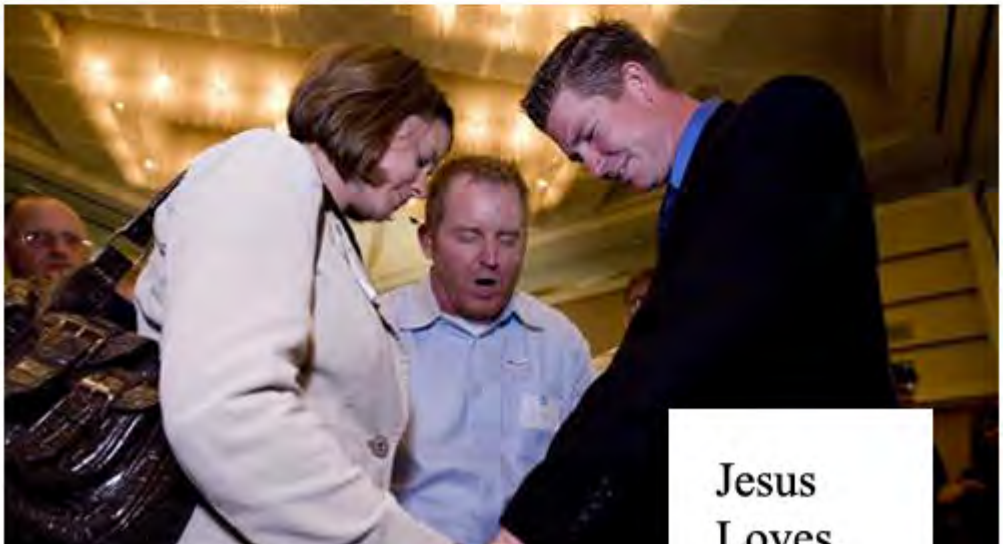
BIGOTRY
4
JESUS

Voters approve Proposition 8 banning same-sex marriages

Email Picture

Rick Loomis / Los Angeles Times

Bob Knoke, of Mission Viejo, Amanda Stanfield, of Monrovia, Jim Domen, of Yorba Linda, and J.D. Gaddis, of Yorba Linda, celebrate returns for Proposition 8 at an Irvine hotel.



YOU WON'T BELIEVE THIS!!!!

Oh my God! I can't believe it! I just received an email update from a Pastor that thinks I'm on "his side". P.S. Please sign up for mailing lists on those Support 8 websites! They are talking about the "Persecution" that has happened to Jim Domen because of his picture appearing in the LA Times. Guess WHAT!!!! HE'S AN EX GAY!! Can you believe this s#$% I'm still in shock! He's a bigot and a hypocrite! And guess what, they said that his girlfriend is also being targeted... I'll bet that's her right in the picture! Amanda Stanfield!!!

They included his PERSONAL email address! So Please Let him know that you support him and his "girlfriend"!

Text of the email is below:

YORBA LINDA Pastor Jim Domen of Rose Drive Friends Church has been the target of persecution by marriage opponents; not just him, but his girlfriend as well. Jim is one whom the Lord delivered from a life of struggle with same-sex attractions. He has been a vocal supporter of Proposition 8. He was photographed on Election night celebrating the results of Proposition 8, both he and his girlfriend. The photographs were published in The Los Angeles Times, The Orange County Register, and The Chicago Tribune. Since then, blogs were established to target both Jim AND his girlfriend for verbal persecution, particularly when it was discovered that he is an ex-gay.

Please email/phone Pastor Jim and offer your words of encouragement and your prayers as we stand with this dear brother of ours who is suffering persecution for our Lord s sake.

Pastor Jim Domen
Rose Drive Friends Church
4221 Rose Dr
Yorba Linda 92886
714.528.6496
jimdomen@me.com

Some numbers from the previous posts...
Bob Knocke (949) 472-1249
Louis Kanoke (949) 472-1249
25292 Campina Dr, Mission Viejo, CA 92691
His church: http://www.stkilianchurch.org/

Jim Domen, Catalyst Pastor at Rose Drive Friends Church, jimd@rdf.org 714.528.6496 ext. 130
Rose Drive Friends Church. Jim LeShana, Sr. Pastor 4221 Rose Drive, Yorba linda, CA 92886. 714-528-6496
http://rdf.org/
http://tinyurl.com/63o69j
http://tinyurl.com/65yvk4

Amanda Stanfield, M.A.
Assistant Director, Graduate Center Client Services
Azusa Pacific University
(626) 815-4560

If they disconnect her number, call her boss:
Graduate Center
Azusa Pacific University
PO Box 7000, Azusa, CA 91702-7000
Phone: (626) 815-4570
Fax: (626) 815-4545
http://www.apu.edu/graduatecenter/

Jim Domen Gay

K-14

Threats, Legal Action in Washington's Gay-Marriage Debate

Tuesday, September 08, 2009 10:02 AM
By Newsweek

By Krista Gesaman

This November, residents of Washington state will go to the polls to decide the fate of same-sex domestic partnerships, voting on Referendum 71 (R-71). Nicknamed the "everything but marriage" proposition, R-71 proposes an expansion of a current domestic-partnership law to include adoption rights, child support, pension, and other public-employee benefits for same-sex couples. Although gay partners would have all the rights afforded married couples, the state will refrain from using the term “marriage.” But right now, voters are less worried about what's actually on the ballot than how it got there in the first place. In Washington, as in most states, supporters must collect a threshold number of signatures for a ballot initiative to go to the polls. In the case of R-71, those who signed were asked to include their name, occupation, and address. Now, a political group wants to publish the names of the 121,000 residents who signed on the Internet.

WhoSigned.Org is a grassroots organization based in Washington which would make the names and contact information of these individuals available on a searchable Web site so residents could check whether their signature was accurately or fraudulently recorded. Although for some, advocating for the public disclosure of records could be a democratic and civic-minded concept, state residents started to worry when threats came pouring in. Protect Marriage Washington, the primary organization behind R-71, cites a variety of Web postings advocating harm. One post retrieved from the Web site Queer Equality Revolution in early August stated: "I advocate using violence against the property of ALL of those who are working tirelessly to HURT my family; starting with churches and government property. Government is enabling a vote on whether or not I "should be allowed" to see my husband [*sic*] while he is dying in the hospital - any NORMAL man would be driven to get a gun and kill those who tried such evil cruelty against his loved ones." Messages on WhoSigned.org have also threatened to boycott the businesses of everyone who signed the petition.

Protect Marriage Washington has filed a motion for an injunction to stop the release. The organization not only asks to seal the release of the names and organizations of the individuals who supported the referendum but also the contact information of individuals who signed petitions opposing the potential law. On Sept. 3, District Court Judge Benjamin H. Settle had the difficult task of weighing constitutional rights versus public disclosure. One side argues that releasing the names will have a chilling effect on free speech, while the other side claims that public-disclosure laws should be upheld in order to continue open government efforts. In an unusual twist, Settle decided to extend a temporary restraining order while he considers some of the public disclosure issues. He expects to have a decision by Sept.10.

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February 8, 2009 Sunday
Late Edition - Final

SECTION: Section BU; Column 0; Money and Business/Financial Desk; SLIPSTREAM; Pg. 3

LENGTH: 959 words

HEADLINE: Disclosure, Magnified On the Web

BYLINE: By BRAD STONE

BODY:

FOR the backers of Proposition 8, the state ballot measure to stop single-sex couples from marrying in California, victory has been soured by the ugly specter of intimidation.

Some donors to groups supporting the measure have received death threats and envelopes containing a powdery white substance, and their businesses have been boycotted.

The targets of this harassment blame a controversial and provocative Web site, eightmaps.com.

The site takes the names and ZIP codes of people who donated to the ballot measure -- information that California collects and makes public under state campaign finance disclosure laws -- and overlays the data on a Google map.

Visitors can see markers indicating a contributor's name, approximate location, amount donated and, if the donor listed it, employer. That is often enough information for interested parties to find the rest -- like an e-mail or home address. The identity of the site's creators, meanwhile, is unknown; they have maintained their anonymity.

Eightmaps.com is the latest, most striking example of how information collected through disclosure laws intended to increase the transparency of the political process, magnified by the powerful lens of the Web, may be undermining the same democratic values that the regulations were to promote.

With tools like eightmaps -- and there are bound to be more of them -- strident political partisans can challenge their opponents directly, one voter at a time. The results, some activists fear, could discourage people from participating in the political process altogether.

That is why the soundtrack to eightmaps.com is a loud gnashing of teeth among civil libertarians, privacy advocates and people supporting open government. The site pits their cherished values against each other: political transparency and untarnished democracy versus privacy and freedom of speech.

"When I see those maps, it does leave me with a bit of a sick feeling in my stomach," said Kim Alexander, president of the California Voter Foundation, which has advocated for open democracy. "This is not really the intention

of voter disclosure laws. But that's the thing about technology. You don't really know where it is going to take you."

Ms. Alexander and many Internet activists have good reason to be queasy. California's Political Reform Act of 1974, and laws like it across the country, sought to cast disinfecting sunlight on the political process by requiring contributions of more than $100 to be made public.

Eightmaps takes that data, formerly of interest mainly to social scientists, pollsters and journalists, and publishes it in a way not foreseen when the open-government laws were passed. As a result, donors are exposed to a wide audience and, in some cases, to harassment or worse.

A college professor from the University of California, San Francisco, wrote a $100 check in support of Proposition 8 in August, because he said he supported civil unions for gay couples but did not want to change the traditional definition of marriage. He has received many confrontational e-mail messages, some anonymous, since eightmaps listed his donation and employer. One signed message blasted him for supporting the measure and was copied to a dozen of his colleagues and supervisors at the university, he said.

"I thought what the eightmaps creators did with the information was actually sort of neat," the professor said, who asked that his name not be used to avoid becoming more of a target. "But people who use that site to send out intimidating or harassing messages cross the line."

Joseph Clare, a San Francisco accountant who donated $500 to supporters of Proposition 8, said he had received several e-mail messages accusing him of "donating to hate." Mr. Clare said the site perverts the meaning of disclosure laws that were originally intended to expose large corporate donors who might be seeking to influence big state projects.

"I don't think the law was designed to identify people for direct feedback to them from others on the other side," Mr. Clare said. "I think it's been misused."

Many civil liberties advocates, including those who disagree with his views on marriage, say he has a point. They wonder if open-government rules intended to protect political influence of the individual voter, combined with the power of the Internet, might be having the opposite effect on citizens.

"These are very small donations given by individuals, and now they are subject to harassment that ultimately makes them less able to engage in democratic decision making," said Chris Jay Hoofnagle, senior fellow at the Berkeley Center for Law and Technology at the University of California.

THANKS to eightmaps.com, the Internet is abuzz with bloggers, academics and other pundits offering potential ways to resolve the tension between these competing principles. One idea is to raise the minimum donation that must be reported publicly from $100, to protect the anonymity of small donors.

Another idea, proposed by a Georgetown professor, is for the state Web sites that make donor information available to ask people who want to download and repurpose the data to provide some form of identification, like a name and credit card number.

"The key here is developing a process that balances the sometimes competing goals of transparency and privacy," said the professor, Ned Moran, whose undergraduate class on information privacy spent a day discussing the eightmaps site last month.

"Both goals are essential for a healthy democracy," he said, "and I think we are currently witnessing, as demonstrated by eightmaps, how the increased accessibility of personal information is disrupting the delicate balance between them."

URL: http://www.nytimes.com

GRAPHIC: PHOTO: California's Proposition 8 drew protests last year. A Web site takes names and ZIP codes of donors supporting the measure and overlays data on a map.(PHOTOGRAPH BY J. EMILIO FLORES FOR THE NEW YORK TIMES) MAP

LOAD-DATE: February 8, 2009

K-16

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My Lexis™ Search Research Tasks Get a Document Shepard's® Alerts Total Litigator Transactional Advisor Counsel Selector Dossier History
FOCUS™ Terms proposition 8 and harass Search Within Original Results (1 - 78) Using Semantic Concepts What's this? Go Advanced...
All Results - (20) News - (20)

Source: **Combined Source Set 20 - Major Newspapers; The New York Times; Los Angeles Times**
Terms: proposition 8 /s donor* and date geq (09/14/2008) (Edit Search | Suggest Terms for My Search)
Focus: **proposition 8 and harassment and date geq (09/14/2008)** (Exit FOCUS™)

Select for FOCUS™ or Delivery

Attacks on Miss California reveal intolerance of gay-rights activists Point of View • Beauty queen is latest target of a campaign to silence critics of same-sex marriage. OTHER VIEWS St. Louis Post-Dispatch (Missouri) April 30, 2009 Thursday

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St. Louis Post-Dispatch (Missouri)

April 30, 2009 Thursday
THIRD EDITION

SECTION: EDITORIAL; Pg. A17

LENGTH: 669 words

HEADLINE: Attacks on Miss California reveal intolerance of gay-rights activists Point of View • Beauty queen is latest target of a campaign to silence critics of same-sex marriage. OTHER VIEWS

BYLINE: COLLEEN CARROLL CAMPBELL

DATELINE: 0

BODY:

"I believe that a marriage should be between a man and a woman. No offense to anybody out there, but that's how I was raised."

With that mild answer to a beauty-pageant query earlier this month, Miss California Carrie Prejean was catapulted to the center of an international controversy resulting in vicious attacks on her character, intelligence and religious beliefs.

The assault began almost immediately after the 21-year-old college junior answered a question about her views on same-sex marriage from Perez Hilton, a gay gossip blogger and Miss USA contest judge who earned his fame by drawing obscene doodles on celebrity photos and "outing" gay stars on his website. Incensed by Prejean's failure to endorse his views on gay marriage, Hilton took to the airwaves and Internet to call Prejean a string of unprintable names.

The incident would be just another laughable case of a blogger behaving badly were it not for the fact that Hilton's histrionic response was echoed by a chorus of more respectable voices. They ranged from the TV journalists who fretted on air about Prejean's insensitivity and pageant officials who publicly sided with Hilton to the parade of Hollywood celebrities who denounced Prejean and high-ranking gay British politician Alan Duncan, who called her a "silly [expletive]" and said that if she turns up murdered, "you will know it was me."

For all the fuss, Prejean hardly is alone in her conventional view of marriage. Polls show that most Americans share that view and voters in 29 states, including California, have approved state constitutional amendments banning gay marriage. Yet Prejean did something most Americans who oppose gay marriage no longer dare to do: She voiced her beliefs in the public square. And when pressured to recant, she refused.

Prejean's boldness has made her the latest target of a cabal of strident gay-rights activists and their media allies who define even the most muted public words against same-sex marriage as hate speech. These ideologues increasingly rely on intimidation tactics to advance their cause where rhetorical persuasion and democratic means have failed. In an ugly twist for a movement that once made "tolerance" its rallying cry, the most glaring examples of intolerance in today's marriage debate come from supporters of same-sex marriage.

That intolerance was on full display in California last fall, before and after the passage of the **Proposition 8** gay-marriage ban. Anti-**Proposition 8** TV ads blatantly stoked religious prejudices by depicting wild-eyed Mormon missionaries gleefully terrorizing a lesbian couple. Gay activists published an online blacklist of individual contributors to the **Proposition 8** cause so those donors could be targeted for **harassment,** boycotts and firings. After the election, evangelical, Catholic and Mormon churchgoers faced angry protesters screaming at them on their way in to their respective churches. In Palm Springs, a raucous mob of gay-rights activists was caught on TV ripping a cross from an elderly woman's hands and stomping on it, while shoving her and swatting her with their placards. In Michigan, a band of gay-rights activists incensed by the California vote disrupted an evangelical church service, yelling at churchgoers, pulling a fire alarm and unfurling a gay pride flag from the church balcony as part of their "Bash Back" campaign.

Such boorish behavior typically receives little coverage from the mainstream media. Yet many Americans have noticed the increasing intolerance of the gay-marriage movement and they resent it. Perhaps that's why Miss California has enjoyed a surge of grassroots

support in the wake of her media flogging. At a time when many politicians and pastors are too intimidated to defend their beliefs about marriage, a beauty queen willing to stand up to a bully is an inspiring sight.

Colleen Carroll Campbell is an author, television and radio host and St. Louis-based fellow at the Ethics and Public Policy Center. Her website is www.colleen-campbell.com.

GRAPHIC: Miss California Carrie Prejean reads from a Bible during church services in San Diego Sunday. The Associated Press
Colleen Carroll Campbell

LOAD-DATE: April 30, 2009

Source: **Combined Source Set 20 - Major Newspapers; The New York Times; Los Angeles Times**
Terms: proposition 8 /s donor* and date geq (09/14/2008) (Edit Search | Suggest Terms for My Search)
Focus: **proposition 8 and harassment and date geq (09/14/2008)** (Exit FOCUS™)
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Same-sex marriage protesters assaulted with food

4:55 PM Wed, Jul 29, 2009 | Permalink
Maria Armental Email

WARWICK, R.I. -- The police are investigating an assault Tuesday on Bald Hill Road.

The weapon of choice: soda, salsa, eggs ...

"Your basic garden variety of food condiments," Capt. Robert Nelson said Wednesday.

It started as the four men stood at the median on Bald Hill Road and East Avenue around 2:40 p.m. protesting against same-sex marriage.

The location, Nelson noted, afforded them a roomy median and prime visibility.

They caught the attention of a group of women in one of the cars.

The women, who apparently objected to their message, flung a soda bottle at the men and vowed to return.

And back they were, about 15 minutes later, hurling at the men a mélange of food ingredients and drinks and a full repertoire of profanities, Nelson said.

One of the women swashed a protester with pepper spray.

No one was hurt and no arrests have been made, Nelson said

BOOKMARK

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24 of 227 DOCUMENTS

Copyright 2009 The Weekly Standard
The Weekly Standard

March 16, 2009 Monday

SECTION: ARTICLES Vol. 14 No. 25

LENGTH: 1606 words

HEADLINE: The New Blacklist;
Freedom of speech--unless you annoy the wrong people.

BYLINE: Maureen Mullarkey, The Weekly Standard

BODY:

Strange times we live in when it takes a ballot initiative to confirm the definition of marriage as the union of a man and a woman. Stranger still when endorsing that definition through the democratic process brings threats and reprisals.

In November, the San Francisco Chronicle published the names and home addresses of everyone who donated money in support of California's **Proposition 8** marriage initiative. All available information, plus the amount donated, was broadcast. My name is on that list.

Emails started coming. Heavy with epithets and ad hominems, most in the you-disgust-me vein. Several accused me, personally, of denying the sender his single chance at happiness after a life of unrelieved oppression and second-class citizenship. Some were anonymous but a sizable number were signed, an indication of confidence in collective clout that belied howls of victimhood. New York's Gay City News asked for an interview because I was "one of only four New Yorkers who contributed more than $500."

I ignored the request, trashed the emails, and forgot about them. But the West Coast bureau chief of the New York Daily News did not forget.

One night in early February, I drove home to find two cars, two men, waiting for me, unannounced, in the dark. Reporters for the Daily News, they were publishing a story on me and Prop 8 the next day and wanted a live quotation. Serious interviews are arranged ahead of time. Besides, I had filed enough newspaper pieces on deadline to know that copy is well into the can at 7 P.M. This was intimidation, not fact-gathering.

Where is the story, I asked, if I have not said anything? The response was: "We have documents." Sound familiar? For half a second, I thought of saying that Prop 8 left intact all the legal advantages of civil union. It took nothing away. But I was too surprised by having been singled out. After a few heated words--none of them equal to what, in hindsight, I wish I had said--I went into the house.

Next day, I discovered in the Daily News that I am known as a painter of gays and lesbians; gay activists felt betrayed by my contribution. It was a sparse article. The only accurate quotation to appear was a sentence cribbed from

my own website, which seems to be the "document" from which the story was spun. (The sentence, from an old interview about a gallery show of my paintings, referred to New York's gay pride parade as "an erotic celebration loosed for a day to keep us all mindful that Dionysus is alive, powerful and under our own porch.") Compensating for the interview that never took place, the reporter constructed an exchange over the question he obviously wanted to ask but never got the chance. The article reads:

When asked how she could have donated money to fight gay marriage after making money from her depictions of gays, she just said, "So?"

Set aside the non sequitur. The question was an undisguised indictment that triggered a barrage of virulent mail and threats of blacklisting. Suddenly, I was "a vampire on the gay community" who should be put out of business. As one note put it: "Your career is over, you nasty piece of s--. F-- off! WHORE!"

To make sense of this, backspace to the early '90s and a series of paintings I exhibited called Guise & Dolls. It was a singular body of work based on images from New York's annual carnival, the gay pride parade. I could have used a New Orleans Mardi Gras or Munich's Fasching, but Manhattan was closer. At times funny and poignant, the parade was also--in the age of AIDS--tinged with sexual danger. The spectacle of it made a splendid analogy to the medieval danse macabre.

Festive misrule and the politics of carnival, deeply rooted in cultural history, are a compelling motive for painting. Think of Bruegel the Elder's Fight Between Carnival and Lent. The flamboyant Dionysian heart of the gay pride parade was the subject of Guise & Dolls, not homosexuality itself and certainly not any policy agenda. A public event free for the watching, it is staged to provoke audience response. I responded with a suite of paintings; they bore no relation to my prior or subsequent work. All suggestion that I "make a living on the back of the gay community," as my mail insisted, was a hysterical fantasy brewed in the grievance industry's fever swamp.

But no matter. I was up there now with Halliburton and Big Oil, a class enemy. The brownshirts came out in force. Within 24 hours, the "story" spread from one gay website to another, even to Vancouver ("Typical greedy American bigot"), France, and Belgium. My home address and email were repeated in comment sections in which readers egged each other on to "make the bitch pay." Militants trawled for editors and gallerists I had worked with to warn them that "the Gay Community is looking at our adversaries and those who may support them." (One former editor blind-copied me his exchange with an aspiring storm trooper who threatened a **boycott** for those "having an association" with me.)

Reprimands flooded in, all based on the false premise that fat slices of proprietary gay imagery were being creamed off the urban spectacle for my personal profit:

You should apologize for your deceit. Stop using us as your subject matter in this incredibly exploitative manner. You must realize that your actions are no different than an artist depicting the black community contributing to white supremacist organizations.

How dare you use gay people as inspiration and then stab these people in the back by fighting to limit their rights. You are a disgusting, pitiful, opportunistic bitch.

Conceptual clarity is not mobthink's strong suit:

I don't understand why you would want to deny love in this world, no matter what form it takes. I can't imagine your motives, can't imagine your hate.

Our parades are not the only place you can fulfill your artistic vision. You could visit the Hasidic community. You know, them? They wear "unusual" clothes, too. There are so very many freak shows you can enjoy in this world.

The prevailing mood was punitive:

Homosexuals rule the World of Creativity, and that is whom you just f--ed with!

You represent the most despicable type of artist and human being. I do hope that you feel the financial pain your actions will bring. May God bless you with financial ruin for your treacherous deed.

Because I love delusional bigots, I hope you never see another dime, bitch.

The president and CEO of an executive travel agency cc'd his message to a curator at the Brooklyn Museum: "You are a disgusting TURD of a woman to support Prop 8." One painter, whose work I had reviewed enthusiastically months before, rushed to her blog to broadcast an open letter exposing my perfidy to the New York gallery world:

The grave ungood you have done is not only to us, lesbians and gays who expect no less than full civil rights in our own country, but ironically to your own art career. Unless you don't mind showing at Reverend Rick's or perhaps at Brigham Young University.

A local paper followed up the Daily News piece. I submitted a brief statement to the reporter affirming the time-honored definition of marriage. I took care to note that regard for individual gay persons does not require assent to a politicized assault on bedrock social reality and the common good. The story disclosed other "suspect" donations of mine (to pro-life groups and, most damning, to the Swift Boat vets) and referred to my Catholicism. That prompted a fellow painter, and heretofore friendly colleague, to write:

At first I thought there should be a special place in hell for people like you. But then I thought, maybe purgatory! A dull, nothing kind of Catholic nowhere. Just like you!

The religious note struck various chords. Rick0564 wrote: "If God makes us Gay, then please let us love one another through marriage. It's what Jesus would do." Tina K inquired: "If I believed that Catholics should not vote, and managed to get a proposition passed to that effect, would that be fair to you?"

Ah, Tina, my opposition to same-sex marriage does not originate in the pew. However much sympathy, affection--indeed, love--I have for certain gay persons, "gay marriage" burlesques a primal institution rooted in nature. Marriage, as a unique bond between male and female, predates all politics and religious doctrines. And no one has to believe in God to see social anarchy, with children adrift in the wreckage, at the end of the same-sex marriage road.

But any semblance of moral reasoning is lost on a mob. The character and sensibility of the same-sex marriage brigades is told in their litany of sexual hostility:

Eat shit and die, c--. Eat c-- and die, bitch. You right-wing, heterosupremacist t--. You are the moral equivalent of a Jewish Nazi. Roast in hell, you filthy c--.

It is one thing to read hate-filled mail on a computer screen. It is something else to have it in hand. At the end of the week, when it started coming to my house, I filed a police report.

Until now, donating to a cause did not open private citizens to a battery of invective and jackboot tactics. While celebrities sport their moral vanity with white ribbons, thousands of ordinary Americans who donated to Prop 8 are being targeted in a vile campaign of intimidation for having supported a measure that, in essence, ratified the crucial relation between marriage and childbearing. Some in California have lost their jobs over it; others worry about an unhinged stranger showing up at the door.

Who was it who predicted that if fascism ever came to the United States, it would come in the guise of liberal egalitarianism?

Maureen Mullarkey is a painter who writes on art and culture.

LOAD-DATE: March 9, 2009

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FOCUS - 9 of 45 DOCUMENTS

Copyright 2009 The New York Times Company
The New York Times

February 8, 2009 Sunday
Late Edition - Final

SECTION: Section BU; Column 0; Money and Business/Financial Desk; SLIPSTREAM; Pg. 3

LENGTH: 959 words

HEADLINE: Disclosure, Magnified On the Web

BYLINE: By BRAD STONE

BODY:

FOR the backers of **Proposition 8,** the state ballot measure to stop single-sex couples from marrying in California, victory has been soured by the ugly specter of intimidation.

Some donors to groups supporting the measure have received death **threats** and envelopes containing a powdery white substance, and their businesses have been boycotted.

The targets of this harassment blame a controversial and provocative Web site, eightmaps.com.

The site takes the names and ZIP codes of people who donated to the ballot measure -- information that California collects and makes public under state campaign finance disclosure laws -- and overlays the data on a Google map.

Visitors can see markers indicating a contributor's name, approximate location, amount donated and, if the donor listed it, employer. That is often enough information for interested parties to find the rest -- like an e-mail or home address. The identity of the site's creators, meanwhile, is unknown; they have maintained their anonymity.

Eightmaps.com is the latest, most striking example of how information collected through disclosure laws intended to increase the transparency of the political process, magnified by the powerful lens of the Web, may be undermining the same democratic values that the regulations were to promote.

With tools like eightmaps -- and there are bound to be more of them -- strident political partisans can challenge their opponents directly, one voter at a time. The results, some activists fear, could discourage people from participating in the political process altogether.

That is why the soundtrack to eightmaps.com is a loud gnashing of teeth among civil libertarians, privacy advocates and people supporting open government. The site pits their cherished values against each other: political transparency and untarnished democracy versus privacy and freedom of speech.

"When I see those maps, it does leave me with a bit of a sick feeling in my stomach," said Kim Alexander, president of the California Voter Foundation, which has advocated for open democracy. "This is not really the intention

of voter disclosure laws. But that's the thing about technology. You don't really know where it is going to take you."

Ms. Alexander and many Internet activists have good reason to be queasy. California's Political Reform Act of 1974, and laws like it across the country, sought to cast disinfecting sunlight on the political process by requiring contributions of more than $100 to be made public.

Eightmaps takes that data, formerly of interest mainly to social scientists, pollsters and journalists, and publishes it in a way not foreseen when the open-government laws were passed. As a result, donors are exposed to a wide audience and, in some cases, to harassment or worse.

A college professor from the University of California, San Francisco, wrote a $100 check in support of **Proposition 8** in August, because he said he supported civil unions for gay couples but did not want to change the traditional definition of marriage. He has received many confrontational e-mail messages, some anonymous, since eightmaps listed his donation and employer. One signed message blasted him for supporting the measure and was copied to a dozen of his colleagues and supervisors at the university, he said.

"I thought what the eightmaps creators did with the information was actually sort of neat," the professor said, who asked that his name not be used to avoid becoming more of a target. "But people who use that site to send out intimidating or harassing messages cross the line."

Joseph Clare, a San Francisco accountant who donated $500 to supporters of **Proposition 8,** said he had received several e-mail messages accusing him of "donating to hate." Mr. Clare said the site perverts the meaning of disclosure laws that were originally intended to expose large corporate donors who might be seeking to influence big state projects.

"I don't think the law was designed to identify people for direct feedback to them from others on the other side," Mr. Clare said. "I think it's been misused."

Many civil liberties advocates, including those who disagree with his views on marriage, say he has a point. They wonder if open-government rules intended to protect political influence of the individual voter, combined with the power of the Internet, might be having the opposite effect on citizens.

"These are very small donations given by individuals, and now they are subject to harassment that ultimately makes them less able to engage in democratic decision making," said Chris Jay Hoofnagle, senior fellow at the Berkeley Center for Law and Technology at the University of California.

THANKS to eightmaps.com, the Internet is abuzz with bloggers, academics and other pundits offering potential ways to resolve the tension between these competing principles. One idea is to raise the minimum donation that must be reported publicly from $100, to protect the anonymity of small donors.

Another idea, proposed by a Georgetown professor, is for the state Web sites that make donor information available to ask people who want to download and repurpose the data to provide some form of identification, like a name and credit card number.

"The key here is developing a process that balances the sometimes competing goals of transparency and privacy," said the professor, Ned Moran, whose undergraduate class on information privacy spent a day discussing the eightmaps site last month.

"Both goals are essential for a healthy democracy," he said, "and I think we are currently witnessing, as demonstrated by eightmaps, how the increased accessibility of personal information is disrupting the delicate balance between them."

URL: http://www.nytimes.com

GRAPHIC: PHOTO: California's **Proposition 8** drew protests last year. A Web site takes names and ZIP codes of donors supporting the measure and overlays data on a map.(PHOTOGRAPH BY J. EMILIO FLORES FOR THE NEW YORK TIMES) MAP

LOAD-DATE: February 8, 2009

K-20

THE SACRAMENTO BEE sacbee.com

This story is taken from Sacbee / Our Region

Mormon church in Orangevale vandalized in wake of Prop. 8 vote

cphua@sacbee.com

Published Sunday, Nov. 09, 2008

Three days after voters approved a proposition to ban same-sex marriage in California, vandals targeted a Mormon church in Orangevale.

Vandals spray-painted the words "No on Prop 8" at the church's property on Hazel Avenue sometime between late Thursday and early Friday, Sacramento County sheriff's spokesman Sgt. Tim Curran said.

The church's building was tagged once and the sidewalk multiple times, Curran said. Sheriff's officials say they have not characterized the crime as the work of those opposed to Proposition 8, an amendment to the California constitution that limits marriage to between a man and a woman.

Curran said the department has not received similar reports of vandalism in the county.

In response to the incident, officials from the Church of Jesus Christ of Latter-day Saints issued a statement asking for those involved in the same-sex marriage debate to treat each other with respect and civility.

"While those who disagree with our position on Proposition 8 have the right to make their feelings known, it's wrong to target the Church and its sacred places of worship for being part of the democratic process," said the church's statement. "No one on either side of the question should be vilified, harassed or subject to erroneous information."

The Mormon church supported the proposition, encouraging members to contribute time and resources to help its passage.

Supporters of same-sex marriage have staged protests outside Mormon temples, including one Friday at the church's headquarters in Salt Lake City.

In Sacramento today, a "marriage equality" rally is planned at the state Capitol.

Same-sex marriage advocates say they have called for a peaceful and civil campaign.

"The No on Prop. 8 campaign denounces any sort of vandalism whatsoever," said Bill Bradley, a campaign spokesman. "It's wrong to deface property and does not reflect the spirit or values of this campaign."

Andrea Shorter, a campaign spokeswoman, added, "That is not going to get us any closer to marriage equality.

"We understand that people are upset and angry and frustrated, but we call upon everyone to express their frustration through the correct processes."

The debate over whether same-sex couples should be allowed to marry has been intense. In the run-up to the Nov. 4 election, campaign signs were vandalized and there have been some reports of violence since the vote.

In Southern California, published reports say yard signs supporting the proposition at a Roman Catholic church in Riverside were rearranged into a swastika.

And in Fresno, a prominent pastor who supported Proposition 8 received death threats that prompted police to assign officers to protect him. Vandals also targeted his church.

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LOCAL

Vandals Egg Downtown Fresno Church

Tuesday, October 28, 2008

Fresno, CA, USA (KFSN) -- Vandals targeted a downtown Fresno church that supports a California ballot measure that would eliminate the right of same-sex couples to marry.

Workers at Cornerstone Church got to their offices Tuesday to find the offices and the sanctuary, which is in the historic Wilson Theater, had been egged. Crews are working on cleaning up the mess.

On Sunday, a rally supporting Proposition 8 was held at City Hall. Cornerstone's Pastor Jim Franklin told other prop eight supporters his home had recently been egged.

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Nov 7, 2008 12:24 pm US/Pacific

Vandals Arrange Prop. 8 Signs Into Swastika

RIVERSIDE Vandals Thursday rearranged yard signs at a Riverside church expressing support for Proposition 8 into a swastika, police said Friday.

The vandalism at Our Lady of Perpetual Help took place Thursday at 9:35 a.m., Steven Frasher of the Riverside Police Department said.

No damage was done to the grounds or the church, Frasher added.

Proposition 8, which narrowly passed on Tuesday, amended the state constitution to define marriage as being between a man and a woman.

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1 of 1 Click to enlarge

Vandals arranged Proposition 8 signs into a swastika at a church in Riverside.
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Gay Marriages Now Uncertain After Prop. 8 Passes
(11/6/2008)

K-23

THE ORANGE COUNTY REGISTER
ocregister.com

Monday, October 20, 2008

Vandals spray paint signs in downtown Fullerton

If caught, violators could face up to one year in prison, $10,000 fine.

By BARBARA GIASONE

The Orange County Register

FULLERTON – Vandals used gold spray paint to scrawl anti-Proposition 8 messages on commercial and residential buildings in the downtown and east Fullerton over the weekend, police said.

The "Prop H8TE" message was found on the Bank of America and Union Bank on north Harbor Boulevard, and on a retail store in the 500 block of north Harbor. Additional tagging was found on houses near Dorothy Lane.

Sgt. Mike MacDonald said anyone caught causing more than $400 in damages is subject to one year in state prison or county jail – and $10,000 in fines. Suspects who are caught causing less than $400 in damages could be charged $1,000 and spend one year in county jail.

In addition to the spray-paint vandalism, 500 "Yes on 8" signs valued at $10 apiece were reported missing throughout the city by a Yes on 8 community organizer, MacDonald said.

At least one resident in the city is using a night-vision camera to catch sign vandals, police said. The homeowner told police he captured images of a woman stealing signs.

"While we respect people's rights to have an opinion on state politics, it's never appropriate to deface property to further their own beliefs," MacDonald said. "We treat this type of crime very seriously.

"Violators will be prosecuted to the fullest extent of the law," he said.

A resident in the northeast section of the city reported late Monday morning that his property was also defaced with gold paint.

"I've lived in the city for 18 years, and I've never had anything like this," Randy Reece said.

"It's ironic the purveyors of tolerance seem to not have any respect for the First Amendment and it's disgusting," Reece said. "I'd like to have a discussion with them if they want to."

Vandalism should be reported to the Fullerton Police Department at 714-738-6715.

Contact the writer: 714-704-3762 or bgiasone@ocregister.com

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K-24

INLAND EMPIRE

Neighborhood vandalized over Prop 8

Friday, October 31, 2008

By Bob Banfield

YUCAIPA (KABC) -- Vandals have gone on a graffiti spree in a San Bernardino County neighborhood, apparently over neighbors' support of Proposition 8.

Many residents between 5th St. and 6th St. in Yucaipa found their property had been targeted by unwanted visitors with paint cans, and a possible political motive.

"We woke up this morning and we just had paint on all of our cars and fences. It was on everything. It was bright orange -- beautiful paint," said Yucaipa resident, Dawn Antinucci.

The same political message was painted on a number of vehicles, garages, fences, and on "Yes on 8" signs.

Story continues below

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The Antinucci's were angered but not swayed.

"We know what the Lord tells us about this prop. We will be doing what we know is to be true," said Antinucci.

If the graffiti was politically motivated the painters made a big mistake. That is the opinion of Garrett Davis. He is not a supporter of Prop 8.

"Especially in this town. This town is a highly conservative Republican town. To do this is even more radical, because you are just going to persuade the people who are on the line to vote yes anyways. Why would you ever do that? It is just horrible," said Davis.

The vandalism is the talk of the neighborhood and the subject of a sheriff's

department investigation.

"Just to thinking that someone has vandalized our home, wow. Someone is obviously angry and upset. What is next? Are they going to destroy more of our property? Is this going to escalate? Anyone would think and be concerned about that," said a concerned resident.

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K-25

INLAND EMPIRE

Anti-prop 8 vandals hit Alta Loma home

Saturday, October 25, 2008

By Rob McMillan

ALTA LOMA (KABC) -- Suzie Taylor says she awoke to find that she was a victim of vandalism. Taylor says her fifth-wheel trailer was spray-painted advocating a no on Proposition 8.

"It was kind of a shock, and then our neighbors started coming out and they saw it" said Taylor

The words "love for all," "no on 8" and "equal rights were sprayed on three sides of her trailer. Taylor thinks the only reason she was targeted was because of the "Yes on 8" sign in her front yard.

"It's hard to understand why these things happen," said Taylor. "You have a little sign expressing your opinion about something and to have that response was a little shocking."

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And Taylor is not alone. Several people who are against the proposition say they have been victims of Vandalism.

As the elections draw neared vandalism and sign theft has become an epidemic across the nation.

Taylor says she now has to move her sign inside at night. Neighbors said it's sad it has come down to this.

"I am for freedom of speech and I think we have the right, but not to go vandalize," said Taylor's neighbor Al Marino. "That is what the courts are for."

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K-26

SOUTH BAY NEWS

Vandals strike Prop 8 homes in SJ

Monday, October 27, 2008 | 12:09 PM

SAN JOSE, CA (KGO) -- Vandals struck overnight in San Jose at two homes where the owners put out signs in support of Proposition 8.

A "Yes on 8" sign was painted over, and the garage doors on each of the two homes were sprayed with "No on 8."

One of their cars was also vandalized. Prop 8 would change the state constitution to outlaw same-sex marriage. One of the homeowners says she was mad at first, but is now trying to think about what was going through the vandal's mind.

Story continues below

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"Why would you, instead of just giving us a pamphlet, or wanting to talk to us, instead coming in and trying to destroy something we really worked hard for because we're very opened minded we're very open minded people. We're willing to talk to people," said Kelly Byrne, "Proposition 8" supporter.

Police took a report on the vandalism, but the homeowners say there's probably little that can be done to catch the culprit given the fact they have no suspect description.

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Oct 28, 2008 8:58 am US/Pacific

Vandals Target Prop 8 Supporters In NorCal

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SAN JOSE, Calif. (AP) — San Jose police are investigating another case of vandalism targeting supporters of a gay marriage ban in California.

Police were called to a house in South San Jose earlier this week after homeowners reported their garage was spray-painted with "No on 8" messages. Proposition 8 would take away the right of same-sex couples to wed.

The homeowners had signs supporting the measure on their lawn.

Sgt. Mike Sullivan said the department has not tracked incidents of political sign vandalism, but he does know there have been at least four reported incidents involving Proposition 8.

The campaign to defeat the measure issued a statement saying it condemns vandalism and activities of this kind.

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Vandals targeted supporters of a gay marriage ban in California by spray-painting their garage.
CBS

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THE ORANGE COUNTY REGISTER
ocregister.com

Tuesday, October 21, 2008

Five held on suspicion of stealing "Yes" on Prop. 8 signs

Suspects tell police they were angry after attending a rally at a Fullerton bar.

By BARBARA GIASONE

The Orange County Register

FULLERTON - Five people were arrested early today on suspicion of participating in a sign-stealing spree the suspects said originated in a downtown bar, Sgt. Mike MacDonald said.

A police officer patrolling the area near Chapman and Pomona avenues at 1:30 a.m. saw a passenger jump from a car and place a campaign sign on the corner.

When the officer approached the driver, she noticed three "No on Prop 8" signs in the vehicle. She also located 10 torn-up "Yes on 8" signs on the front floorboard with three McCain-Palin signs.

The "Yes on 8" signs were allegedly stolen and the "No on Prop 8" signs were not, police said.

When questioned, the suspects said they had just come from a "No on 8" rally at a downtown business and were angry, MacDonald said.

Based on their statements, all five were arrested on suspicion of possession of stolen property.

Taken to city jail were Jonathan Barrett, 19, of Fullerton; Jennifer Berry, 23, Covina; Emanuel Muro, 23, Artesia; Daniel Palacios, 23, Lakewood; and Eric Gutierrez, 23, Fullerton.

MacDonald said all five admitted taking the signs.

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Prop 8 supporters face sign theft, vandalism

Published Oct 29, 2008

In a community that values free speech and open debate, recent political sign thefts have outraged some community members.

The controversy over Proposition 8, which would amend the California Constitution to allow marriage between only a man and a woman, has spilled over into petty theft and vandalism of lawn signs.

Yes on 8 supporters say they've been hit especially hard in Davis, where a large number of signs have been defaced or stolen.

Davis resident Jo Lynn Meirovitz had Yes on 8 signs stolen from her front yard last week.

"People preach tolerance but they are very intolerant of other people," Meirovitz said. "They see us protecting marriage as full of hate, bigots … and are appalled that we would want to help Prop 8 pass. I'm sure the more signs they see the more frustrated they get."

Having left the house for only an hour and a half and not expecting her signs to be taken during the middle of the day, Meirovitz found two lawn signs missing upon her return, she said.

"We believe in freedom of speech for everybody, not just one side of this proposition," Meirovitz said. "Everybody should be able to voice their opinion."

Davis resident and Cedric Papa is involved in Yes on 8 sign distribution and says voters are calling in daily to report that their signs have been stolen.

Papa, who has had 14 signs taken, estimates that 200 or more may have been taken or vandalized in Davis alone.

"I will follow the law, no matter what happens, so I'd like to get my voice out now," Papa said. "We are just trying to keep our individual rights and keep the government out of our lives."

Papa said one group of people went so far as to pretend to support Prop 8 and took 100 signs and dumped them.

Yolo County Republican Party chair Mark Pruner said it has been common in this and previous elections for political signs to be stolen.

"We spend so much money replacing signs, you almost feel violated," he said.

In addition to sign theft in Davis, there have been several incidences of vandalism and theft in Sacramento, and video of at least two incidences have been posted on YouTube, Pruner said.

"Let's face it, stealing of political signs is something that always happens," he said. "We have

to budget for paying for more signs."

There is little legal recourse for people who have had their signs stolen or vandalized, and many don't bother to report the crimes. The Davis and Sacramento Police Departments and the Yolo County Sheriff all say no police reports regarding stolen or damaged signs have been filed in their jurisdictions.

Among other incidents in Davis are keyed cars displaying Yes on 8 bumper stickers, while last week the Yes on 8 table located on the Quad was hit with water balloons by a group of students yelling "you teach hate," according to UC Davis graduate student Casey Meirovitz, who is married to Jo Lynn Meirovitz.

"I think yelling 'you teach hate' and exhibiting hate isn't the coolest thing in the world, especially at a university," he said. "People feel very passionately about Prop 8 and they are letting it get the best of them. Unfortunately they're weakening the stance of their argument by acting hypocritically."

Meirovitz and wife Jo Lynn have since replaced their Yes on 8 signs with a homemade sign made of plywood, attached to a tree in their front yard with a bike lock, a sign that they will not forfeit their right to free speech anytime soon.

Representatives from the No on 8 campaign did not respond to requests for information regarding sign theft or vandalism on their side.

AARON BRUNER can be reached at city@californiaaggie.com.

K-30

THE ORANGE COUNTY REGISTER
ocregister.com

Thursday, October 30, 2008

Prop. 8 sign-stealing ignites free speech debate

Pro-amendment group says 25,000 'Yes on Prop. 8' signs have been stolen.

By SALVADOR HERNANDEZ

The Orange County Register

He admits he's done it at least 20 times – out of pure anger and frustration – but he said he didn't know it was against the law when he did it. Just don't ask him if he'll stop.

He's done it on his way to work or back home. The feeling was overwhelming, Shankar Singam said, and he would pull over to the side of the road, grab one of the yellow "Yes on Proposition 8" signs and throw it on the back of his truck.

"It's (Prop. 8 is) discrimination in disguise and it infuriates me," said Singam. "It's a civil right."

It's a scene that continues to play out on the streets as the day nears for California voters to decide on Prop. 8, which would amend the state constitution to define marriage as that between a man and a woman – and therefore ban same-sex marriage. While proponents and opponents of the proposition have raised more than a combined $21 million to campaign their views, individuals have been pushing their own personal campaigns.

Some of them have done so illegally.

Theft and vandalism of Proposition 8 signs have been reported in Santa Ana, Yorba Linda, Huntington Beach, Fountain Valley, Irvine and Laguna Hills. In Fullerton, five people were taken into custody after police there found 10 torn "Yes on Proposition 8" signs in their car. The suspects told police they had just attended a "No on 8" rally.

In Irvine, two citizen arrests have been reported of people stealing or vandalizing "Yes" signs and on Tuesday, three students were stopped by a police officer in an area where several signs had the word "No" spray-painted over several "Yes" signs. Two of them, a 17- and an 18-year-old were found to be in possession of spray cans. The minor was released to her parents, said Lt. Rick Handfield of the Irvine Police. Police are investigating the case involving the 18-year-old, who was not taken into custody.

Singam said he feels that at stake are the civil rights of thousands of people, equating it to the past prohibition of interracial marrying.

But 58-year-old Robert Thompson, who said he has had 14 "Yes" signs stolen from his front lawn, said his right to express himself is being hindered.

"Everyone has a right to voice their opinion," he said. "Why can't they get their own signs? I'm not going to be offended if they put up their own signs."

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It's a common occurrence, said Damon Micallizi, spokesman for the Orange County Sheriff's Department. As political signs go up, reports of stolen or vandalized signs surface, although the sheriff's department does not keep track of the numbers. They're listed along with other incidents thefts and vandalism. Taking signs from private yards and public areas is against the law, but the sheriff's department has not seen spike in incidents.

"We've had continued reports on both sides," Handfield said. "It's not just Prop. 8 signs, although that's one issue that seems to be polarizing."

Mike Erickson, a community organizer for "Yes on Proposition 8" said the campaign estimates about 25,000 signs have been stolen or vandalized in California, about one-third of the signs distributed.

"It is epidemic," he said. "It leads us down a dangerous road when you say you don't have a right to your speech."

In three weeks, Erickson said he has received about 670 emails from people reporting missing signs in the county. He said he believes the reason why so many signs have been reported stolen on both sides of the isle is because the issue at hand is something very personal.

"This is a sensitive issue," he said "It's about people's families and that's the most cherished relationships and passions are high on both sides."

Singam said he never took signs from people's yards and thought taking them from public spots was legal.

"I'm not gay but that doesn't mean I can't stand for equal rights," Singam said. "Their right to free speech is to put it up. Mine is to take it down."

Stolen signs might hurt the campaign's visibility, but it has also pushed some supporters of the proposition, Erickson said. One Orange County resident picked up signs after finding out his neighbor's sign was stolen.

In Fullerton, one resident posted more than 40 signs in her front lawn after several were stolen.

"Is it helping? I don't think so," Singam said about his opposition to the constitutional amendment. "I think by taking down the signs I'm letting them know people won't stand for it."

In the end, Erickson said, the discussion will continue in the poll box.

"I just ask they be respectful of my rights and participate in the political process," he said.

Contact the writer: shernandez@ocregister.com or 949-454-7361

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THE ORANGE COUNTY REGISTER
ocregister.com

Friday, October 31, 2008

Dana Point man will keep replacing downed signs favoring Prop. 8

By CHRIS DAINES

The Orange County Register

William Vogeler calls Proposition 8 sign-placement feuds the "battle of the signs" – but he says he's not giving up posting signs promoting the initiative until Tuesday's election is over.

"Virtually every sign I have put up from Santa Ana through Irvine, San Juan to Dana Point has been taken down," Vogeler said.

Proposition 8 is a ballot proposal to amend the California Constitution to define marriage as between a man and a woman. It would effectively end same-sex marriage in the state.

Though the signs around Vogeler's Dana Point home have been undisturbed, signs along the stretch of Pacific Coast Highway between Niguel Road and Harbor Drive are being removed almost as fast as he can put them up, he said.

"I put them out wherever I go for my work or otherwise, and when I go past where I've been, they are gone," Vogeler said.

Such sign removal has been rampant across Orange County and has ignited many discussions of free speech. Regardless of one's position on Prop. 8, Vogeler – who practices general law but specializes in media rights – says he wishes there could be more respect between the two sides.

"We live in a society where people have the right to say their piece," he said. "Taking down a sign is not saying your piece, that's vandalism."

Vogeler, who has been placing signs favoring Prop. 8 for several months in south Orange County, often receives looks and honks from passing motorists but said he can't tell whether they're friendly. He has taken cell-phone photos of people he thought were acting suspiciously around the signs, but he can't be sure whether they are removing them.

After a 7-foot-tall wooden Prop. 8 sign was removed a day after he placed it at the intersection of Alicia Parkway and Aliso Creek Road, Vogeler decided a steel sign would be harder to take down, and he put one up Thursday morning. He said Friday that he hadn't driven past the site yet, but he said someone would need a hacksaw to take it down.

"(If) I drive by and my sign is gone, I'll put another one up. I'll put a new one up the day after if it is gone, and again on Monday if I need to – the election is Tuesday."

Contact the writer: 949-492-5135 or cdaines@ocregister.com

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KCRA.com

Sheriff: Prop. 8 Signs Being Stolen, Burned

Both Sides Of Gay-Marriage Initiative See Signs Destroyed

POSTED: 9:31 pm PDT October 19, 2008
UPDATED: 12:08 am PDT October 20, 2008

SACRAMENTO, Calif. -- As the days leading up to Election Day dwindle down, signs on both sides of the gay-marriage initiative are being stolen, and in some cases even burned, sheriff's officials said.

Hector Lluen said that a "Yes" on Prop. 8 sign nailed to the front of his Fair Oaks home door was stolen in the middle of the night.

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Video: Political Sign Vandalism Rising, Sheriff Says

"My family and I strongly believe that their acts are cowardly," Lluen said. "It is not going to intimidate my family. We will continue to put up 'yes' on Prop. 8 signs."

Some supporters of the vote "No" on Prop. 8 campaign said those stealing signs are just hurting their own cause.

"If someone is doing it on our side it needs to stop, and if someone is doing it on their side that needs to stop as well," said David Cano, who supports the "No" on Prop. 8 campaign.

Some voters who have had their signs stolen said it feels like getting mugged.

"I feel disenfranchised," said Linda Subramanian, who had her political sign stolen. "That was my sign. That was my political expression."

In Midtown, voters are coming together to urge those breaking the law to have a better approach.

"You got to vote, that's where you make your opinion count," said voter Megan Evans.

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THE SACRAMENTO BEE sacbee.com

Sacto 9-1-1

The Sacramento Bee's Crime blog is a comprehensive report of crime news, trends and information for your community and beyond.

October 28, 2008

Arrests made in Roseville after Yes on Proposition 8 signs found in car

From David Richie:

Roseville police arrested a man and two women early today who were reportedly stealing "Yes on Proposition 8" signs from residents' yards.

Officers recovered 53 signs from the suspects' vehicle - all in support of Proposition 8, said Dee Dee Gunther, police department spokeswoman.

The arrests occurred about 12:32 a.m. after a resident in the 200 block of Sierra Boulevard spotted someone taking a sign out of a neighbor's yard.

A few minutes later an officer spotted a green sedan, matching the description of the suspect vehicle in the 700 block of Shasta Street. All four doors and the trunk were open and the officer watched as two people walked to the car and placed something in the trunk. The car then drove away but was stopped by police.

Police arrested Brian Joseph Greene (left photo), 18 of Roseville, Kacey Elizabeth Flieder (right photo), 18, of Sacramento and a 17-year-old girl from Roseville. The 18-year-olds were booked on suspicion of possession of stolen property, conspiracy, petty theft and contributing to the delinquency of a minor. The 17-year-old was cited and released to her parents.

Karen England, a local coordinator for the Yes on 8 campaign said theft and vandalism of Proposition 8 signs has become a continuing problem. In some cases, signs have been stolen multiple times.

Proposition 8 backers along Misty Creek Drive, off Foothills Boulevard, have started bringing their signs in at night but recently they also have experienced spray paint vandalism as well as sign theft.

"This has been happening all over Roseville," England said, noting that she has filed two police reports related to theft of signs from her yard. Her organization recently posted a $1,000 reward for information leading the arrest of sign thieves and vandals, England said.

Categories: Arrests

Tags: Campaign signs

Posted by **Anthony Sorci**

K-34

NOW STREAMING: ABC7 News at 5

SAN FRANCISCO NEWS

Prop 8 protestors vandalize church

Sunday, January 04, 2009 | 7:45 PM

SAN FRANCISCO (KGO) -- Vandals spray-painted swastikas on a Catholic church in San Francisco's Castro District Saturday night.

It appears the vandals are upset about the Catholic church's support of Proposition 8, which made same-sex marriage illegal in California.

But, the Most Holy Redeemer Catholic Church on Diamond Street is gay-friendly. Many parishioners voted against Prop 8 and they are upset their church was targeted.

Story continues below

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"We're very disturbed by the hierarchy's support of the Yes on Eight Campaign. We've been in conversation with the bishop, which is the way I think we need to handle it. I think Catholic teaching shows us we're all a community and we all need to talk to one another about it even if we have disagreements," said Rob Hopckey.

San Francisco Police are investigating the vandalism.

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A life thrown into turmoil by $100 donation for Prop. 8

By STEVE LOPEZ
December 14, 2008

Margie Christoffersen didn't make it very far into our conversation before she cracked. Chest heaving, tears streaming, she reached for her husband Wayne's hand and then mine, squeezing as if she'd never let go.

"I've almost had a nervous breakdown. It's been the worst thing that's ever happened to me," she sobbed as curious patrons at a Farmers Market coffee shop looked on, wondering what calamity had visited this poor woman who's an honest 6 feet tall, with hair as blond as the sun.

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Well, Christoffersen was a manager at El Coyote, the Beverly Boulevard landmark restaurant that's always had throngs of customers waiting to get inside. Many of them were gay, and Christoffersen, a devout Mormon, donated $100 in support of Proposition 8, the successful November ballot initiative that banned gay marriage.

She never advertised her politics or religion in the restaurant, but last month her donation showed up on lists of "for" and "against" donors. And El Coyote became a target.

A boycott was organized on the Internet, with activists trashing El Coyote on restaurant review sites. Then came throngs of protesters, some of them shouting "shame on you" at customers. The police arrived in riot gear one night to quell the angry mob.

The mob left, but so did the customers.

Sections of the restaurant have been closed, a manager told me Friday during a very quiet lunch hour. Some of the 89 employees, many of them gay, have had their hours cut and layoffs are looming. And Christoffersen, who has taken a voluntary leave of absence, is wondering whether she'll ever again be able to work at the landmark restaurant, which opened in 1931 (at 1st and La Brea) and is owned by her 92-year-old mother.

"It's been so hard," she said, breaking down again.

A lot of customers saw Christoffersen as the face of the restaurant. She was the hostess who roamed from table to table with a pitcher of water, refilling glasses and schmoozing with friends.

Christoffersen, raised Mormon by her late father, told me she has no problem with gay people.

"I love them like everybody else."

But she supports her church's position that marriage is between a man and a woman.

I, on the other hand, opposed Prop. 8. And as I wrote more than once, I think organized Christian religion reached new levels of hypocrisy in using the Bible to preach discrimination and promote the initiative.

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A life thrown into turmoil by $100 donation for Prop. 8

By STEVE LOPEZ
December 14, 2008

As for the Mormons, I have trouble taking any cues on social mores from a group whose founder and early leaders believed they were acting on directives from on high when they took enough wives -- many in their teens -- to fill every booth in the cavernous El Coyote.

But I didn't like what I was hearing about the vilification of Margie Christoffersen and others in California being targeted for the crime of voting their conscience.

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"I agree with you on this," said Fred Karger. On his Californians Against Hate website, Karger has been outing Prop. 8 supporters, but he thinks Christoffersen's small personal donation didn't warrant such a backlash against El Coyote. Karger also spoke out against the resignation of a Sacramento theater director who gave $1,000 to Yes on 8 and happens to be Mormon.

The focus should be on the Mormon Church, Karger said, and on people and businesses that gave hundreds of thousands of dollars to Yes on 8. He said he doesn't intend to go back to El Coyote, but he's not supporting an organized boycott.

Wayne Christoffersen, who is also a manager at El Coyote, is not a Mormon, and he said he doesn't care who marries whom. But he doesn't think it's right that he and other employees at the restaurant are seeing their livelihoods threatened. Should Apple be boycotted by Yes on 8 people, he asked, simply because the computer company donated $100,000 to the No on 8 campaign?

El Coyote has never been known for gourmet cuisine. But the warm, kitschy vibe and cool patio scene have always been a hit with customers who were willing to wait in long lines under the distinctive neon sign.

Now business is off about 30%, Wayne said. Margie wants to blame it on the economy, because she can't deal with the alternative. But Wayne insisted the low-priced restaurant is largely recession-proof, and it's the controversy that has stemmed the flow of margaritas.

Margie tried to smooth things over last month by inviting gay clients to a free lunch to talk it over, but she left in tears when asked if she would write a check to the group challenging Prop. 8.

She blubbered all over again as she thought back on the last month. She has been a nightly fixture at El Coyote for two decades, walking to work from her home just a few doors away. It's been her life, she said. And she can't stand that it's been taken away.

Even if she goes back to work, Wayne said, "she will never, ever be back here on a Thursday night."

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By STEVE LOPEZ
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Thursdays, as tradition had it, the place was mobbed with gay customers.

I had lunch at El Coyote on Thursday and the place was quiet, most tables empty. Margie was off in a dark corner of the restaurant -- at the table where Sharon Tate had her last meal -- exchanging Christmas presents with friends and her mother. I sat on the patio with Wayne and two other El Coyote managers -- Arnoldo Archila and Bill Schoeppner -- who happen to be gay.

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"We always joked around with Margie," said Schoeppner, who's been on the job 26 years. "I'm a Democrat and voted for Obama; she probably voted for McCain -- so what? If she were a bigot or a homophobe, you wouldn't have had all these gay people" working at the restaurant or eating at it.

Besides, the donation was personal. "She didn't cut a check from the restaurant," added Archila, a 28-year employee. "The restaurant didn't have anything to do with it."

Archila said he and other employees voted no on Prop. 8 and gave money to the legal challenge. As someone who came to the U.S. 30 years ago from El Salvador, Archila said, he's always cherished this country's right of free speech and the diversity of opinion.

"You can express yourself as a citizen," said Archila. "Not everyone has to believe the same things."

steve.lopez@latimes.com

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K-36

Major Victory for Prop 8 Protesters

Thursday , December 11, 2008

By Greg Gutfeld

FOX NEWS

Today, I salute gays for a major civil rights victory: They forced some old lady to quit her job.

After Proposition 8 passed, angry gays discovered that Margie Christoffersen — who fills pitchers at El Coyote restaurant in Los Angeles — had given cash to the cause, which restricted the definition of marriage to include only straights. So they picketed her place of business with hilarious protest signs until the evil lady finally resigned.

Now, some might say this is nothing like Rosa Parks on the bus. But they're wrong. I mean, it takes guts to ruin some old lady's life just because she supports a bill based on her silly religious beliefs!

Seriously, if I was there, I would have thrown paint on her — a soft lilac shade, of course.

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But why stop there? Now that you banished the old broad, get your ass down to those other parts of town where you don't brunch and give those blacks and Mexicans a piece of your mind. And, when you're done, why not the Muslims — who are not only against you marrying, but living too!

Look, I'm all for gay marriage, but just because some folks aren't as enlightened as you are, doesn't mean you can treat them like poop. No one is going to take you seriously until you protest more seriously. Blacks sat in restaurants where they weren't welcome and women protested outside the White House for days on end.

But instead of picketing a Cineplex playing a Tyler Perry movie, gays hit a joint in West Hollywood a few blocks from a busy gay bar.

And to that I say: *Comer con gusto!*

Greg Gutfeld hosts "Red Eye with Greg Gutfeld" weekdays at 3 a.m. ET. Send your comments to: redeye@foxnews.com

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K-37

Galt attorney: Son harassed by teacher over Proposition 8

By Jennifer Bonnett
News-Sentinel Staff Writer

A Galt attorney claims his son is being harassed, even attacked, by a Galt High teacher for his views on Proposition 8.

Len ReidReynoso, who also sits on the school district's Bond Oversight Committee, said his son, Tarl, has been teased and even made a public example by Alex Bauer, who teaches economics and advanced placement American government.

Bauer, who is president of the Galt Federation of Teachers union, said the allegations are false.

"I have not done anything inappropriate," he said in an e-mail, declining to elaborate further.

Additionally, according to a letter sent to Superintendent Tom Gemma on Thursday, ReidReynoso said his son has been slapped and even received death threats from fellow students because he supports Proposition 8.

The proposition would remove the right for same-sex couples to marry in California. Tarl ReidReynoso does not support same-sex marriage, according to his father.

ReidReynoso's 17-year-old son was among the contingent last week who protested the California Teachers' Association's donation to fight against the proposition by staying home from school. Gemma said at that time the high school received about 30 calls from parents keeping their students home for that reason.

Because of his efforts in helping organize the protest, ReidReynoso said his son was made an example by Bauer, who allegedly presented to the class an out-of-state court case which states that blocking students while handing out flyers was not allowed.

Upon reading this case to the class, ReidReynoso said Bauer substituted Tarl's name and other personal information for the person in the court case.

"This was implying to all of the students present that Tarl, by supporting Proposition 8 and actively taking a political stand, was a bad person and had done something illegal ... This presentation by an adult teacher was in poor judgment and may even be itself illegal," he wrote to Gemma.

ReidReynoso, who said he does not plan to explore legal action against Bauer, said his son is not the only victim. Two parents have contacted him as an attorney to see what their options against on-campus harassment over Proposition 8 are.

"The parents of these harassed students are afraid to come forward due to fear of retaliation for their children at Galt High School," he said. "These parents lack confidence that the current administration will protect their children."

In addition to alleged incidents by Bauer, ReidReynoso said that one of these verbal "assaults" was over a three-day period and at the hands of a substitute teacher.

It is unclear how the district will handle the issues or if ReidReynono's was the only complaint, and Gemma was out of the office Thursday.

In his letter, ReidReynoso said Bauer posted his opinions on various political topics on his personal blog and students are required to respond to the blog in order to earn participation points.

ReidReynoso said he would like a public apology from the teacher for what he calls "pure intimidation" and assurance from the district that what he terms harassment won't occur in the future.

Contact reporter Jennifer Bonnett at jenniferb@lodinews.com.

Editor's Note: This story was updated at 4:31 p.m. Friday, Oct. 31 to correct the classes that Alex Bauer teaches.

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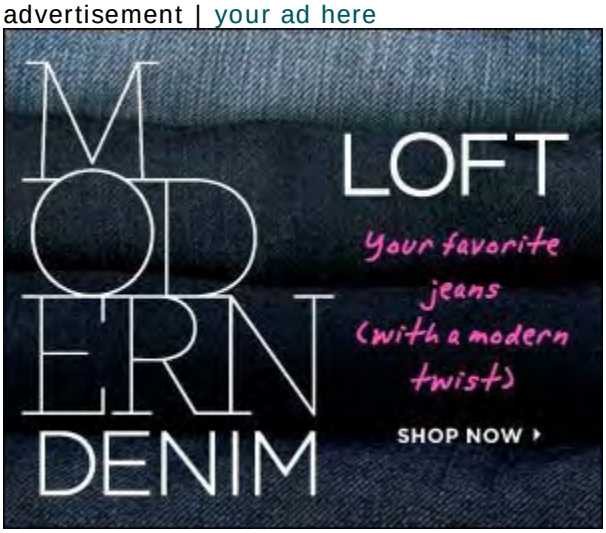

The ugly backlash over Proposition 8

John Diaz
Sunday, November 23, 2008

A supporter of Proposition 8, fed up with what he believed was the gay community's and "liberal media's" refusal to accept the voters' verdict, fired off a letter to the editor.

"Please show respect for democracy," he wrote, in a letter we published.

What he encountered instead was an utter lack of respect for free speech.

Within hours, the intimidation game was on. Because his real name and city were listed - a condition for publication of letters to The Chronicle - opponents of Prop. 8 used Internet search engines to find the letter writer's small business, his Web site (which included the names of his children and dog), his phone number and his clients. And they posted that information in the "Comments" section of SFGate.com - urging, in ugly language, retribution against the author's business and its identified clients.

"They're intimidating people that don't have the same beliefs as they do ... so they'll be silenced," he told me last week. "It doesn't bode well for the free-speech process. People are going to have to be pretty damn courageous to speak up about anything. Why would anyone want to go through this?"

Let the record show that I absolutely disagree with the letter writer on the substance of Prop. 8. I believe that same-sex couples should have the full rights and responsibilities of marriage. In my view, the discrimination inherent in Prop. 8 is morally and legally indefensible in a society where the concept of equal protection is supposed to safeguard the rights of the minority.

But let me also say that I am disturbed by the vicious, highly personalized attacks against the letter writer and others. Protesters have shouted insults at people headed to worship; temples and churches have been defaced. "Blacklists" of donors who contributed to Yes on 8 are circulating on the Internet, and even small-time donors are being confronted. A Palo Alto dentist lost two patients as a result of his $1,000 donation. The artistic director of the California Musical Theatre resigned to spare the organization from a fast-developing boycott. Scott Eckern, the artistic director of the Sacramento theater group and a Mormon, had given $1,000 to Yes on 8.

This out-of-scale attempt to isolate and intimidate decidedly small players in the Yes on 8 campaign is no way to win the issue in a court of law or the court of public opinion.

Equally disappointing is the lack of a forceful denunciation from leaders of the honorable cause of bringing marriage equality to California. "We achieve nothing if we isolate the people who did not stand with us in this fight," the No on 8 campaign reminded its coalition in a statement issued after the election.

Guess what? Certain advocates of the cause *are* alienating people - and this approach needs to be called out. Remember, the No on 8 campaign was shouting "blackmail!" at the top of its lungs when the Yes side sent certified letters to major donors threatening to "out" them in a press release unless they also contributed to the marriage ban. Of course, that "threat" had a tinge of absurdity. Corporations such as PG&E, McDonald's and Levi Strauss were not afraid of being "outed" for their association with the marriage-equality cause. They were well aware that their major donations amounted to a public statement that might cause them to lose - and gain - customer goodwill.

Opponents of same-sex marriage should not be let off the hook for their post-election tactics. There is already talk of a recall campaign against California Supreme Court justices if they overturn Prop. 8, reminiscent of the unsuccessful attempt to oust Chief Justice Ronald George and Justice Ming Chin after they voted to overturn a law that required parental consent for minors to receive an abortion. The judiciary must not be intimidated in this nation of laws.

Assemblyman Mark Leno, the San Francisco Democrat who wrote a marriage-equality bill that passed both houses and was vetoed by Gov. Arnold Schwarzenegger, said he does not "defend or rationalize" overzealous tactics by those on his side. He noted that tumult and emotion have historically defined moments of momentous social change. "This is a visceral reaction to the fact that, for the first time in U.S. history, a recognized constitutional right was repealed by a simple majority vote," Leno said.

Time is on the side of marriage equality. Sixty-one percent of voters younger than 30 opposed Prop. 8, while 61 percent of those older than 65 supported it. Attitudes are changing and will continue to shift as more and more Americans see that extending the right to same-sex couples is not a threat to traditional marriage, but an affirmation of its value to society.

Intimidation, through attempts to chill free speech or an independent judiciary, should have no part in this debate. The leaders on both sides should have the honesty to recognize it within their camps - and the courage to condemn it.

John Diaz is The Chronicle's editorial page editor. You can e-mail him at jdiaz@sfchronicle.com.

http://sfgate.com/cgi-bin/article.cgi?f=/c/a/2008/11/23/INOQ147155.DTL

This article appeared on page **G - 9** of the San Francisco Chronicle

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hollywoodreporter.com

November 25, 2008 Tuesday

SECTION: HOMEPAGE; NEWS

LENGTH: 767 words

HEADLINE: Richard Raddon resigns post

BYLINE: Gregg Goldstein

BODY:

NEW YORK -- In the wake of harsh industry criticism over his $1,500 donation in support of Proposition 8, the California initiative that banned same-sex marriage, Richard Raddon has resigned as director of the Los Angeles Film Festival. He had held the post at the fest, run by Film Independent, since 2000.

"I have always held the belief that all people, no matter race, religion or sexual orientation, are entitled to equal rights. As many know, I consider myself a devout and faithful Mormon," said Raddon, whose donation became public after gay-rights supporters began scanning lists of political donors. Members of the Mormon Church contributed more than $20 million toward the "Yes on 8" campaign that helped the proposition pass in a 52%-48% vote this month.

"I prefer to keep the details around my contribution through my church a private matter," Raddon said. "But I am profoundly sorry for the negative attention that my actions have drawn to Film Independent and for the hurt and pain that is being experienced in the GLBT community."

The heat surrounding Raddon's contribution has been building for several weeks. Film Independent not only has several openly gay members on its board but also supports indie filmmaking, with encouraging diversity one of its stated goals.

When word of Raddon's contribution first surfaced nearly two weeks ago, Film Independent appeared to back its festival director, saying: "As a champion of diversity, Film Independent is dedicated to supporting the civil rights of all individuals. At the same time, our organization does not police the personal, religious and political choices of any employee, member or filmmaker." Several outlets reported at the time that Raddon had offered his resignation but the group had declined to accept it.

But Film Independent general counsel Michael Donaldson said Tuesday that Raddon didn't formally offer to resign until Monday. Donaldson explained that "he was going through a process" involving general discussions and talking to many of the Film Independent board members.

On Monday afternoon, two emotional conference calls were held among the board members, who debated the issues involved.

"Generally we've been very happy with Rich, and most if not all of us have been unhappy with Prop 8," said board member and film director Rodrigo Garcia. "Most have felt that we don't fire people."

Even within the organization, there were questions about whether Raddon had offered an earlier resignation and, if so, why it had not been accepted.

"Some of us were consulted and some weren't," said one board member who spoke on condition of anonymity. "There was some question as to why (the resignation) wasn't accepted before."

Added Garcia: "The protests have kept growing. I've also heard rumblings that a lot of our members were unhappy."

The widespread impression that Film Independent had decided that Raddon should stay led to "a very rough week and a half," the board member said. "There have been a lot of calls and e-mails, and everyone is extremely opinionated."

Donaldson said that Film Independent executive director Dawn Hudson tried to reach out to all board members during the past few weeks. Hudson and Raddon did not respond to requests for comment.

On Tuesday, the Film Independent board issued a statement, saying that "with great reluctance" it accepted Raddon's resignation.

"Rich's service to the independent film community and to Film Independent has been nothing less than extraordinary," the statement read. "He has always shown complete commitment to our core principles of equality and diversity during his long tenure."

No immediate replacement was named.

"I'll miss Rich, who was a great film festival director," said Roadside Attractions co-president Howard Cohen, a member of the LAFF advisory board. "On the other hand, the wife of (Mormon church founder Brigham Young's descendant) Steve Young came out publicly against Prop 8. Standing behind the church holds no sway with me."

The controversy at LAFF comes amid a rising call in some quarters for boycotts of individuals and businesses that supported the "Yes on 8" campaign. Some activists have called for a boycott of the Sundance Film Festival because it is located in the Mormon church's home state of Utah -- or at least a selective boycott of the Holiday Village Cinemas, used by Sundance, because the theater is owned by the Cinemark chain, whose CEO Alan Stock contributed to the campaign against same-sex marriage.

No one had called for a boycott of LAFF or Film Independent's Spirit Awards, though some board members worried about that possibility.

LOAD-DATE: December 1, 2008

K-40

THE SACRAMENTO BEE sacbee.com

This story is taken from Sacbee / Our Region

Theater felt growing pressure before artistic director quit

mcrowder@sacbee.com

Published Wednesday, Nov. 12, 2008

The California Musical Theatre found itaself caught in a dramatic conflict between free speech and civil rights, a situation that ultimately led to today's resignation of artistic director Scott Eckern.

Eckern quit this morning. He became the target of strong criticism after it was learned he donated $1,000 to the Proposition 8 campaign to ban gay marriage.

In an industry long considered gay-friendly and tied to causes such as AIDS research, Eckern's donation outraged theater workers across the country.

In Sacramento, a number of the musical theater's supporters contacted The Bee to rally behind the embattled Eckern, stating that he was now a victim of intolerance and persecution himself.

Playbill and other media have said he issued an apology and plans to donate $1,000 to a nonprofit committed to achieving equal rights for gay, lesbian, bisexual and transgender people.

When Tony Award-winner Marc Shaiman, the composer of "Hairspray," read of Eckern's donation last week, he urged artists and theater workers across the country to boycott the theater.

On Tuesday, Kellie Randle and a group of like-minded friends launched www.supportscotteckern.blogspot.com to advocate for Eckern.

"It's everyone's First Amendment right to contribute to the causes they believe in and voice their political choice," Randle said. To show the abuse against Eckern, Randle's site links to the Clyde Fitch Report, one of numerous blogs now weighing in on the debate.

"I'm so enraged at the hypocrisy of the No on 8 community. I could care less how he voted on any issue. It's about what he does in his job. This is persecution," Randle said.

Other community members, including Kitty Wilson of Curtis Park, echoed this sentiment.

"Before any gay person talks about blacklisting anyone in theater, I'll remind them what McCarthy's blacklist did to the entire entertainment industry," Wilson said.

The idea of a blacklist and boycott have grown from Shaiman's postings and e-mails. The composer, who is openly gay, said he read about Eckern's contribution to the campaign on the Web site www.datalounge.com, and he felt he had to do something.

"I was so shocked. I'm dealing myself with being legally discriminated against, and then come to

find out, I helped put money in his pocket that helped get this proposition passed," Shaiman said in a telephone interview.

Shaiman sent an e-mail which has reverberated through the national theater community and backed the CMT's leaders into the unusual position of doing damage control. He wrote he wouldn't allow his work to be done at California Musical Theatre, and theater workers around the country have followed his lead.

"No one should be surprised in 2008 at how fast information can be spread, and that's of course a doubled-edged sword," Shaiman said.

Susan Egan, star of "Thoroughly Modern Millie" and "Cabaret," followed with a similar e-mail.

Theater professionals flooded CMT's offices over the weekend with phone calls and e-mails decrying Eckern's actions.

In a statement released Monday, CMT executive producer Richard Lewis said: "Any political action or the opinion of Scott Eckern is not shared by California Musical Theatre. We have a long history of appreciation for the LGBT community and are truly grateful for their longstanding support."

New York talent agent Chris Nichols, who negotiated three of the four contracts for the actors employed in CMT's "Forever Plaid" at the Cosmopolitan Cabaret in Sacramento, said New York is watching the situation closely.

"I woke up to Susan Egan's e-mail Monday morning and have received that e-mail 11 times in less than 48 hours," Nichols said. "I would say the industry is buzzing. I took no less than half a dozen phone calls from clients today who are working in various theaters across the country asking if it was true."

Frank Schubert, the local campaign manager for Yes on Prop. 8, wrote a letter of support for Eckern on Tuesday, faxing it to all of CMT's board members.

"Mr. Eckern unfortunately is the victim of what appears to be a systematic attempt to harass and intimidate anybody who had the courage to stand up and support traditional marriage," Schubert said by phone. "There's nothing about supporting traditional marriage which is anti-gay."

Shaiman hopes the episode leads to better understanding of gay people.

"I love God. And this is how God made me," he said. "How people can say this is a choice? Unless you are – you don't know."

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KCRA.com

Student Leaders Face Recall Over Prop. 8

Council Endorsed Measure On Sept. 30

POSTED: 5:56 am PDT October 21, 2008
UPDATED: 8:31 am PDT October 21, 2008

SACRAMENTO, Calif. -- Several student government leaders at American River College are facing a recall vote today and Wednesday after they supported Proposition 8, a statewide ballot measure that would ban same-sex marriage.

The American River College Student Council voted 8-3 on Sept. 30 to endorse Prop. 8. Three members of the council abstained.

Supporters of gay marriage responded by launching the recall effort.

Prop. 8, which is on the Nov. 4 ballot, defines marriage as being between a man and woman.

Related To Story

Jorge Riley

RECALL EFFORT

Video: Student Leader Defends Support Of Prop. 8
Resource: American River College
Complete Coverage

Jorge Riley, one of the student leaders facing recall, on Tuesday defended his earlier endorsement of Prop. 8.

"We definitely want to stand up against things that take away from family values in our community," Riley said.

Student Cassendra Smith said she supports Prop. 8, but added that she feels the leaders should not have taken their stand without discussing the issue more to fellow students.

"They didn't have the right to go out and just be the big voice like that," Smith said. "They should have kind of talked a bit more to the school."

"This is a decision made by students, and it's a stance that they wanted to take," added Phil Sander, campus life coordinator. "Would I have done it? No. But, you know, as a student government, I believe that they believe that that was something they needed to do, right or wrong."

Voter turnout among students at the campus is usually very low. Only about 1 percent of students took part in the election to elect the leaders in the first place.

American River College is a state-funded two-year community college and is part of the Los Rios Community College District.

Previous Stories:

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K-42

Saturday, Nov. 15, 2008

What Happens If You're on Gay Rights' 'Enemies List'

By Alison Stateman / Los Angeles

Ever since a slim majority outlawed gay marriage in California, opponents have waged national protests and petitions, urging the judicial system to reconsider the results of the Nov. 4 referendum. (Proposition 8 overturned an earlier decision by the California Supreme Court that legalized same-sex marriage.) While the court weighs whether or not to get back into the fray, the civil unrest ignited by the ban shows no sign of abating. A national protest against Prop. 8 organized by JoinTheImpact.com is scheduled for today. The Church of Jesus Christ of Latter-day Saints, which opponents say donated more than $20 million to the Yes on 8 campaign, has already become a focus of protests, with demonstrators gathered around Mormon temples not only in California but across the country.

The Mormon Church is not the only group being singled out for criticism. African Americans, 70% of whom voted yes on Prop. 8, according to a CNN exit poll, have become a target. According to eyewitness reports published on the Internet, racial epithets have been used against African Americans at protests in California — with some even directed at blacks who are fighting to repeal Prop. 8. Said Evan Wolfson, executive director of nonprofit group Freedom to Marry: "In any fight, there will be people who say things they shouldn't say, but that shouldn't divert attention from what the vast majority are saying against this, that it's a terrible injustice." (See the Top 10 ballot measures.)

In addition to the protests, gay rights activists have begun publishing lists online exposing individuals and organizations that have donated money in support of Prop. 8. On AntiGayBlacklist.com, individuals who gave money toward Prop. 8 are publicized, and readers are urged not to patronize their businesses or services. The list of donors was culled from data on ElectionTrack.com, which follows all contributions of $1,000 and more and all contributions of more than $100 given before Oct. 17. Dentists, accountants, veterinarians and the like who gave a few thousand dollars to the cause are listed alongside major donors like the Container Supply Company Inc. of Garden Grove, which gave $250,000. "Anyone who steps into a political fight aimed at taking away fundamental rights from fellow citizens opens themselves up to criticism," said Wolfson. "The First Amendment gives them the right of freedom of speech and to support political views, but people also have the right to criticize them."

Even before the passage of Prop. 8, the group Californians Against Hate compiled and published a "dishonor roll" of individuals (and their company affiliations) who gave $5,000 or more in support of the measure. Phone numbers and websites were added, along with commentary about some of the larger donors, all public information obtained through the California secretary of state's office. "My goal was to make it socially unacceptable to give huge amounts of money to take away the rights of one particular group, a minority group," says Fred Karger, a retired political consultant and founder of Californians

Against Hate. "I wanted to make the public aware of who these people are and how much they're giving, and then they could make a decision as to whether or not they want to patronize their businesses."

The negative publicity is having an effect on both companies and individuals. Scott Eckern, artistic director of the California Musical Theatre in Sacramento, whose $1,000 donation was listed on ElectionTrack, chose to resign from his post this week to protect the theater from public criticism. Karger says a "soft boycott" his group had started against Bolthouse Farms — which gave $100,000 to Prop. 8 — was dropped after he reached a settlement with the company. Bolthouse Farms was to give an equal amount of money to gay rights political causes. The amount ultimately equaled $110,000.

Meanwhile, lists of donors to Prop. 8, once trumpeted on the Yes on 8 website, have been taken down to protect individuals from harassment. "It's really awful," says Frank Schubert, campaign manager for Yes on 8. "No matter what you think of Proposition 8, we ought to respect people's right to participate in the political process. It strikes me as quite ironic that a group of people who demand tolerance and who claim to be for civil rights are so willing to be intolerant and trample on other people's civil rights."

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Editorial

Prop. 8 -- boycott, or blacklist?

Shunning businesses is one thing; intimidation crosses the line.

December 10, 2008

Gays and lesbians -- at least some of them -- plan to refrain from working and shopping today as an expression of their dismay over Proposition 8, the Nov. 4 measure that banned same-sex marriage, and as a showing of both their economic clout and their place within the larger community. If organizers carry it off, this is exactly the kind of tactic that can make a difference, though its impact might have been bigger before election day.

For all the complaints (mainly coming from the Yes-on-8 campaign), boycotts against corporations or organizations are a time-honored method of expressing opinions and pushing for social or political change. But in the superheated Proposition 8 debate, this venerable tactic has occasionally been used in ugly ways.

It started when the directors of the Yes-on-8 campaign sent letters to various companies that had donated to the opposition camp. The missives warned donors to pay an equal amount to the "Yes" side or risk being publicly outed as opponents of "traditional marriage" (the implication being that they would then face a boycott). The tactic looked and quacked a lot like extortion. It's one thing to boycott, or threaten it; a demand for hush money goes over the line.

Since then, postelection boycott efforts by the other side -- defenders of same-sex marriage -- have expanded into a vengeful campaign against individuals who donated to the gay-marriage ban, usually in the form of pressure on their employers. At least two people have resigned from their jobs and a third is considering it, including the artistic director of a stage company in Sacramento and a manager at an L.A. eatery.

As much as we abhorred Proposition 8, there's nothing to cheer about when private individuals are afraid to donate to the political campaigns of their choice because it may cost them their livelihood. In the case of Scott Eckern, who resigned from the California Musical Theatre in Sacramento, the future of the nonprofit company was at stake after some artists refused to work with him. But what if that situation were reversed and Eckern were targeted because he opposed Proposition 8? Or because he was gay? Professionals have to look past their personal and political differences or everyone with an opinion will be on an official list of undesirables.

The line between boycott and blacklist can be imprecise. Owners and officers of companies aren't just private

individuals; they must accept that their political actions will reflect on the organizations they head and act accordingly. But a heated debate about a basic right -- in this case, the right to marry whom one chooses -- must also consider the rights of citizens to vote and donate without intimidation.

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SAN FRANCISCO, Nov. 13, 2008

Prop. 8 Anger Spurs Donor Blacklists

CBS Evening News: Online Donor Lists Prompt Boycotts Of Same-Sex Marriage Ban Supporters

By John Blackstone

Play CBS Video The Fight Against Prop 8

Supporters of same sex marriage have started posting the names and businesses of those who gave money in support of Proposition 8. John Blackstone reports.

Supporters of same-sex marriage rally in San Francisco. **(CBS)**

(CBS) For supporters of same-sex marriage, the Election Day loss in California seems to be energizing their campaign rather than ending it.

Demonstrations against Proposition 8, the ban on same-sex marriage, have been growing, **CBS News correspondent John Blackstone** reports.

Now the anger is moving to the Internet, where supporters of same-sex marriage are posting blacklists - the names and businesses of those who gave money to help Proposition 8 pass.

Chris Lee, an engineer who is an immigrant from China, was shocked to see his name on the Web site AntiGayBlacklist.com after he gave $1,000 to the campaign to end same-sex marriage.

"I was completely disgusted," Li said. "This sort of blacklist should only appear in communist countries, should not be found in the United States."

In Los Angeles, demonstrators called for a boycott of a restaurant whose manager made a personal donation of $100 to the "Yes on 8" campaign.

"She didn't think it would be public record," said Jeff Yarbrough.

Anger over the blacklists brought out demonstrators in Sacramento, where Scott Eckern resigned as musical director of a local theater when he was identified as a donor.

While it isn't clear who is behind the blacklisting Web sites, political donations are public record and publishing them is legal. But this campaign is making even many supporters of same-sex marriage uncomfortable.

"I understand the anger, but I think we need to channel it," said Molly McKay of Marriage Equality USA. "Into conversations, into moving forward because, you know again, hate vs. hate produces more hate."

Those campaigning to end same-sex marriage drew up their own blacklist, sending letters to large donors to the campaign to save same-sex marriage, demanding equal money or threatening to publish their names.

The Internet has made open political financing even more open - and perhaps more intimidating.

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Inland Valley Daily Bulletin (Ontario, CA)

November 15, 2008 Saturday

SECTION: NEWS

LENGTH: 396 words

HEADLINE: Proposition 8 passage inspires protests; proponents claim intimidation

BYLINE: Lori Consalvo, Staff Writer

BODY:

The 2008 election has come and gone, but the strong feelings about Proposition 8 have not subsided.

Those who opposed the ballot measure have been holding protests and rallies throughout the state - and even the nation - since its passage.

But supporters of the measure, which eliminated the right of same-sex couples to marry in California and provided that only marriage between a man and a woman is valid, say enough is enough.

"I think they're poor losers," said Jan Gurley of Upland about those who are protesting the measure's passage.

Proposition 8 passed 52 percent to 48 percent.

"The numbers were overwhelming," Gurley said. "It is still not being laid to rest."

In the days since the election, opponents of Proposition 8 have gathered in front of churches and walked down streets in California advocating for equal rights.

But the protests have gone too far, said Meg Waters, spokeswoman for the Yes on 8 Campaign.

The artistic director of a musical-theater company in Sacramento resigned amid protests that began when it was revealed that he financially supported the measure, picketers have harassed restaurant owners who supported Proposition 8 in Los Angeles, and others have been beaten up for their support in Carlsbad, she said.

"Harassing phone calls, intimidation, it just goes on and on and on," she said.

Waters was part of a news conference on Friday in Orange County that addressed the recent protests.

"We understand they have a right to protest and a right to file lawsuits," she said. "But they don't have a right to harass and intimidate and use violence against people they disagree with."

Supporters will "vigorously defend" any lawsuits filed "in a peaceful and respectful way," Waters said.

"There was a call by many pastors for continued respect with the other side," she said. "We can disagree with the other side, but we should still respect them. And we ask that we receive respect from their side as well."

As he hears about continued protests and talk of lawsuits, Chino Hills resident Kenn Rasmussen said this is the best thing that could happen to the "Yes people."

"Our case is made. They have proven they are an angry, revengeful group," he said.

Rasmussen and other supporters know there is a possibility the vote could be overturned, but he said he would rather see it done in a civil way.

"If they want to do it, let's have another election," he said.

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Proposition 8 protesters target businesses

By Tami Abdollah, and Cara Mia DiMassa,
November 14, 2008

More than a week after the passage of Proposition 8, activists opposed to the ban on gay marriage have shifted their protests to new arenas -- using boycotts to target businesses and individuals who contributed to the winning side.

The effect of the boycotts remains unclear. Merchants said that the overall poor economy made it difficult to tell whether their businesses were declining specifically because of the threats. But the protests have been highly visible and have drawn strong objections from backers of the initiative.

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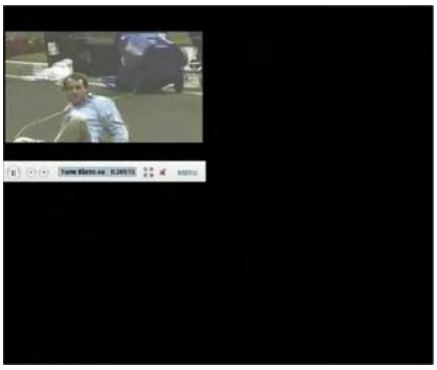

"No matter your opinion of Proposition 8, we should all agree that it is wrong to intimidate and harass churches, businesses and individuals for participating in the democratic process," Ron Prentice, of ProtectMarriage.com, said in a statement. Boycotters were "unabashedly trampling on the rights of others," he said.

Activists behind the boycott effort argue they are simply exercising their political rights.

"People are determining who their friends are, and who are not their friends," said Fred Karger, a Los Angeles resident and retired political consultant. "I think people need to be held accountable for their financial support."

The activists have pored though campaign contribution databases and then "outed" Proposition 8 donors on sites like Facebook.com and craigslist.com. "People are going to do what they want, and it's in this society where you have campaign reporting that is all public information," said Karger.

Some gay rights activists also have gone onto the restaurant website *yelp.com*, giving bad reviews to eateries linked to the Yes on 8 movement.

"This one star is for their stance on Prop. 8," one poster wrote of El Coyote Mexican Cafe. "Enjoy it. . . . You deserve it."

Hundreds of protesters converged on El Coyote on Beverly Boulevard on Wednesday night, and the picketing got so heated that LAPD officers in riot gear had to be called.

All because Marjorie Christoffersen, a manager there and a daughter of El Coyote's owner, had contributed $100 to the Yes on 8 campaign.

Christoffersen, who is Mormon, met with protesters Wednesday and at one point broke down in tears, said Arnoldo Archila, another El Coyote manager. But the activists were not satisfied with her explanation and continued to post protests about her on the Web.

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Proposition 8 protesters target businesses

By Tami Abdollah, and Cara Mia DiMassa,
November 14, 2008

"She had a chance to make nice and blew it. I was almost feeling a tiny bit of sympathy for her. Not no more!!" wrote one blog poster, who also listed competing Mexican restaurants where diners should go instead of El Coyote.

By Thursday, Christoffersen had left town, said Archila, who said El Coyote employees -- some of whom are gay -- were left staggered by the protests, including more than 50 calls a day criticizing the restaurant.

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"We are all a family," Archila said. "If this is going to affect the business, its going to affect them. There are people who have to feed children and pay mortgages."

Some activists are now turning their attention to Texas-based Cinemark, one of America's largest theater chains, whose chief executive contributed nearly $10,000 to Yes on 8.

A prolonged protest could cause trouble for the Sundance Film Festival, which uses Cinemark screens to show movies during the January event in Park City, Utah. The state of Utah is a focus of some boycotts because the Church of Jesus Christ of Latter-day Saints, which has its headquarters there, marshaled millions of dollars in contributions from its members for the Yes on 8 campaign.

Brooks Addicott, a spokeswoman for the Sundance Institute, said the festival received about 100 e-mails over the last few week, many of which had the same text, but it appeared that the efforts had peaked.

"Our position is that we have a festival that is essentially three months away," Addicott said. "We are committed to having our 25th festival; it's a celebration for us. We would be incredibly disappointed if people decided not to come because of a boycott."

Officials at Cinemark did not return calls for comment.

Gay marriage activists had been targeting some Yes on 8 donors well before the Nov. 4 election. In July, Karger started the website Californians Against Hate, which lists a "dishonor roll" detailing more than 800 donations of $5,000 or more to the Yes on 8 campaign. He said the site was getting 300 to 350 hits a day before the election. Now, it's receiving an average of 7,500 hits daily.

Californians Against HateOne business affected by the campaign is Lassen's, a family-owned chain of nine health food stores throughout California, from Bakersfield to Thousand Oaks. Lassen's owners gave $27,500 to the Yes on 8 campaign.

Scott Parvel, general manager of the Ventura store, said the contribution was a "private donation" by family members who are Mormon.

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Proposition 8 protesters target businesses

By Tami Abdollah, and Cara Mia DiMassa,
November 14, 2008

But No on 8 supporters listed their stores along with many others on websites, urging a boycott.

Since the election, the stores have received angry calls about Proposition 8 as well as comments from customers. "They have a right to their views, but they should take it up with the person who did it, not the people who work here. . . . We're providing a business, that's all we do," said Parvel, who has worked for the company since 2001.

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Robert Hoehn was another person who made Karger's "dishonor roll." Hoehn, vice president of the Carlsbad-based Hoehn Motors, gave $25,000 of his own money to the Yes on 8 campaign in February. And he called what followed "a really, really ugly experience."

Hoehn said that most of the campaign against him came before the vote, when he received "dozens and dozens and dozens" of phone calls and his Honda dealership was picketed. Since the proposition passed, he said, he has received a few "vitriolic messages and phone calls."

Next time, he said, he will be "smarter" about how he gives such a donation, possibly in a way that doesn't require listing his business. "I wouldn't not do it because of fear," he said. "I am not ashamed of it, but it has been a very educational experience."

Despite the criticism, activists say they plan to continue applying pressure. "It doesn't matter if it's the CEO or if it's the hostess that greets you at El Coyote. It really makes no difference," said Gerry Moylan, 47, a Los Angeles Realtor who planned a night of picketing in front of the restaurant Thursday.

"If I'm going to eat dinner at El Coyote and part of my money is going to pay the hostess' pay and she turns around and uses her pay to promote a proposition that takes away my rights, then I'm going to stop paying my money to her."

Abdollah and DiMassa are Times staff writers.

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Prop. 8 Opponents Protest Ice Cream Parlor

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Family-Run Creamery Gave Thousands To 'Yes on 8' Campaign

POSTED: 4:14 pm PST November 16, 2008
UPDATED: 11:18 am PST November 17, 2008

SACRAMENTO, Calif. -- Opponents of Proposition 8, an amendment to ban same-sex marriage in California, gave out free ice cream Sunday in protest of a Sacramento family-run ice cream parlor.

About a dozen protesters rallied outside Leatherby's Family Creamery with signs and free rainbow sherbet.

Owner Alan Leatherby, his business and his relatives gave a total of $20,000 supporting the "Yes on 8" campaign, which worked to get the measure passed.

"I think that providing people with information is never a bad thing to do -- make an informed choice about where they are spending their money," said Rachel Gregg, who's opposed to Proposition 8.

A crowd also lined up out the door of Leatherby's to show their support for the ice cream parlor.

"We've had people drive in from Auburn," Leatherby said. "It's nice to have friends, it really is."

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THE WALL STREET JOURNAL.
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DECEMBER 27, 2008

Gay Activists Boycott Backers of Prop 8

By JIM CARLTON

LOS ANGELES -- Soon after California's passage of a initiative banning same-sex marriage last month, dozens of gay activists descended on the El Coyote restaurant with signs and placards. They chanted "Shame on you," cussed at patrons and began a boycott of the cafe.

The restaurants's crime: A daughter of the owner donated $100 to support Proposition 8, the antigay-marriage initiative approved by voters. Gay activists have refused to lift the boycott -- which restaurant managers say has slashed revenues by 30% -- even after some El Coyote employees raised $500 to help repeal the new ban.

The boycotters have demanded that the owner's daughter, El Coyote manager Marjorie Christoffersen, pony up $100 to help repeal Prop 8. She tearfully declined, citing her Mormon faith, during a raucous meeting with activists. "You are not my friend if you take my civil rights," one activist shouted before she fled the room.

In the first days after California voters reinstated the ban on Nov. 4, activists vented much of their anger in protests at Mormon and other churches that had advocated Prop 8. But they soon shifted to a new tack: compiling Internet blacklists of businesses like El Coyote, where top officials or one or more employees were found from public disclosures to have donated to the "Yes on 8" campaign.

The idea is to use gay-spending power to punish businesses the activists say discriminate against gays' right to get married. Among the dozens of businesses now being targeted for boycotts are hotels, fast-food chains and dental offices.

So far, the boycott campaign has claimed at least two high-profile casualties: Scott Eckern, artistic director of the California Musical Theatre in Sacramento, and Richard Raddon, president of the Los Angeles Film Festival. Both men resigned after their private donations to Yes on 8 were revealed and activists threatened boycotts unless they quit.

Mr. Eckern and Mr. Raddon were members of the Church of Jesus Christ of Latter-day Saints, whose members accounted for much of the $40 million in contributions raised by the Yes on 8 campaign. "The main finger we are pointing is at the Mormon Church," says Vic Gerami, a leading gay activist in West Hollywood, Calif.

Some gay-rights advocates say they don't agree with the boycotts. "We need to get it together. I mean, gang, we lost," Dana Miller, a gay television producer from Los Angeles, wrote in a Nov. 24 column in the gay magazine, In Los Angeles.

Leaders of the gay-marriage movement say they don't endorse hurting people's livelihoods, but understand why some people would. "I am not going to support a business that will not support my rights," says San Francisco Mayor Gavin Newsom, who gained national attention for allowing same-sex marriages in his city in 2004.

Some legal experts say the boycotts raise issues about the civil liberties of people who are targeted. In most cases, individuals can boycott anyone they want for almost any reason so long as they aren't representing a government institution, says Vikram Amar, associate dean of the University of California at Davis School of Law. But if the boycotts include defamatory comments that are untrue, Mr. Amar said, the target of the boycott could have grounds for a

lawsuit.

"If I am just outing you because you are a Proposition 8 supporter, there is nothing the law can do," said Mr. Amar.

In compiling blacklists, activists say they have tried to make sure a business really belongs on one. They decided not to target a law firm in Los Angeles after learning that only one of the partners had donated to Yes on 8 and that the firm employed many gay attorneys, says David Stern, publisher of Frontiers Magazine, a gay publication in Los Angeles.

But the fact that many of the El Coyote's 89 employees are gay didn't spare that establishment. The cafe also has long served as a gay hangout, which is why boycott organizers say they chose to target it after they discovered Ms. Christoffersen's donation."It just hit too close to home," Mr. Gerami says.

The restaurant invited activists to a free brunch on Nov. 12 and Ms. Christoffersen read them an apology. "I am sick at heart that I have offended anyone in the gay community," the 67-year-old manager told a few dozen activists in the colorfully decorated cafe. The meeting turned ugly when she refused to renounce her support of the gay-marriage ban. "I can't change a lifetime of faith in which I believe in very deeply," she said.

Boisterous street protests erupted that night, prompting a sharp slowdown of El Coyote's business. While the protests have died down, the restaurant has been assailed since in online reviews.

"It's a lynch mob," says Carl Bell, 77 years old, a retired Hollywood animator who dined there on a recent afternoon. "I'm ashamed of the gay community."

At first, Ms. Christoffersen stayed away, but then returned to the cafe when the protests faded. "Tons of people have called or come in to show their support, and that has been gratifying," she said at the El Coyote on a recent evening, when several tables remained empty.

Boycotters offer little sympathy, and some even suggest they won't go back unless she quits. "Marjorie," says Mr. Gerami, "has the key to make things better."

Write to Jim Carlton at jim.carlton@wsj.com

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Prop 8 foes turn to 'blacklist' tactics

By William M. Welch, USA TODAY

LOS ANGELES — After losing on Election Day, some supporters of gay marriage are using economic boycotts and Internet lists to focus ire on the financial backers of Proposition 8.

Some on the receiving end say the tactic amounts to a blacklist, a term that conjures memories of Hollywood's refusal to hire screenwriters and others identified as communists in the late 1940s and 1950s.

"I just hate being pigeonholed as a hate monger or bigot," says Robert Hoehn, who contributed $25,000 to the campaign for Prop 8, which amended California's Constitution to exclude same-sex marriage. "I have friends in the gay community, and I don't think any of them would say that."

Hoehn has seen protesters outside his Carlsbad, Calif., car dealerships, his name and business have appeared on websites publicizing donors, and he has received "the most vitriolic kinds of e-mails, letters and phone calls."

His discomfort is exactly what some have in mind.

"I want to make it a little hot for these people," says Fred Karger, a retired Los Angeles political consultant who started the group and website called Californians Against Hate.

Small as well as large donors have felt heat:

• El Coyote, a Mexican restaurant in Los Angeles since 1931, has seen fewer diners and been picketed over a $100 contribution by a manager and member of the owning family. Marjorie Christoffersen told *The Los Angeles Times*, "I've almost had a nervous breakdown."

• San Diego developer Doug Manchester, who donated $125,000 to put Prop 8 on the ballot, has seen a boycott against hotels he owns, including the Manchester Grand Hyatt on San Diego Bay. Manchester did not return calls seeking comment. Sonja Eddings Brown, spokeswoman for the Protect Marriage coalition, which supports Prop 8, said Manchester's hotel "has lost several national conventions and conferences."

• A-1 Self Storage, with 30 locations across California, has also been targeted by Karger's group. Owner Terry Caster and family members donated $693,000.

Caster did not return calls but has a recording on his phone defending the contribution and Prop 8. "The homosexual community is trying to change something that has been practiced since the start of our great country," he says, referring to marriage. "I simply exercise my right to support that which I believe in."

Brown says she has received calls from small business owners in Hollywood and West Hollywood who have lost customers because of their donations. She said she has seen printed lists that name Hollywood studio employees who gave to the cause, an action that "replicates that feel" of blacklists of movie-industry figures who many in Hollywood to this day believe were prevented from earning a living because of their politics.

Some say blacklist is the wrong analogy.

Larry Gross, professor and director of the school of communication at the University of Southern California, said publicizing donors is a legitimate tactic. He says it is similar to the Montgomery, Ala., bus boycott of the 1960s in which blacks were protesting segregated seating.

"This is a matter of private citizens saying they don't want to patronize businesses that have worked against their interests," Gross said.

But Ron Prentice, executive director of the California Family Council, says it is wrong to compare supporters of traditional marriage to racists.

"I think the general public is recognizing intolerance" of the blacklist, he said.

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Prop. 8 victors upset by personal attacks

jgarza@sacbee.com

Published Wednesday, Nov. 12, 2008

Supporters of Proposition 8 won the election but now are frustrated because they are still fighting for their cause.

A week after a majority of voters passed the controversial measure to ban same-sex marriage, the conflict continues – in the courts, at protests and in personal attacks.

"I'm frustrated by what's going on," said Dave Leatherby, owner of the Leatherby Family Creamery in Sacramento, commenting on the protests and court battles.

"Let's move on. I always told my children that once a rule was made, you have to abide by it. I think it should be the same in this circumstance."

Leatherby and his family donated about $20,000 for the passage of Proposition 8. A devout Catholic and father of 10, Leatherby supported the measure for religious reasons. He said his business has been targeted by bloggers as a result, and that he is particularly confused because his business has participated in the annual gay pride Rainbow Festival.

"It saddens me that all this is happening," he said.

The battle over same-sex marriage will not end anytime soon. This week, 44 state legislators filed a friend-of-the-court brief on behalf of opponents of the gay-marriage ban. They maintain the initiative process was used improperly. The California Supreme Court could rule as early as this week on a lawsuit that seeks to invalidate Proposition 8, said court spokeswoman Lynn Holton.

Proposition 8 opponents said they will continue to fight for their civil rights.

"For them to say the voters have spoken and no one should question it is a bit disingenuous," said West Sacramento Mayor Christopher Cabaldon. He cited repeated attempts to pass other initiatives. "They believe in the justice of their causes, that's why they return over and over again with the same proposal on parental notification."

Cabaldon was referring to Proposition 4, which would have required parental notification before a minor could have an abortion. It was defeated for the third time last week.

Since the election, thousands have protested on the steps of the state Capitol and in some cities at temples of the Church of Jesus Christ of Latter-day Saints and other sites. The Sacramento temple has not been targeted.

"Protesting is a time-honored American tradition," said Ned Dolejsi, executive director of the California Catholic Conference. Catholic leaders were active in the Yes on 8 campaign. "But it's

unfortunate when it steps over into religious bigotry or harassment."

Some Proposition 8 supporters say a minority of protesters have gone too far by targeting individuals. Opponents of the measure have called for a boycott of the California Musical Theatre after revelations that artistic director Scott Eckern, a Mormon, donated $1,000 to the Yes on 8 Campaign. Members of his church played a significant role in the campaign.

"It's disheartening that he is being singled out," said Lisa West, spokeswoman for the church in the Sacramento area. "We had hoped there would be more tolerance for different viewpoints."

Others who supported Proposition 8 said they have also been targeted. Scott Purves, of Purves & Associates, a Davis insurance company, said a protester carrying a sign reading "Purves Family Supports Homophobia" picketed his business Monday.

"If this had gone the other way, I can't imagine the backlash if people protested and called the other side names," said Purves. "People would be angry and rightfully so. ... It makes me sad that this would happen when a majority of people supported this measure."

Opponents of Proposition 8 issued a statement last week asking those disheartened by the passage of the initiative not to target those who voted the other way. "We achieve nothing if we isolate the people who did not stand with us in this fight," the statement said. "... We know people of all faiths, races and backgrounds stand with us in our fight to end discrimination, and will continue to do so."

Other ballot initiatives that have been approved by voters have faced legal challenges.

"When it comes to social initiatives, it can become very emotional," said Douglas Kmiec, professor of constitutional law at Pepperdine University.

He cited two initiatives that were approved by voters and later challenged in the courts. One was Proposition 209, the 1996 ballot measure that eliminated racial preferences at California agencies and public institutions; the other was Proposition 187, the 1994 measure that proposed barring undocumented children from schools and most health care.

"Although there were bumps along the way, Prop. 209 eventually passed, but 187 was ultimately invalidated," said Kmiec.

For now, Leatherby said, Proposition 8 should stand. "If they want to win me over," he said, "that's not how to do it."

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THE ORANGE COUNTY REGISTER
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Friday, November 14, 2008

Prop. 8 leaders accuse foes of harassment, intimidation

Opponents of the gay marriage ban counter that boycotts are fair game; but some agree that other "nutcase" tactics have gone too far.

By MARTIN WISCKOL

The Orange County Register

SANTA ANA - Proposition 8 leaders gathered Friday to denounce their opponents' post-election tactics as harassment, intimidation and – in the case of white powder sent to two Mormon temples – "domestic terrorism."

Ten days after the Prop. 8 ban on gay marriage was approved by voters, protests and lawsuits by gay marriage proponents show no signs of abating. Indeed, several dozen protesters were on hand outside the Santa Ana hotel where the pro-Prop. 8 press conference was held, and at least two more Orange County protests are planned for the weekend.

Prop. 8 leaders were quick to acknowledge that demonstrations and lawsuits were the right of protesters – but other tactics that were out of bounds.

"What they don't have the right to do is harass and intimidate people," said Frank Schubert, director of the Prop. 8 campaign. "They don't have a right to blacklist and boycott our supporters."

Schubert listed three businesses that had been boycotted or threatened with boycotts by Prop. 8 foes. Newspaper accounts have specified at least three more. Cinemark Theatres, which has cinemas in Orange County, has also been mentioned as a possible target.

Leaders of the battle against Prop. 8 and protesters interviewed outside today's press conference condemned the use of violence, threats of physical harm, and the mailing of an unidentified white powder to two temples of the Mormons, who contributed significantly to the Prop. 8 campaign.

"That's some nutcase," protester Angelo Vassos said of the white powder. "That's just dumb."

Vassos and other Prop. 8 opponents say they generally support the boycott approach. But Vassos – who still doesn't eat Carls Jr. hamburgers because of the politics of the late Carl Karcher – said he isn't sure he endorses all of the current targets.

Among those is El Coyote restaurant in Los Angeles, which is being boycotted because the

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THE ORANGE COUNTY REGISTER
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owner's daughter contributed $100 to the Yes on 8 campaign. Another is the California Musical Theatre, which was threatened with a boycott because its artistic director gave $1,000 to the campaign. The director then resigned.

"If it's the head of the company who's giving money, I'd say I wasn't going there," said Vassos, a retired school teacher from Irvine who, along with his wife, is a longtime political activist. "But if it's the daughter of the owner or an employee, I'm not so sure."

Inside the ballroom of the Doubletree Hotel, Yes on 8 leaders filled the room with more than 400 backers, who frequently interrupted speeches with cheers and gave the press conference the festivity of a rally or political convention. About 30 of the leaders shared the stage, with evangelical Christians and Muslims from throughout Southern California accounting for more than half.

They called gay marriage an assault on the family, and labeled Prop. 8 foes as hypocrites for calling the measure hateful and intolerant.

"They have shown their own intolerance and hatred," said Ron Prentice, chairman of the Protect Marriage Coalition.

Leaders said democracy had been exercised – and it was time to acknowledge that.

"I come here with a wholly righteous, God-given anger at what's happening in our state," Jim Garlow, a Sand Diego pastor, said of his opponents' activities. He also complained about unfair treatment by the media, and was enthusiastically cheered. "The bigotry must come to an end."

But the battle is likely to continue through a legal challenge and future ballot measures.

"Just because it was on the ballot doesn't mean it was constitutional," said Irvine's Mitch Goldstone, a gay man who married his longtime partner in June.

Goldstone was among protesters outside the hotel holding signs and periodically breaking into chants – including, "It's not over. It's not over." There was a mix of gays, lesbians and straights, like Vassos.

"We have two great gay friends," said Vassos, 76. "I said, 'I have to go over there for Kelly and Joe.'"

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K-52

Activists Target Mormons for Gay-Marriage Ban's Success in California

Monday , December 01, 2008

FOX NEWS

In the nearly four weeks since Election Day, gay activists and thousands of their supporters have rallied outside Mormon temples around the country, protesting the Church of Jesus Christ of Latter-Day Saints' support for California's Proposition 8, the ballot initiative to make same-sex marriage illegal in the Golden State.

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There have been calls to boycott the annual Sundance Film Festival in Park City, Utah; some activists have called for a boycott of the entire state of Utah. Protesters have defaced some church buildings, and in Arapaho County, Colo., the Sheriff's Office is investigating a possible hate crime — the torching of the Book of Mormon on a church's doorstep.

Even the state of California itself has announced that it is investigating the church's involvement in Proposition 8, which was approved by a vote of 52 percent to 48 percent and, barring a Supreme Court overturn, will ban gay marriage in the state.

There have been no other reports of backlash against other groups that supported Prop 8, notably African-Americans and other churches and religious denominations that turned out in heavy numbers to push through the ban.

Exit polls after the Nov. 4 vote showed that 70 percent of black voters and more than half of Latino voters voted yes on Prop 8. About two-thirds of self-identified Christians supported the ban, and married voters and parents also showed strong support. The Knights of Columbus, the Catholic Church and evangelical groups in the state also urged for a ban on gay marriage.

So why is the Mormon Church the only target?

It's because of the money, says Evan Wolfe, executive director of Freedom to Marry, a New York-based group that supports same-sex marriage.

"The Mormon Church hierarchy led the way on this attack on gay families and the California constitution," Wolfe said. "They provided more than half of the funding. They provided the ground troops and were a major political force in a way that no other group was.

"It's not like there's one centralized voice telling everyone whom to protest. People have their own reactions to what they see with their own eyes, and what they saw here was a $40 million deceptive campaign to take away rights, led by the Mormon Church hierarchy."

Lorri Jean, CEO of the L.A. Gay and Lesbian Center, wrote on the organization's Web site that she doesn't blame African-Americans or minority groups for the passage of Prop. 8.

"We have been critical of all of the out-of-state conservative religious groups that made significant contributions to the campaign, including the Knights of Columbus National Headquarters in Connecticut and Focus on the Family in Colorado. But the truth is that the LDS church leadership in Utah specifically directed its membership to get involved with the Yes campaign in an unprecedented way — both in terms of volunteer time and dollars," Jean wrote.

"The campaign they funded was one of lies and deceit, clearly in violation of the religious tenet of “thou shalt not lie.”

Ron Buckmire, president of the Barbara Jordan/Bayard Rustin Coalition, an organization that organizes African-Americans for gay rights in Southern California, said fewer African-Americans supported the gay-marriage ban than was originally reported -- 57 percent instead of 70.

"People were emotional after Obama being elected and recognizing the ideal that the African American and LGBT (lesbian, gay, bisexual and transgender) community were part of one large progressive alliance that were going to enact change … was not necessarily true," Buckmire said.

"Once they realized that, and that some of the data is not exactly correct and they were actually being hateful to some African-Americans, I think they then focused on the Mormons, the religious people and some Republicans as well."

Rev. Roland Stringfellow, coordinator of the Bay Area Coalition of Welcoming Congregations, a network of gay-friendly religious organizations, said that he has heard of African American individuals being harassed for the passage of Prop 8, but that many are using the Mormon Church as a scapegoat for their anger.

"Many gays and lesbians have been hurt by the church and they see the Mormons as a way of taking out that aggression, not only on the Prop 8 position, but on their life in general," he told FOXNews.com.

"I think simply it comes down to everyone needing a scapegoat. I think we're seeing that with the Republican Party, where people are pointing fingers at Sarah Palin as to why John McCain lost."

Back in June, soon after the California Supreme Court ruled that a ban on gay marriage was unconstitutional in the state, the Mormon Church sent a letter to members announcing its support of Prop 8, which was designed to overturn the ruling. The church's members subsequently donated millions of dollars to support the Yes on 8 campaign.

According to Californians Against Hate, which lobbied to defeat Prop 8, Mormons gave $25 million of the almost $40 million that groups supporting the initiative spent on advertising and get-out-the-vote efforts.

"They did the slickest commercials you've ever seen, and they mostly do it to convince younger people why its OK to be opposed to same sex marriage," Californians Against Hate founder Frank Karger told FOXNews.com.

Mormon voters themselves had little effect on the ballot initiative's outcome, simply because the Mormon population is small in California. There are only about 750,000 Mormons in the state, about 2 percent of its 38 million residents.

But over 59,000 Mormon families contributed to the Yes on 8 effort, Karger said. "Without the Mormon money it would have been a very different campaign."

Mormons also donated time — walking through California neighborhoods to get voters talking about Prop 8, he said.

In the weeks after Nov. 4, of Gay activist John Aravosis, editor of Americablog.com, called on Hollywood to shun the Sundance Film Festival, held just a few hours' drive from Salt Lake City.

"Anyone who attends Sundance is quite literally funding the enemy," he wrote. Aravosis also called for a boycott of tourism and skiing in the "Hate State of Utah."

California Musical Theatre Artistic Director Scott Eckern, a Mormon and graduate of Brigham Young University, resigned from his position with the Sacramento theater group on Nov. 12 after undergoing pressure from artists who scorned his decision to give $1,000 to the Yes on 8 campaign.

And last week, Californians Against Hate filed a complaint with the state Fair Political Practices Commission alleging that the Mormon Church did not report all of its non-monetary contributions to the campaign.

"I just want to make sure that when they involve themselves in California elections that they play by the rules," Karger said.

"They bused people into California the last three weekends going door to door and out with signs on the major intersects and major highways. It’s a common California roadside activity, but they did it with hundreds and hundreds of people," Karger said.

On Friday, the commission said it would investigate the complaint.

Californians Against Hate also has called on gay-marriage supporters to boycott A-1 Storage facilities around the

state because the business's owner gave more than $700,000 to the Yes on 8 cause.

On Nov. 14, Mormon Church leaders issued a statement criticizing the backlash.

"Since the people of California voted to reaffirm the sanctity of traditional marriage between a man and a woman on November 4, 2008, places of worship have been targeted by opponents of Proposition 8 with demonstrations and, in some cases, vandalism," the church's First Presidency wrote.

"Attacks on churches and intimidation of people of faith have no place in civil discourse over controversial issues. People of faith have a democratic right to express their views in the public square without fear of reprisal. Efforts to force citizens out of public discussion should be deplored by people of goodwill everywhere."

But gay activists say they are right to single out the Mormons for the success of California's ballot initiative.

"What is clear in any case is that we did not lose this election because of African Americans," Lorri Jean wrote.

"Even if African Americans had voted for and against Prop 8 in the same proportion as white voters, we still would have lost."

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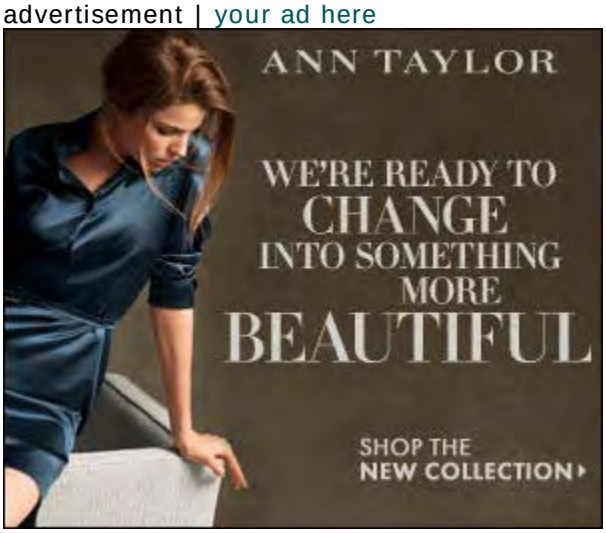

Mormons face flak for backing Prop. 8

Matthai Kuruvila, Chronicle Religion Writer
Monday, October 27, 2008

(10-26) 14:40 PDT OAKLAND -- Christine Alonso's body trembled and her lips quivered as she walked up and spoke to a few of the 50 protesters in front of the Mormon Temple in Oakland on Sunday.

"Don't think they're all against you," said Alonso, 27, explaining that she was Mormon and that despite her religious leaders' support of a ballot measure banning same-sex marriage, she was actively opposed.

As she walked away, she said, "I'm afraid that a gay or lesbian friend might hear that I'm Mormon and think that I want to tear their marriage apart."

Alonso's solitary act came as the Church of Jesus Christ of Latter-day Saints and its members are increasingly under fire for their support of Proposition 8, which would take away the right of gays and lesbians to marry. In addition to increased protests, online campaigns seek to identify and embarrass Mormons who support the ballot measure.

<< **Database: Look up Prop. 8 contributors** >>

The church largely stays out of politics. But in this case, the Salt Lake City-based church has sent letters, held video conferences and in church meetings asked for volunteers to support the campaign. In response, some church members have poured in their savings and undertaken what may be an unprecedented grassroots mobilization for the effort.

Prop. 8 is on pace to be the costliest race in the nation, except for the billion-dollar presidential election. The Yes on 8 campaign estimates that up to 40 percent of its donations come from Mormons. Some others estimate that Mormons account for over 70 percent of donations from individuals.

All of California's Catholic bishops have all come out in favor of the measure. So have many evangelical Christians and Orthodox Jews. Yet it is Mormons, who account for 2 percent of the state population, who are catching the most heat.

"We seem to be the symbol of the Yes on 8 campaign," said Rand King, 60, a Walnut Creek resident who is Mormon and who was watching Sunday's protest from inside the temple's gates.

Prop. 8 opponents are increasingly narrowing their focus on Mormons, harnessing technology and open-records laws in their efforts. One Web site run by a Prop. 8 opponent, Mormonsfor8.com, identifies the name and hometown of every Mormon donor. On the Daily Kos, the nation's most popular liberal

blog, there is a campaign to use that information to look into the lives of Mormons who financially support Prop. 8.

It has led some Mormons to question why other religious groups in the coalition aren't being targeted.

"I don't think it's politically expedient to point the finger at the Catholic Church," said Dave Christensen, 52, a Mormon and an Alamo resident who donated $30,000 to the Yes on 8 campaign. "You don't get the mileage criticizing a church that has more clout."

Nadine Hansen, who runs Mormonsfor8.com, said the church decided to enter politics and can't excuse itself for the ramifications.

"Any group that gets involved in the political arena has to be treated like a political action committee," said Hansen, 61, a Mormon who lives in Cedar City, Utah, and has stopped going to church. "You can't get involved in politics and say, 'Treat me as a church.' "Hansen said she focused on Mormons because she is one. She said Mormons have contacted her to shut the site, saying it was being used by the Daily Kos campaign in a "witch hunt."

"I didn't think there were any witches on the list, so I wasn't worried," said Hansen, whose site is "neutral" on its views, though she is opposed because she views it as "divisive."

The person who initiated the Daily Kos campaign to look into the lives of Mormon donors is Dante Atkins, an elected delegate to the state Democratic convention who said he's the vice president of the Los Angeles County Young Democrats.

Atkins said his goal was to "embarrass the opposition by pointing out and publicizing any contributors they may have." He said focusing on Mormons made sense. "If one religious group is putting close to the majority of the money and the effort into passing this proposition, it is fair to single them out."

The Mormon church hasn't taken the same level of interest in Arizona or Florida, which also have constitutional amendments banning same-sex marriage.

But California is a bellwether, said LDS spokesman Mike Otterson. "If same-gender marriage is approved in California... other states will follow suit."

Several Bay Area Mormons said they would support the right of gay and lesbian unions to have all the rights of married couples. But the word marriage was sacred, pivotal to their concept of families, who can be "eternally united" in the afterlife. A key church document - "The Family: A Proclamation to the World" - says that "marriage between man and a woman is essential to His eternal plan." They also believe that children are entitled to be raised by a father and a mother.

Those words speak for Michele Sundstrom, 47, of San Jose, who has been married for 18 years and has five children.

She and her husband gave $30,000 to the Yes on 8 campaign and put a sign on their home. But in response, two women parked an SUV in front of their home, with the words "Bigots live here" painted on the windshield.

Sundstrom believes such responses must come from deep places of pain - and that gays and lesbians are entitled to the same rights as heterosexuals, just not the word marriage. Any animosity toward gays or lesbians is wrong, she said.

"There must be such deep, deep, deep hurt; otherwise there couldn't be so much opposition," she said. "They've lived with this. I guess we're getting a taste of where they live."

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Same-sex marriage backers hit Capitol, churches

John Wildermuth,Demian Bulwa, Chronicle Staff Writers
Monday, November 10, 2008

More...

The backlash against the state's new ban on gay and lesbian marriage intensified over the weekend, with thousands of people gathering around the Bay Area and California during mostly peaceful protests.

Supporters of same-sex marriage questioned whether they had done enough before Tuesday's vote on Proposition 8 and expressed hope that it would be tossed out by the state Supreme Court. They also promised to take the issue back to the ballot.

<<Related story: Catholics, Mormons allied to pass Prop. 8.>>

About 2,500 people gathered on the Capitol steps Sunday afternoon after a noisy, three-hour rally against the marriage ban. About 400 assembled outside Oakland's Mormon Temple, forcing Highway Patrol officers to temporarily close two Highway 13 ramps to protect the marchers.

"I didn't see it coming," said Joe West, who traveled from San Francisco for the Sacramento demonstration. "It was like a punch in the gut. We worked so hard to bring change in this election, and then this happens."

"If I'd known if was going to be so close, I would have made more phone calls," added Brendan Bishop of Sacramento.

The weekend of protests started Friday evening in San Francisco when about 1,000 people gathered, some clogging rush-hour traffic. The state's largest event was held in San Diego with about 10,000 protesters Saturday. On Sunday, hundreds gathered outside Saddleback Church in Lake Forest (Orange County), an evangelical megachurch that had pushed for the ban, which was approved by 52 percent of voters.

Covering state capitol steps

At the Sacramento protest, the crowd covered the Capitol steps and spilled into the surrounding park. Dozens of rainbow gay pride banners waved, along with hundreds of the blue and white "Vote No on Prop. 8" signs left over from the campaign.

There were hundreds more homemade signs, broadcasting the feelings of those left shocked and disappointed by the election results. "Hatred is Not a Family Value," one said. "Love Will Prevail,"

another added. "I'm Embarrassed to be a Californian," a third read.

Opponents of the same-sex marriage ban have filed a challenge to the new constitutional amendment with the California Supreme Court, arguing that the rights guaranteed by the court in a May decision overturning a 2000 same-sex marriage ban can't be overturned by a simple ballot measure.

Republican Gov. Arnold Schwarzenegger, an opponent of Prop. 8, expressed support for the court challenge on CNN's "Late Edition" Sunday, calling the measure's passage "unfortunate."

"But it is not the end because I think this will go back into the courts," the governor said. "It's the same as in the 1948 (California) case when blacks and whites were not allowed to marry. This falls into the same category."

Supporters of Prop. 8 argue that the legal challenge is little more than a desperate attempt to overturn the will of California voters.

It's more than that, said Dennis Mangers, a former Orange County legislator who will take over next month as chief of staff to state Sen. Darrell Steinberg, D-Sacramento.

"It's very clear we're not going to take no for an answer," said Mangers, who married his longtime partner this year. "If necessary, we'll go back to the ballot ... and give the voters of California another chance."

In Oakland, the loud and peaceful protest outside the Mormon Temple included dozens of gay and lesbian couples whose marriages are in limbo. They said they wanted to openly display their anguish to people who pushed to ban same-sex marriage.

Inside the gates of the huge temple, church officials asked protesters to accept the will of the voters. But the anger over Prop. 8 only seems to be growing.

"I don't think people thought it was going to pass," said Carrie Blanche, 52, an Alameda schoolteacher who got married Oct. 29.

Blanche and others said they were focusing anger on the church because of its endorsement of Prop. 8 and the subsequent rush of campaign donations by members.

Some of those who gathered advocated for a boycott of travel to Utah, the home of the Mormon church, and of Mormon-owned businesses.

Mormons feel singled out

Tim DeBenedictis, a protest organizer from San Francisco, said the actions were warranted, even though he noted that some Mormons support same-sex marriage and not all Utah residents are church members. "To affect large social change, you have to make difficult decisions," he said.

A spokesman for the church, which moved some of its services to other locations Sunday because of the protest, said Mormons have been unfairly singled out.

"We don't normally get involved in anything political," said Don Eaton, who directs public affairs for the church in most of the Bay Area. "However, on certain things that are considered moral issues, we do get involved."

Eaton said calls for boycotts amounted to discrimination and doubted such a strategy would be tolerated if it was aimed at another major religion. "We're an easy target," he said.

The Associated Press contributed to this report. E-mail the writers at jwildermuth@sfchronicle.com and dbulwa@sfchronicle.com.

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K-55

THE ORANGE COUNTY REGISTER
ocregister.com

Sunday, September 7, 2008

Local donors give $1.6 million for ban on gay marriage

Local Proposition 8 supporters contribute 30 times more than opponents.

By ERIN CARLYLE

THE ORANGE COUNTY REGISTER

Orange County, where Republicans dominate politics and tens of thousands pour into evangelical megachurches each weekend, has become a funding powerhouse in the effort to ban gay marriage in California.

Orange County donors have contributed $1.6 million for Proposition 8, a November ballot initiative that would amend the state constitution to define marriage as between a man and a woman, eliminating the right of same-sex couples to marry.

Donations from here to support Prop. 8 constitute 24 percent of the $6.8 million raised statewide, according to campaign finance records filed with the California Secretary of State through Aug. 28. Orange County's portion accounts for 15 percent of the $10.9 million that had been raised nationwide in support of Prop. 8.

Orange County is home not only to numerous individual Prop. 8 supporters, but also to the state's most generous donor and a major Prop. 8 fundraising committee. The National Organization for Marriage-California, a political committee that has collected $2.8 million of the $10.9 million total to fuel the fight, is headquartered in Santa Ana. The biggest donation in California comes from a local billionaire's Irvine-based foundation.

Local donations against Prop. 8 total $50,000, making up 1 percent of the $4.7 million state total and an almost negligible portion of the $9.6 million raised nationally.

WHO'S GIVING?

The strongest opposition to gay marriage comes from people 55 or older, said Catherine Bolzendahl, a UC Irvine sociologist who studies public opinion on same-sex relationships. People 35 to 55 have a mix of opinions, while people 18 to 35 tend to support gay marriage, Bolzendahl said. Women are more supportive than men of gay marriage.

People in favor of Prop. 8 tend to be older, more politically conservative and religiously devout, according to political analysts.

"Republicans and conservatives tend to support it more," said Sherry Bebitch Jeffe, a political analyst at USC, about the initiative. "Hispanics are a potential group of supporters. Democrats tend not to. Moderates and liberals tend not to. Independents are more receptive to the idea of single-sex marriage."

Mark Hobbins of Trabuco Canyon supports the measure. He donated $25,000 toward the gay-

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marriage ban.

"If the traditional definition of marriage is not upheld, it has what I believe to be extremely negative consequences in our society, and for families and children," said Hobbins, a Mormon and founder of www.familyiq.com, a Web site that offers e-learning courses designed to strengthen families.

Laguna Beach resident Sandra Hartness, owner of Asset Services Inc., sees things differently. She donated $2,500 to defeat Prop. 8.

"I think this issue rises beyond a gay-straight issue," said Hartness, who is gay and serves on the board of the Human Rights Campaign, which has raised about $325,000 against Prop. 8. "I decided to donate primarily because I don't believe in discrimination of any sort. Equal rights are the basis of our country, and so why they wouldn't be extended to all citizens is an anathema to me."

Larry Shultz of Placentia gave $80 to support the ban. He doesn't see same-sex marriage as an issue of equal rights but one of religious morality.

"I don't donate to a lot of campaigns but I thought this issue was very important, so I did," said Shultz, 68. "I believe in the Bible and I think that the Bible clearly states that marriage should be between a man and a woman, and homosexuality is wrong."

Major Prop. 8 supporters in Orange County include Irvine-based Fieldstead &Co., the personal foundation of Home Savings heir Howard Fieldstead Ahmanson and his wife, Roberta Green Ahmanson, which gave $500,000.

Donald G. Laws and Steve Samuelian donated $100,000 each. Laws is a Laguna Beach resident and health care executive who has contributed to Republican presidential candidates. Samuelian works for Generations Healthcare, according to his political donation record, and has been a bishop of the Laguna Beach ward of the Church of Jesus Christ of Latter-day Saints.

Former state senator Robert Hurtt Jr. donated $25,000 in his name, and $25,000 was donated through his company, Container Supply Co.

PUBLIC OPINION

Though nationwide fundraising for and against the measure is fairly evenly matched, attitudes toward gay marriage appear to be shifting somewhat in California.

Eight years ago, 61 percent of California voters approved a same-sex marriage ban.

In 2004, 11 other states passed anti-gay marriage initiatives.

Then in May, the California Supreme Court ruled that denying same-sex couples the right to marry is unconstitutional. A recent Public Policy Institute of California survey found that 47 percent of likely California voters are against letting gay couples marry, while 47 percent are in favor.

"Clearly attitudes have shifted since that (2000) election," said Mark Baldassare, PPIC president and chief executive.

To pass Prop. 8, same-sex marriage opponents must persuade a narrow margin of undecided voters in California – 6 percent – to support their cause.

They'll also have to persuade their philosophical

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allies to support the measure.

Though 47 percent of likely voters oppose gay marriage, only 40 percent say they favor the ballot proposition.

The gap between philosophical support and likely voters may be related to the initiative's language. Set by state Attorney General Jerry Brown, Prop. 8 is called the "Eliminates Right of Same-Sex Couples to Marry Initiative Constitutional Amendment."

"Now we have a ballot measure that seeks to eliminate a right that already exists," Baldassare noted.

Shifting demographics also might be behind changing attitudes.

"People who are more supportive, or at least less opposed, are increasing in the U.S," Bolzendahl said. "As older cohorts die out … there's not going to be the same kind of strong opposition in the general population."

Still, the issue clearly resonates with small donors in Orange County and across the country. Nearly half of the donations – 45 percent – are from people who gave $500 or less.

Staff writer Ronald Campbell contributed to this report

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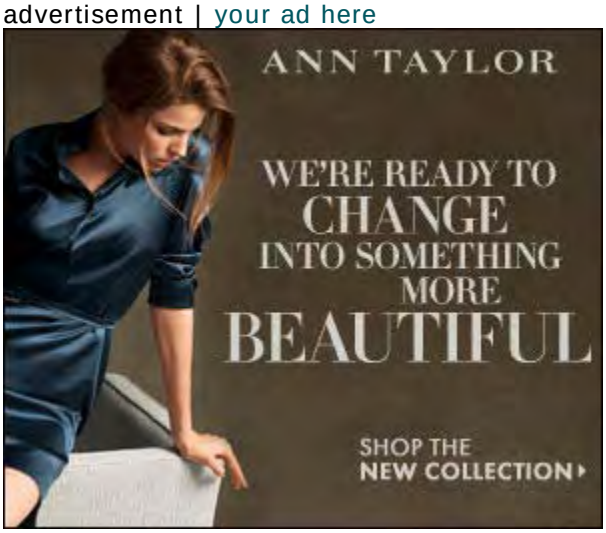

Gay-rights activists protest Prop. 8 at Capitol

John Wildermuth, Chronicle Staff Writer
Sunday, November 23, 2008

More...

(11-23) 04:00 PDT Sacramento - --

Opponents of Proposition 8 might have to go back to the ballot to reverse the ban on same-sex marriage, speakers told a crowd of about 5,000 at a loud and enthusiastic gay-rights rally in front of the state Capitol on Saturday.

Although the state Supreme Court has agreed to hear a challenge to Prop. 8 early next year, preparations already are being made to fight the battle for marriage rights all over again if the court doesn't overturn the constitutional amendment passed by voters in November, said Geoff Kors, executive director of Equality California.

"We can't just sit around until June and see what (the justices) do," he said. "We will take this back to the ballot if we have to and get our rights back."

More than 100,000 people already have pledged to carry petitions for a new ballot measure, which could come as early as the 2010 election, said Kors, whose group was one of the leaders of the "No on Prop. 8" effort.

"So we lost," said Robin Tyler, one of the plaintiffs in a case the state Supreme Court used in May to overturn Proposition 22, a statutory marriage ban approved in 2000. "It's only a battle and this is a war. And we'll win the war."

Any new campaign would be very different from the unsuccessful push to stop Prop. 8, the speakers agreed. There will have to be an improved effort to go out and make the case for marriage equality to the religious groups that provided much of the support for the measure.

"There's no road to success that doesn't go through religion-based homophobia," said the Rev. Lindi Ramsden of the Unitarian Universalist Legislative Ministry. "This is a community that's very good at talking to ourselves. Now we need to talk to others."

The results of the Nov. 4 election shocked many in the lesbian, gay, bisexual and transgender community, who never believed Californians would vote 52 percent to 48 percent to eliminate the right to same-sex marriage. Since the election, rallies and marches against Prop. 8 have brought hundreds of thousands of people out into the streets across the nation.

Even though the election is over, the protests send an important message to Californians, said Mike

Bennett of Sacramento, who was at the rally with his partner and their two children.

"We got complacent, and a lot of us wish we'd done more of this before people went out and voted," he said. "But it just seems completely obvious that our household doesn't affect anyone else's household."

It is important to show California how many people care deeply about the same-sex marriage issue, Kors said.

"To go invisible after having our rights were taken away would have been giving up," he added.

Protesters filled much of the lawn beyond the Capitol steps, carrying homemade signs with messages like "What's so scary about our love?" and "Give tolerance a chance." Vendors walked through the crowd, selling gay-rights buttons and rainbow flags.

The crowd was much smaller than the 15,000 to 30,000 organizers originally had advertised or even the scaled-back 10,000 they hoped for this week. But while the rally was talked up in the days after the election, the actual organizing was done on the fly.

"There was a lot of buzz about this, but no real information," said Keegan Killian of California Outreach, one of the organizers. "Our first planning meeting was little more than a week ago."

The event featured some big-name speakers, such as civil rights attorney Gloria Allred, comedian Margaret Cho and state Sen. Darrell Steinberg, D-Sacramento, who will take over as leader of the state Senate next month.

While the crowd was peaceful and relaxed, there were plenty of hot words from the speakers, many of them aimed at the people and organizations who backed Prop. 8.

Tyler, a longtime activist for lesbian rights, argued that same-sex marriage opponents have no right to complain about any physical and verbal attacks they've encountered since election day.

"Get over it," she said. "It's easier to wash a paint stain off a church than to take off the stain they left on the California Constitution."

Cho, whose comedy routines are anything but G-rated, provided a song she wrote slamming Mormons for their support of the measure, ending with a chorus suggesting that voters not let the Mormons get away with what they did.

As has been the case at almost all the postelection rallies, supporters of Prop. 8 were invisible Saturday, declining to respond to the attacks or stage counterprotests.

"Getting involved in protests would undermine our point that the election is over and we won," said Andrew Pugno, an attorney for the Prop. 8 effort. "It seems pretty basic to me."

But for the opponents of Prop. 8, the election might be over but the battle continues.

"Anything worth fighting for oftentimes is a struggle," Steinberg said. "But the arc of history moves

forward, it doesn't move backward. Prop. 8 is only a temporary setback."

E-mail John Wildermuth at jwildermuth@sfchronicle.com.

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Hollywood and the same-sex marriage fight

By Rachel Abramowitz, and Tina Daunt,
November 23, 2008

Should there be boycotts, blacklists, firings or de-facto shunning of those who supported Proposition 8?

That's the issue consuming many in liberal Hollywood who fought to defeat the initiative banning same-sex marriage and are now reeling with recrimination and dismay. Meanwhile, activists continue to comb donor lists and employ the Internet to expose those who donated money to support the ban.

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Already out is Scott Eckern, director of the nonprofit California Musical Theatre in Sacramento, who resigned after a flurry of complaints from prominent theater artists, including "Hairspray" composer Marc Shaiman, when word of his contribution to the Yes on 8 campaign surfaced.

Other targets include Film Independent, the nonprofit arts organization that puts on both the Los Angeles Film Festival and the Spirit Awards; the Cinemark theater chain; and the Sundance Film Festival.

In Film Independent's case, the board has defended the continued employment of Richard Raddon, the Mormon director of the L.A. Film Festival who donated $1,500 to support Proposition 8. Cinemark is under siege because Chief Executive Alan Stock gave $9,999 to support the same-sex marriage ban. And in a sign of a powerful ripple effect, Sundance, perhaps the American institution that has done the most to support gay filmmakers and gay cinema, is being targeted because it screens films in a Cinemark theater.

For many in Hollywood, the Proposition 8 backlash represents a troubling clash of free speech, religious beliefs and the right to fight intolerance; many supporters of same-sex marriage view the state constitutional amendment as codified bigotry, a rollback of civil liberties for gays and lesbians.

Raddon has been a particularly polarizing figure because Film Independent's board includes many independent film stalwarts, including Don Cheadle, Forest Whitaker, Fox Searchlight President Peter Rice and Oscar-winning writer Bill Condon. One of the group's explicit missions is to promote diversity.

Last week, Raddon offered to resign. According to one board member, a conference call was hastily arranged, and after much discussion the board voted unanimously to keep him.

Yet the anger continues to stew.

"There is still roiling debate within the organization," says distributor Howard Cohen, an advisor to the film festival who is gay. "Is it OK to let this go? There are a lot of gay people who work at Film Independent. The issue has not been closed."

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Hollywood and the same-sex marriage fight

By Rachel Abramowitz, and Tina Daunt,
November 23, 2008

No one is certain how the current protest will affect Film Independent's Spirit Awards in the spring, a popular event recognizing work that "challenges the status quo." And there are already indications the Los Angeles Film Festival could be affected.

Gregg Araki, director of the critically acclaimed gay cult hit "Mysterious Skin" and an influential figure in "new queer cinema," has said he won't allow his films to be shown there, while others, such as "Milk" producers and gay activists Dan Jinks and Bruce Cohen, say they're going to "study in depth all the facets of our specific situation before making a decision."

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Araki says Raddon should step down. "I don't think he should be forcibly removed. The bottom line is if he contributed money to a hateful campaign against black people, or against Jewish people, or any other minority group, there would be much less excusing of him. The terrible irony is that he runs a film festival that is intended to promote tolerance and equality."

Others are leery of punishing free speech, even if they consider it hateful. "I can't quite stomach the notion that you fire somebody because of what they believe. It doesn't feel right to me," says Christine Vachon, a pillar of gay cinema who produced such films as "Boys Don't Cry" and "Far From Heaven."

Raddon declined to comment, but Dawn Hudson, executive director of Film Independent, says, "Are we happy with his donation? No. But he has a right to his religious and personal beliefs.

"The very cornerstone of our organization is diversity, and diversity includes sexual orientation. Rich's actions have always been in accordance with those principles," she said.

Condon, the gay writer-director of "Dreamgirls" and a Film Independent board member, offered this retort to what he calls the "off-with-his-head" crowd: "If you're asking, 'Do we take discrimination against gays as seriously as bigotry against African Americans and Jews?' . . . the answer is, 'Of course we do.' But we also believe that some people, including Rich, saw Prop. 8 not as a civil rights issue but a religious one. That is their right. And it is not, in and of itself, proof of bigotry."

Fury is certainly percolating through the gay community, fomented largely through the Web. Younger advocates -- not necessarily from Hollywood -- have been using Facebook and YouTube to get the message out. What began as a kind of cyber-venting is mushrooming into a new kind of viral protest movement, including the latest protest of Proposition 8 in Hollywood today, which was largely publicized via Facebook.

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Hollywood and the same-sex marriage fight

By Rachel Abramowitz, and Tina Daunt,
November 23, 2008

And there remains a distinct contingent of same-sex marriage supporters who are adamant about retribution. One is Chad Griffin, a political advisor to Hollywood executives who says, "A dollar to the yes campaign is a dollar in support of bigotry, homophobia and discrimination. There are going to be consequences. Any individual who has held homophobic views and who has gone public by writing a check, you can expect to be publicly judged. Many can expect to pay a price for a long time to come."

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Still, film companies are typically wary of involving themselves in causes, particularly those that advocate boycotts, because they know how vulnerable their products are to similar initiatives by well-organized groups on the religious right. For eight years, the Southern Baptist Convention boycotted the Walt Disney Co. for extending employee benefits to same-sex partners and urged its members not to patronize the theme parks and Disney products. Films with religious subjects -- most notably "The Last Temptation of Christ" -- have also sparked protests.

Bruce Cohen, one of the producers of "Milk," -- which lands in theaters next week and traces the life and death of California's first openly gay elected official (San Francisco Supervisor Harvey Milk) -- and a leader of the No on 8 campaign in Hollywood, suggests everyone should proceed with caution.

"You need to draw a very specific distinction between the cases where it's the actual owner of the company who put money into a cause. If it's an employee, it's a different discussion. That becomes a freedom of speech issue," he says. "People should personally always have the right to express their own opinions even if that means getting out their checkbook."

And in fact, Focus Features, which is distributing "Milk," still intends to play the film in Cinemark theaters despite calls for a boycott.

In particular, the notion of boycotting Sundance, which seems to have originated with the liberal Americablog, has picked up little traction thus far within the Hollywood community.

"I don't feel the Sundance Film Festival deserves our ire or our censor," says Howard Cohen. "It's an incredible force for good. I know where they are on the issues, and there's no evidence they supported Yes on 8."

"If there is one festival that has supported queer cinema from the start, it's Sundance," says Marcus Hu, president of Strand Releasing, which has released many gay-themed films. "Sundance has been, first and foremost, people who have been discovering and fostering young gay talent."

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Hollywood and the same-sex marriage fight

By Rachel Abramowitz, and Tina Daunt,
November 23, 2008

In part, Hollywood's distress is a reflection of its guilty conscience about Proposition 8's passage. Many feel that they were asleep at the wheel, preoccupied with Barack Obama's candidacy and winning larger congressional majorities for the Democrats. "Many straight people really don't understand it's a civil rights issue," says Vachon. "We didn't do our job well enough. We need to do it better."

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The No on 8 campaigns simply didn't have a high profile in Hollywood until the very end, when people realized that the effort was in trouble. At that point, the No on 8 forces enlisted Griffin, who worked in the Clinton White House, and a new team of advertising consultants to turn things around. A number of high-profile celebrities donated to the cause, among them Steven Spielberg and Brad Pitt. But it wasn't enough.

"What the passage of Prop. 8 did is stir the soul of the people in the gay community," says publicist-activist Howard Bragman. "It took what had been a top-down movement and made it a grass-roots movement."

Abramowitz and Daunt are Times staff writers.

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VenturaCountyStar

Prop. 8 foes aim their ire at Lassen's stores

Owner backed ballot measure

By Kevin Clerici
Wednesday, November 19, 2008

As a vegetarian, Jessica Pollack frequently turned to Lassen's Natural Foods & Vitamins in Ventura for its organic and dairy-free products.

"It's been a saving grace," she said.

So the 26-year-old lesbian, who got married in August, said she was shocked and angry to learn the store's owner contributed $27,500 to the campaign for Proposition 8, a state constitutional ban on same-sex marriage approved by voters this month.

"I haven't been back since," said Pollack, who has urged her friends to shop elsewhere. "I couldn't understand why they would be supporting this. It's incredibly disappointing and hurtful."

Although Ventura County's largest gay and lesbian organization has not organized a protest against the store, some activists have independently targeted it. Handmade signs calling for people to boycott Lassen's were on display at a rally of some 600 people Saturday in downtown Ventura, and a small group protested Sunday outside the Lassen's store in Thousand Oaks.

Gay activists say the backlash against Lassen's and other businesses that financially supported Proposition 8 is likely to intensify, fueled by text messages, e-mails and calls for action on Web sites such as Facebook and MySpace.

"There is definitely a movement to educate people," said J.J. Wilner of Ventura, who criticized the owner of the Lassen's store in Ventura forpromoting a position that he said conflicts with the egalitarian beliefs of many customers.

"People have always seen Lassen's as progressive and forward-thinking," said Wilner, co-founder of Community Organized for Liberty, Opportunity and Respect, or COLOR, a gay-straight alliance. "I know a lot of customers — gay and straight — who felt blindsided."

State campaign finance records show the Ventura store contributed separate checks of $25,000 and $2,500 to Proposition 8. The Lassen's in Camarillo also contributed $3,000 to the proposition, and the store in Simi Valley $1,000. Election law allows business owners to contribute as much as they want to ballot initiatives.

Other businesses targeted

In July, gay rights advocates called for a boycott of two San Diego hotels because owner Doug Manchester contributed $125,000 to Proposition 8. And since the Nov. 4 election, California has seen an outpouring of demonstrations against passage of Proposition 8.

Sign-waving protesters have massed outside churches and temples, as well as a Los Angeles Mexican restaurant where employees contributed to the proposition. Gay activists have begun publishing lists online of individuals and organizations that donated money to Proposition 8.

Dentists, accountants and veterinarians who gave a few thousand dollars are listed alongside major donors like the Container Supply Co. of Garden Grove, which gave $250,000. The artistic director at the California Musical Theater, the state's largest nonprofit musical theater company, quit last week amid protests over his $1,000 donation to the Yes on 8 campaign.

National organizers are planning a Dec. 10 "Day Without a Gay" that encourages supporters to volunteer instead of going to work, and a Jan. 10 coast-to-coast protest.

"A lot of these events are going to be popping up, and many are from individual and grass-roots efforts being born from text-message blasts and the Internet," said Jay Smith, director of the nonprofit Ventura County Rainbow Alliance, a support center for lesbian, gay, bisexual, transgendered and HIV/AIDS-affected individuals.

Smith said he has discouraged people from protesting in front of Lassen's, but some are angry.

"There are a lot of people in our community who have been continuous supporters of Lassen's who were shocked to see that much money going to defeat our civil rights," he said.

Word spreads via e-mail

Kasie Vinson, a longtime patron of Lassen's, sent an e-mail to nearly 200 local Democratic volunteers detailing the store's campaign contributions. Vinson, who is straight, was stunned to learn the contributions were collectively the largest in Ventura County for Proposition 8, according to campaign finance forms.

"I personally do not feel comfortable knowing that I contributed even a penny's worth to writing discrimination into the constitution," she said in the e-mail.

Owner Peter Lassen, who has held a business license for the store since 1986, did not respond to repeated calls seeking comment.

Store manager Scott Parbell said the campaign donations were private contributions and were not tied to store operations, even though the donations were listed under the store's name on the state finance forms.

"We have an extremely diverse staff that do not necessarily share the same views," Parbell said. "We're all about providing good customer service, natural foods and vitamins, and what the owner chooses to do with his money is his choice, and we don't have any say over it."

Family defends contributions

Lassen is a member of The Church of Jesus Christ of Latter-day Saints, which opposes same-sex marriage, and it was well within his rights as owner to put his money behind his beliefs, said his niece Else Endecott. The store in Simi Valley is the only one of eight with the Lassen name that is not owned by a Lassen family member, said Endecott, who personally contributed $250 to Proposition 8.

"We have a lot a gay and lesbian customers. We have nothing against them," said Endecott, who manages the Lassen's store in Camarillo, which is owned by her father, John Lassen. "To us, it (same-sex marriage) is a moral issue, not a civil issue."

Business at the Camarillo store has not been affected, she said, although she acknowledged her uncle has

received some backlash, which she felt was unfair. She wasn't surprised he has avoided interviews, because the media have unfairly targeted Mormons for their beliefs and advocacy, she said.

"Sadly, people feel like they have to blame somebody," she said. "It's not just Mormons who voted for this. It was passed by a majority of Californians.

"We love our gay and lesbian customers," she said. "If they don't want to shop at our store, then that's their choice. I can respect that, but they should respect my family's beliefs, too. It's pretty sad how mean people can be."

Sonja Eddings Brown of ProtectMarriage.com, a Web site created to support Proposition 8, said boycott threats against business donors have been widespread, and some have reported losses.

Approach could backfire

Beverly Kelley, an author and communications professor at California Lutheran University in Thousand Oaks, said protesting won't likely change Lassen's mind. In fact, it could have the opposite effect, she said.

"The protesters against this need to learn there could be a backlash against them," Kelley said. "Was this $27,500 contribution what turned the tide? No. It was all the new voters, the minority voters, the African-American voters who came out in record numbers and put Obama over the top and put this initiative over the top."

Same-sex marriage backers, she said, should focus on figuring out why people voted as they did. "You have to respect the other side if you want to convince them," she said.

In the parking lot outside the Ventura store recently, longtime customer Christine Burke said she voted against Proposition 8 and was disappointed to learn of Lassen's support, but it wouldn't change her shopping habits. "I believe he has the right to believe in what he believes in," she said. "It's a complex issue."

Shopper Chris Hoover, a Ventura contractor, agreed. "I don't support his point of view," he said, "but I think he has a right to it."

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More Metro news

Gay rights groups to boycott Manchester Grand Hyatt

Owner donated to Proposition 8

By Bill Ainsworth
U-T SACRAMENTO BUREAU

July 10, 2008

Gay rights supporters and their union allies plan to launch a boycott of the Manchester Grand Hyatt because its owner, Doug Manchester, contributed $125,000 to Proposition 8, an amendment to ban same-sex marriage on the November ballot.

Organizers of the campaign, which is expected to be announced at a news conference today, say they believe it is the first time that gay rights supporters have boycotted a business whose owner seeks to ban same-sex marriage.

Leaders will urge the public to avoid the downtown hotel because they say that support for Proposition 8 amounts to unfair treatment of gays and lesbians.

“Manchester's contribution to this anti-marriage initiative is discrimination plain and simple,” said Brigette Browning, president of Unite Here Local 30, which represents 4,500 hotel and restaurant workers.

The Manchester Grand Hyatt is not unionized.

Manchester and campaign officials from Proposition 8 did not return phone calls seeking comment.

In an interview earlier this year, Manchester said that he decided to donate to Proposition 8 because he had heard that schools that teach that marriage is between a man and a woman could be sued for discriminating against gays.

In addition, he said, he was motivated by his strong Catholic faith to believe that marriage is between a man and a woman.

But, he said, that he welcomes gays and lesbians to his hotels and restaurants.

Gay rights leaders say they are not targeting the Hyatt Corp. – which operates the Manchester Grand Hyatt – because the company has a good record in hiring and supporting gays and lesbians. But they are singling out the Manchester property.

In May, California became the second state in the nation to allow same-sex marriage after the state Supreme Court ruled that laws banning it violate the right to marry in the state constitution. A court ruling in Massachusetts legalized same-sex marriage in that state four years ago.

In November, voters will get a chance to overturn the California ruling, if they vote for a constitutional ban under Proposition 8.

Manchester is one of several San Diegans whose large contributions helped put the initiative on the ballot. Others include Mission Valley developer Terry Caster, who gave $162,500, and Robert Hoehn, owner of Hoehn Motors in Carlsbad, who has given $25,000.

Fred Karger, who is helping to organize the boycott and is running an organization opposed to Proposition 8, said he is also urging the public to boycott Manchester's other hotel, the Grand Del Mar.

“This is someone who is giving an exorbitant amount of money to write discrimination into the constitution for the very first time,” he said.

Karger said he hopes the boycott will send a message to other potential contributors to the Proposition 8 campaign.

“Our goal is to create a business loss for people who contribute,” he said. “We want to make it a little uncomfortable.”

The results of the boycott could be watched closely.

In the battle over Proposition 8, both sides will be trying to raise huge amounts of money, nearly $15 million each, to make their case to voters. In 2000, 61 percent of California voters approved Proposition 22, enacting a statutory ban on same-sex marriages. But in late May of this year after the court ruling, the nonpartisan Field Poll found a majority of California voters opposed a constitutional ban and by a slimmer majority for the first time supported same-sex marriage.

Backers of Proposition 8 have predicted that any boycott efforts would fail.

“Support for traditional marriage is a mainstream view,” said Andrew Pugno, an attorney for protectmarriage.com, which supports Proposition 8. “I can't imagine that efforts to boycott businesses with mainstream views are going to be successful.”

In April, once Manchester's contribution became widely known, two gay rights organizations, the Gay and Lesbian Alliance Against Defamation and PlanetOut Inc., moved events they had scheduled at the Manchester Grand Hyatt.

Find this article at:

http://www.signonsandiego.com/news/metro/20080710-9999-1m10boycott.html

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K-60

San Diego | LGBTI / Queer

Rally Against Prop H8: Manchester Grand Hyatt

by Tony Cochran (tcochran [at] unitehere.org)
Tuesday Nov 18th, 2008 5:02 PM

Rally Agaist Hate!

Doug Manchester is one of the leading funders ($125,000) of Proposition 8, a California ballot initiative that discriminates against LGBT couples. While Hyatt may officially disavow Manchester's contributions to Proposition 8 as a personal choice, the fact remains that their multi-million dollar LGBT marketing efforts must be seen as little more than sheer hypocrisy when the revenue this marketing attracts is then funneled into efforts that bite the hand which feeds them. In such a situation, we always have the ability to choose not to feed them any longer.

RALLY @ MANCHESTER HYATT
NOVEMBER 22TH -5:00 P.M.
1 Market Place, San Diego, CA 92101

On July 10th, 2008, a coalition led by the San Diego labor movement and the LGBT community called for a boycott of the Manchester Grand Hyatt, the host site for AERA's 2009 Conference. Manchester's Hyatt has brought the LGBT community UNITE HERE together to fight for equality for gay and lesbian couples and justice for the workers at his Hyatt hotel. Doug Manchester has a history working against both:

· Equality for lesbian and gay couples. Doug Manchester is one of the leading funders ($125,000) of Proposition 8, a California ballot initiative that discriminates against LGBT couples. The California LGBT community faces an extremely difficult fight to prevent an outright ban on their civil right to have legal recognition for same sex couples and equal protection for their families. While Hyatt may officially disavow Manchester's contributions to Proposition 8 as a personal choice, the fact remains that their multi-million dollar LGBT marketing efforts must be seen as little more than sheer hypocrisy when the revenue this marketing attracts is then funneled into efforts that bite the hand which feeds them. In such a situation, we always have the ability to choose not to feed them any longer.
· Justice for Manchester Hyatt workers. Manchester's Hyatt allegedly forces housekeepers to clean more rooms than housekeepers at other Hyatt hotels, including the other Hyatt hotel in San Diego. In 2006, housekeepers began lunch hour protests against working conditions in the hotel, saying that their daily room quota had been increased from 17 to 30 rooms per shift! We have no reason to believe that Manchester has made any workload reductions to address these protests. Across the hotel industry, increasing workloads have put a greater strain on housekeepers; work speedups have led to increasing injury rates. According to the Department of Labor, injury rates for hotel workers are 40% higher than the service sector average. Hotel housekeeper injuries are debilitating. Back injuries, housemaids' knee (bursitis), and shoulder pain can lead to permanent disability. Numerous studies have shown that unreasonable workloads are a serious occupational health issue; here are a few facts that highlight the severity of that problem:
In a recent survey of more than 600 hotel housekeepers in the U.S. and Canada, 91% said that they have suffered work-related pain. Of those who reported workplace pain:
_ 77% said their workplace pain interfered with routine activities.
_ Two out of every three workers visited their doctor to deal with workplace pain.
_ 66% took pain medication just to get through their daily quota.
(UNITE HERE survey results)

http://sleepwiththerightpeople.org

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FOCUS - 7 of 12 DOCUMENTS

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The Miami Herald
Found on Miami.com
The Miami Herald

June 15, 2006 Thursday

SECTION: A; Pg. 1

LENGTH: 810 words

HEADLINE: A church names names of gay-**marriage** foes;
A Jacksonville church published the names of Florida residents who signed a petition backing the ballot initiative to ban same-sex **marriage.**

BYLINE: ALEXANDRA ALTER, aalter@MiamiHerald.com

BODY:

A Florida church launched a campaign this week to identify supporters of a proposed state constitutional amendment to ban same-sex **marriage** by publishing the names and addresses of 400,000 Florida residents in 60 counties.

The Internet campaign by Christ Church of Peace, a nondenominational church in Jacksonville, has been denounced by groups that support a state ballot initiative that defines **marriage** as the union of a man and a woman.

Gary Debusk, pastor of Christ Church of Peace, said the church began the "**Know Thy Neighbor''** effort Monday to encourage dialogue and prevent voter-signature fraud. As the head of a congregation that supports same-sex **marriage,** Debusk said he also wanted to add a new perspective to a debate that he said has been dominated largely by religious conservatives. "It's time for another voice that is Christian to be heard," he said.

The website, knowthy neighbor.org/florida, is linked to the church's home page and contains a searchable database of names. The names on such petitions are part of the public record, according to the Florida Department of State.

Christian groups such as the Fort Lauderdale-based Center for Reclaiming America and the Florida Family Policy Council have denounced the website as a misguided effort to intimidate activists.

PRIVACY ISSUE

"It's a gross invasion of people's privacy," said John Stemberger, president and general counsel of the Florida Family Policy Council, an offshoot of James Dobson's national Christian conservative group Focus on the Family.

A church names names of gay-marriage foes; A Jacksonville church published the names of Florida residents who signed a petition backing the ballot initiative to ban same-sex marriage. The Miami Herald

Stemberger argued that, if Christian conservatives published the names and addresses of gay-rights activists, they would likely be condemned as hatemongers.

"A lot of people would be outraged and say it's a hateful, un-Christian gesture," he said.

Lisa Owens, a nurse who lives in Pasco County, said she was furious when she learned from the Florida Family Policy Council that her name and address had been posted online.

"If somebody wanted to do a hate crime, my address was right there," she said. ``I felt like my privacy had been invaded."

So far, Florida's Department of State had not received any complaints of harassment by people identified on the website.

The **Know Thy Neighbor** campaign, modeled on a similar effort in Massachusetts, may further feed controversy surrounding religious support for a ban on gay **marriage.**

Christian conservatives leading the petition drive say they have faced increasing interference from opponents of the ballot initiative.

Last week, Sunrise police investigated allegations that an off-duty officer harassed Christian volunteers who were collecting signatures for the **marriage** amendment at a Promise Keepers rally. Stemberger, whose group organized the petition effort at the event, said the officer verbally harassed volunteers and stopped them from distributing petitions.

More than 466,000 people have signed petitions supporting a state ban on same-sex **marriage,** zeroing in on the 611,000 signatures required to get the proposed amendment onto the 2008 ballot.

Some political analysts say that while the Internet campaign may deter some people from signing the petition, others will likely be stirred to activism as a result.

A QUESTION OF ANGER

"The actual activists will not be deterred by this. In fact, they might be angered and their anger will make them more zealous," said John Green, a senior fellow in religion and American politics at the Pew Forum on Religion & Public Life.

John Schumpert, a founding member of Christ Church of Peace, said he got the idea for the website last February after reading an article about how gay-rights activists in Massachusetts published the names of residents who supported a gay-**marriage** ban there. After the church board unanimously approved the campaign, church leaders contacted Florida county supervisors of elections and got the information on petition signers. So far, the church has posted names from 60 of 67 counties.

Schumpert said the website isn't meant to encourage people to harass petition-signers. Instead, he hopes it will offer those who oppose a **marriage** amendment the chance to look up friends and family members who signed and engage them in dialogue.

"The information is really there for people to use in a positive manner," he said. ``You cannot legislate to take away someone's rights or permanently deny them rights under the cover of darkness."

Still, some Christians who support gay **marriage** say that publishing names and addresses is going too far.

Garth Thompson, pastor of the Miami Beach Community Church, said that while he favors the legalization of gay **marriage,** he disagrees with the church's tactics.

A church names names of gay-marriage foes; A Jacksonville church published the names of Florida residents who signed a petition backing the ballot initiative to ban same-sex marriage. The Miami Herald

"Even though we are definitely a pro-gay-rights church and an open and affirming church, it seems to me that they have a right to their opinion and a right to privacy," he said. ``It's almost like blackmail."

LOAD-DATE: June 15, 2006

K-62

Backers Of Calif. Gay Marriage Ban Face Backlash

by KAREN GRIGSBY BATES

Interactive: State-By-State Look At Gay Marriage

March 5, 2009

text size A A A

Since California voters passed a ban on gay marriage, some supporters of the measure have found themselves squarely in the bull's-eye of angry gay rights activists.

It's no secret who gave money for and against the controversial amendment to the state's constitution, known as Proposition 8. California's secretary of state publicized the lists of contributors, which were picked up by local media and Web sites.

And in the aftermath of a contentious campaign, protests followed. In Los Angeles, would-be patrons of a popular Tex-Mex restaurant were greeted by furious protestors like John Dennison.

"El Coyote — millions in gay margarita money funding hatred," Dennison yelled during the protest. "Boycott El Coyote!"

The restaurant owner's daughter, Margie Christofferson, a faithful Mormon, had made a modest $100 contribution to the "Yes on 8" campaign — and the restaurant's gay patrons, like Edward Stanley, felt betrayed.

"I won't be eating here," Stanley said.

Business dipped about 30 percent at the height of the protest, and it still hasn't returned to pre-protest levels. Several members of the restaurant's staff — including many of its gay employees — have seen their hours cut back in response. And Christofferson, who managed the restaurant, has resigned.

Others Feel The Heat

In Sacramento, the owners of Leatherby's Family Creamery found themselves part of the backlash when *The Sacramento Bee* printed the list of contributors. Dave Leatherby, a devout Roman Catholic father of 10, says he was responding to a direct request from his bishop to give generously.

"We gave $20,000 for Yes on Proposition 8," he says.

And once that was known, retaliation was swift. "We soon started getting very nasty e-mails and letters and phone calls by the hundreds," he says.

Leatherby says he was mystified, because the Creamery had always enjoyed good relations with the gay and lesbian community.

And he says something interesting happened when demonstrators arrived outside his shop: Business went up, instead of down. "The day they picketed us, there were about 15 picketers, and that day we had people waiting two hours to get into our restaurant for four or five hours," he says.

Not every backlash story ends that way.

Richard Raddon, director of the Los Angeles Film Festival, and Scott Eckern, director of the California Musical Theater in Sacramento, are devout Mormons. Both made contributions to Yes on 8, and both got demands for their resignations from gay rights protestors. They quit so their organizations wouldn't face further controversy. Ironically, the film festival has been instrumental in introducing works by gay and lesbian filmmakers to a broader audience — and the musical theater included works by gay playwrights and composers.

Attempt To Intimidate?

"This seems to be an effort to indiscriminately go after anyone who contributed money, regardless of their position on gay issues," says Frank Schubert, spokesman for the Yes on 8 campaign. He says the backlash has endangered individuals who exercised their constitutional right to freedom of religion.

"I think that overall the attempt here is to intimidate and punish people so that they are less inclined to speak out in the future," he says.

And it's given rise to charges that as gay rights advocates tried to change public opinion, some stepped over the line and turned their protest into a witch hunt.

K-63

4 of 12 DOCUMENTS

Copyright 2009 The Salt Lake Tribune
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The Salt Lake Tribune

February 12, 2009 Thursday

SECTION: BREAKING; Business

LENGTH: 500 words

HEADLINE: Gay-rights group, **Garff** Automotive meet; boycott goes on

BYLINE: By Tony Semerad The Salt Lake Tribune

BODY:

A boycott of one of Utah's most prominent car dealers remains in place for now, in spite of what both sides described Thursday as an amicable and productive face-to-face meeting aimed at resolving it.

John **Garff,** president of Salt Lake City-based Ken **Garff** Automotive Group, and Fred Karger, head of Californians Against Hate, both said a resolution to the conflict was in the works, after a two-hour meeting on Wednesday.

The California group has called for a boycott of 53 **Garff** dealerships across six states, including California and Utah, in retaliation for a $100,000 campaign donation made by Katharine **Garff,** matriarch of the **Garff** family, in support of Proposition 8, last year's successful initiative to ban same-sex marriage.

Katharine **Garff,** who was out of town Thursday and unavailable for comment, is company president John **Garff's** mother. She made the donation to the pro-Prop 8 group ProtectMarriage.com, a week before the Nov. 4 election, according to filings with the California Secretary of State.

Karger and John **Garff** said they had agreed to keep the substance of their settlement discussions confidential for now, but both confirmed that Karger was drafting a proposal for steps the company might take to resolve the boycott, following the pair's meeting late Wednesday at **Garff** offices.

"Fred and I focused on common ground, and there is plenty of common ground," **Garff** said of their meeting, adding that the exchange included details of the company's extensive history of support for Utah's **gay** and lesbian community.

Karger called the meeting with **Garff** "a good healthy dialogue" and said he hoped his call for customers to stay away from **Garff** dealerships could be withdrawn soon, though he refused to be specific about a time frame.

Karger said the group's Internet site, boycottkengarffautomotive.com, and other Internet-based efforts would remain active until final details of the settlement were worked out.

"This is a civil rights issue," Karger said.

In addition to having a nondiscriminatory policy on hiring and employment, **Garff** Automotive is an annual donor to the pro-**gay** rights Human Rights Campaign and has donated vehicles to the Utah Pride parade, along with a range of other diversity-promoting causes, **Garff** said.

"Fred learned some things I don't think he knew," **Garff** said.

Jerry Rapier, Utah's representative on the Human Rights Campaign's national board of governors, confirmed that annual donations from the **Garff** company made up a sizable share of corporate largess for the group's banquet and silent auction.

Noting that he was expressing his personal view, Rapier said the boycott call "offends me and seems shortsighted."

Garff and his father, former Utah House Speaker and Salt Lake Olympic organizer Bob **Garff,** have both characterized Katharine **Garff's** donation to Prop 8 -- the fifth-largest made by any Utahn -- as a personal gesture, unrelated to the company.

"We are a politically neutral company and we always have been," John **Garff** said.

tsemerad@sltrib.com

GRAPHIC:

LOAD-DATE: February 12, 2009

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FOCUS - 1 of 4 DOCUMENTS

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The San Diego Union-Tribune

May 9, 2009 Saturday

SECTION: LOCAL; Pg. B-5

LENGTH: 460 words

HEADLINE: Hotelier **Manchester** offering $125,000 to **gay,** lesbian groups

BYLINE: Matthew T. Hall, STAFF WRITER

DATELINE: DOWNTOWN SAN DIEGO

BODY:

DOWNTOWN SAN DIEGO -- San Diego hotelier Doug **Manchester** offered $125,000 in cash and hotel credit to **gay** and lesbian groups yesterday, more than a year after contributing an equal amount to the successful campaign to ban **gay** marriage statewide.

The offer won't end a 10-month boycott by **gay**-rights supporters and their union allies of **Manchester's** three hotels, including the downtown Grand Hyatt. It was announced by a **Manchester** employee at the International **Gay** and Lesbian Travel Association convention in Toronto.

In an interview after his announcement, Kelly Commerford, marketing director for the **Manchester** Grand Hyatt, said **Manchester** is trying to say "he made the mistake from the standpoint of offending the **(gay)** community as it relates to everyone thinking that he is anti-**gay** and homophobic."

Manchester is a devout Catholic who says he is against **gay** marriage, not **gays** and lesbians.

"All I'm doing is clarifying what I've said," **Manchester** said yesterday. "Our **gay** and lesbian employees have contributed enormously to our success. We're certainly in support of domestic partnerships and civil unions."

He declined to elaborate further, deferring to crisis-management consultant Howard Bragman. Bragman said that **Manchester's** views on **gay** marriage are no different from President Barack Obama's, but that the hotelier attracts "more heat."

"Doug **Manchester** could save a busload full of schoolchildren from going over a cliff, and certain people would find something to criticize about it," Bragman said.

Fred Karger formed Californians Against Hate last July to target major donors who backed Proposition 8, the **gay**-marriage ban. He said the boycott launched by his group will continue, and he criticized **Manchester's** offer of $100,000 in hotel credit.

"The only way someone could take advantage of that credit is to break the picket line," he said. "It's blood money. I'm deeply offended by it."

Karger said Commerford told him yesterday that the hotel has lost $7 million in business because of the boycott. Neither Commerford nor Bragman would comment on the hotel's loss of business.

Bragman said **Manchester's** move was not meant to be divisive.

"What you need to understand is like almost every not-for-profit organization in this country, **gay** and lesbian groups are hurting," he said. "They don't have the money they did, and they don't have the resources they did. They don't have the endowments they once did. They're looking for places to hold fundraisers and places to meet. I think that our actions are very upfront."

Bragman said **Manchester** doesn't yet know how to distribute the money, only that **gay** and lesbian nonprofits must request it. He said meetings with local **gay**-rights groups will be arranged for that purpose, but he didn't know when.

LOAD-DATE: May 11, 2009

K-65

The New York Times

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SAN FRANCISCO — In many ways it is a typical map, showing states, highways, cities and streets.

But also dotting the online display are thousands of red arrows, marking spots from Bryn Mawr, Pennsylvania, to Jamacha, California, identifying the addresses of donors who supported Proposition 8, which outlawed same-sex marriage in California.

It is exactly those arrows that concern supporters of the measure, who say they have been regularly harassed since the election - with threatening e-mail messages and sometimes with boycotts of their businesses.

"Some gay activists have organized Web sites to actively encourage people to go after supporters of Proposition 8," said Frank Schubert, the campaign manager for Protect Marriage, the leading group behind the proposition. "And giving these people a map to your home or office leaves supporters of Proposition 8 feeling especially vulnerable. Really, it is chilling."

So chilling, apparently, that supporters have filed suit in U.S. District Court in Sacramento seeking a preliminary injunction against a state election law that requires donors of $100 or more to disclose their names, addresses, occupations and other personal information. In particular, the suit seeks to stop the final filing for the 2008 election, which is due Jan. 31. That filing includes donations made in the closing days of the campaign, when the proposition surged to victory.

James Bopp Jr., a lawyer from Indiana who filed the lawsuit on behalf of Protect Marriage, said the harassment of Proposition 8 supporters violated their constitutional rights of free speech and assembly.

"The cost of transparency cannot be discouragement of people's participation in the process," said Bopp, who has argued several prominent cases challenging campaign-finance laws in California and other states. "The highest value in the First Amendment is speech, and some amorphous idea about transparency cannot be used to subvert those rights."

The election law in question, the Political Reform Act of 1974, was approved by California voters as Proposition 9, and gay rights advocates say there is rich irony in supporters of Proposition 8 opposing the earlier ballot measure.

"They believe in the will of the people if it's in tune with what they believe," said Jennifer Pizer, marriage project director of Lambda Legal, the gay rights legal organization, in Los Angeles.

Opponents of Proposition 8 are also suspicious of the intent of trying to prevent donors from being identified. "Do they want to hide something?" said Shannon Minter, legal director of the National Center for Lesbian Rights in San Francisco.

Schubert insisted that there was "no smoking gun" and that the filing would show only "modest in-kind contributions" from the Church of Jesus Christ of Latter-day Saints. Church members contributed millions to the "Yes on 8" campaign, and the California Fair Political Practices Commission is investigating accusations that the Mormon leadership neglected to report a battery of nonmonetary contributions, including phone banks, a Web site and online commercials on the behalf of Proposition 8.

The lawsuit is just one part of the continuing legal wrangling over Proposition 8, whose constitutionality is being reviewed by the State Supreme Court. The court legalized same-sex marriage in May, a decision that was overturned by Proposition 8.

The court is expected to hear arguments on the proposition as soon as March and will probably also decide the fate of some 18,000 same-sex marriages that were performed in the state.

Several prominent groups filed or signed on to briefs in recent days expressing opposition to Proposition 8, including civil rights and women's rights organizations, labor and religious groups, and Google, which created the mapping technology.

In his suit, which is also being argued by the Alliance Defense Fund, a conservative legal group, Bopp alleges a wide range of acts against supporters, including "death threats, acts of domestic terrorism, physical violence, threats of physical violence, vandalism of personal property, harassing phone calls, harassing e-mails, blacklisting and boycotts."

In one instance, a supporter found a flier in his neighborhood calling him a bigot and listing his employer. In another, white powder was sent to a Mormon temple and a facility run by the Knights of Columbus, the Catholic group, which contributed more than $1 million in support of Proposition 8. Other supporters, including the director of the Los Angeles Film Festival, Richard Raddon, have been forced to resign because of their backing of the measure, while some businesses have been boycotted because of Proposition 8.

Bopp also said that the level set under California's campaign law for public disclosure, anything above $100, was too low.

"There certainly would be an amount that would influence more than a few voters," he said. "But it's way above $100."

Opponents of Proposition 8 have condemned any attacks on supporters but noted that those claiming harassment were already protected by laws. "Violence and vandalism are illegal, and

those laws should be enforced," Pizer said. "And sadly people on both sides of this issue have experienced some of that."

John Vincour is on vacation. His Politicus column will resume next Tuesday.

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THE REGION; L.A. college is sued over speech on gay marriage; Student opposed to the unions says teacher reacted improperly. Los Angeles Times February 16, 2009 Monday

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Los Angeles Times

February 16, 2009 Monday
Home Edition

SECTION: CALIFORNIA; Metro Desk; Part B; Pg. 3

LENGTH: 623 words

HEADLINE: THE REGION;
L.A. college is sued over speech on gay marriage;
Student opposed to the unions says teacher reacted improperly.

BYLINE: Gale Holland

BODY:

A classroom dispute at Los Angeles City College in the emotional aftermath of **Proposition 8** has given rise to a lawsuit testing the balance between 1st Amendment rights and school codes on offensive speech.

Student Jonathan Lopez says his professor called him a "fascist bastard" and refused to let him finish his speech against same-sex marriage during a public speaking class last November, weeks after California voters approved the ban on such unions.

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

Lopez also said the teacher threatened to have him expelled when he complained to higher-ups.

In addition to financial damages, the suit, filed last week in U.S. District Court in Los Angeles, seeks to strike down a sexual **harassment** code barring students from uttering "offensive" statements.

Jean-Paul Jassy, a 1st Amendment lawyer in Los Angeles, said a number of cases have explored the tension between offensive speech and the expression of religious views. Often, he said, the decision depends on the specifics of the situation.

"Free speech really thrives when people are going back and forth, disagreeing sometimes and sometimes finding things each other says offensive, but there are limits, particularly in a school setting," Jassy said after reviewing the lawsuit.

Lopez, a Los Angeles resident working toward an associate of arts degree, is described in the suit as a Christian who considers it a religious duty to share his beliefs, particularly with other students. He declined to comment. Matteson could not be reached.

Lopez is represented by the Alliance Defense Fund, a Christian legal organization based in Scottsdale, Ariz., and co-founded by evangelical leader James Dobson of Focus on the Family. The group also advised proponents of **Proposition 8** and sued, unsuccessfully, to stop the release of the names and addresses of donors, who said they had been harassed during the weeks of demonstrations that followed the measure's passage.

Alliance staff counsel David J. Hacker said Lopez was a victim of religious discrimination.

"He was expressing his faith during an open-ended assignment, but when the professor disagreed with some minor things he mentioned, the professor shut him down," Hacker said. "Basically, colleges and universities should give Christian students the same rights to free expression as other students."

Hacker said Alliance filed a similar suit in 2006 against Missouri State University over the school's attempt to discipline a Christian social-work student who refused to support adoptions by same-sex couples. The college settled the suit by, among other things, ordering an external review of the social-work program, Hacker said.

The Los Angeles Community College District's offices were closed Friday for the Presidents Day holiday, and the general counsel,

Camille A. Goulet, could not be reached. But in a letter to Alliance, the district said it deemed Lopez's complaint "extremely serious in nature" and had launched a private disciplinary process.

In the letter, Dean Allison Jones also said that two students had been "deeply offended" by Lopez's address, one of whom stated that "this student should have to pay some price for preaching hate in the classroom."

Hacker said the district's response was inadequate.

"What they didn't do was ensure this wouldn't happen to other students," he said. "The dean accused Jonathan of offending other students."

The suit names the Los Angeles Community College District, which operates nine campuses including L.A. City College; its board of trustees; Matteson; and various administrators. Lopez is asking for a jury trial.

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gale.holland@latimes.com

LOAD-DATE: February 16, 2009

Source: **Combined Source Set 20 - Major Newspapers**
Terms: proposition 8 /s donor* and date geq (09/14/2008) (Edit Search | Suggest Terms for My Search)
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Gay Activists Protest Mormons in NYC

NYC (AP) -- Carrying signs reading "Love not H8" and "Did you cast a ballot or a stone?", a large crowd of gay-marriage supporters gathered outside a Mormon temple to protest the church's endorsement of a same-sex marriage ban in California.

The rally Wednesday night outside The Church of Jesus Christ of Latter-day Saints temple came hours after gay couples exchanged vows for the first time in Connecticut amid cheers and tears of joy.

The milestone did not ease the sting of a major loss for gay-marriage supporters last week. Gay activists planned protests across the country over the vote that took away their right to wed in California.

In the Upper West Side of Manhattan, demonstrators chanted "Shame on you!" outside the temple. Leaders of the Mormon church had encouraged members to support passage of California's Proposition 8, a referendum banning same-sex marriage.

"I'm fed up and disgusted with religious institutions taking political stances and calling them moral when it's nothing but politics," said Dennis Williams, 36. "Meanwhile they enjoy tax-free status while trying to deny me rights that should be mine at the state and federal level."

Church spokesman Michael Otterson said that while citizens have the right to protest, he was "puzzled" and "disturbed" by the gathering since the majority of California's voters had approved the amendment.

"This was a very broad-based coalition that defended traditional marriage in a free and democratic election," Otterson said, referring to the numerous religious and social conservative groups that sponsored Proposition 8.

Organizers of the rally estimated at least 10,000 people participated. Police said they could not give a crowd estimate.

Gay-marriage advocates said they were planning nationwide demonstrations this weekend in more than 175 cities and outside the U.S. Capitol. A Seattle blogger was trying to organize simultaneous protests outside statehouses and city halls in every state Saturday.

Earlier in Connecticut, Jody Mock and Elizabeth Kerrigan emerged from Town Hall in West Hartford to the cheers of about 150 people and waved their marriage license high. The couple led the lawsuit that overturned the state law.

"We feel very fortunate to live in the state of Connecticut, where marriage equality is valued, and hopefully other states will also do what is fair," Kerrigan said.

The Connecticut Supreme Court ruled on Oct. 10 that same-sex couples have the right to wed rather than accept a 2005 civil union law designed to give them the same rights as married couples. A lower-court judge entered a final order permitting same-sex marriage Wednesday morning. Massachusetts is the only other state that allows gay marriages.

Connecticut officials had no information Wednesday on how many marriage licenses were issued to same-sex couples. According to the state public health department, 2,032 civil union licenses were issued between October 2005 and July 2008.

Like the highest courts in Connecticut and Massachusetts, the California Supreme Court ruled this spring that same-sex marriage is legal. After about 18,000 such unions were conducted in California, however, its voters last week approved Proposition 8, a constitutional amendment.

Gay rights groups said Wednesday they may ask California voters to overturn the ban on same-sex marriage if legal challenges to Proposition 8 are unsuccessful.

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The California vote has sparked protests in several states, many targeting Mormon churches. Some have been vandalized.

Activists also are aiming boycotts and protests at businesses and individuals who contributed to the campaign to pass Proposition 8.

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The San Diego Union-Tribune

February 13, 2009 Friday

SECTION: LOCAL; Pg. B-1

LENGTH: 611 words

HEADLINE: Clinton won't cancel talk at boycotted hotel;
Owner supported **gay**-marriage ban

BYLINE: Jeff McDonald, STAFF WRITER

DATELINE: DOWNTOWN SAN DIEGO

BODY:

DOWNTOWN SAN DIEGO -- Despite pressure from supporters of same-sex marriage and organized labor, former President Bill Clinton will speak as planned at a San Diego hotel whose owner gave money to help pass Proposition 8.

Union leaders, political activists and an elected official issued an open letter to Clinton yesterday, urging him to reconsider delivering a speech Sunday at the **Manchester** Grand Hyatt.

The hotel has been the target of a boycott since July, after owner Doug **Manchester** donated $125,000 to the successful campaign to ban same-sex marriage in California.

Union officials also accuse **Manchester** of requiring more work of maids and other employees than most hotels.

"Please do not violate our boycott," states the letter, signed by San Diego City Councilman Todd Gloria, labor leader Lorena Gonzalez and six others. "Please do not speak at the **Manchester** Hyatt."

But a spokesman for the former president said Clinton will stick to his plan to speak before 2,500 members of the International Franchise Association.

Clinton "feels like he has an obligation to the people who invited him to speak," spokesman Matthew McKenna said yesterday. "He's obviously sympathetic to this cause. I don't think you can name a leader in the world who has done more to advance **gay** and lesbian issues."

McKenna noted that Clinton campaigned against Proposition 8 last year and said that if **Manchester** or the hotel had extended the invitation -- rather than the trade group -- Clinton would not have accepted.

Manchester did not return a call seeking comment.

Some who signed the letter, which notes that other organizations moved meetings and conferences to honor the

boycott, were unhappy when told of Clinton's decision.

"It's shameful and hypocritical that President Clinton wouldn't stand by his principles and honor two groups that he's historically supported -- labor groups and **gay** rights," said Brigette Browning, president of Unite Here Local No. 30.

Cleve Jones, a longtime **gay**-rights activist who founded the NAMES Project/AIDS Memorial Quilt, said Clinton should have known he'd create controversy.

"The boycott has been in effect and very well-publicized since July," said Jones, who also signed the letter. "He's had ample foreknowledge of the situation."

Supporters of the boycott plan to gather outside the hotel at 11 a.m. Sunday and remain throughout Clinton's scheduled 12:30 p.m. speech.

A spokeswoman for the International Franchise Association said the convention was booked six or seven years ago. She said the trade group has no stance on **gay** marriage or the rally.

"The boycott really is between the hotel and this group," Alisa Harrison said.

Keynote speakers are typically booked up to a year in advance, said Stacy Tetschner, chief executive of the National Speakers Association, a trade group for professional speakers. Top-tier speakers such as Clinton can command fees of $100,000 or more.

"More than likely, it's his handlers that accepted this rather than himself," Tetschner said. "I don't know that the owner of a hotel's personal political beliefs or support is something they would normally research."

Gay-rights leaders have targeted other Yes on 8 contributors, including A-1 Self Storage owner Terry Caster, a San Diegan who gave almost $700,000 to the campaign.

Supporters of Proposition 8 say such donors are being unfairly targeted and that opponents should accept the will of the majority.

The measure passed Nov. 4 with 52 percent of the vote but has since been challenged in court on multiple grounds. The state Supreme Court is to hear oral arguments March 5.

Online:

To read the open letter to Bill Clinton, go to uniontrib.com/more/documents

GRAPHIC: 1 PIC; CAPTIONS: President Clinton will speak Sunday at **Manchester** Grand Hyatt.; PHOTOBY: Associated Press

LOAD-DATE: February 15, 2009

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TIME IN PARTNERSHIP WITH CNN

Monday, Jun. 22, 2009

The Church and Gay Marriage: Are Mormons Misunderstood?

By DAVID VAN BIEMA

Last November, Jay Pimentel began hearing that people in his neighborhood were receiving letters about him. Pimentel lives in Alameda, Calif., a small, liberal-leaning community hanging off Oakland into the San Francisco Bay. Pimentel, who is a Mormon, had supported Proposition 8, the ballot initiative banning same-sex marriage. And that made him a target. "Dear Neighbor," the letter began, "Our neighbors, Colleen and Jay Pimentel" — and it gave their address — "contributed $1,500.00 to the Yes on Proposition 8 campaign. NEIGHBORS SHOULD BE AWARE OF THEIR NEIGHBORS' CHOICES." The note accused the Pimentels of "obsessing about same-sex marriage." It listed a variety of local causes that recipients should support — "unlike the Pimentels."

Pimentel, a lawyer and a lay leader in the small Mormon congregation in Alameda, is markedly even-keeled. Yet the poison-pen note still steams him, even though in May the California Supreme Court validated Prop 8 as constitutional. He is bothered less by the revelation of his monetary contribution, which he stands by, than the fact that the letter's author didn't bother to find out that every other Saturday for 15 years, he or someone else from Alameda's 184-member Mormon ward has delivered a truckload of hot meals to the Midway Shelter for Abused and Homeless Women and Children — one of the organizations the Pimentels allegedly wouldn't support. "The church does a lot of things in the community we don't issue press releases about," he says. "And when people criticize us, we often just take it on the chin. I guess you could say I'm not satisfied with the way we're seen." (See pictures from inside a Mormon ward.)

Across the country, that's the dilemma facing the Church of Jesus Christ of Latter-day Saints. With 13 million members worldwide (by its own count), the LDS is the fourth largest church in the country, the richest per capita and one of the fastest-growing abroad. The body has become a mainstream force, counting among its flock political heavyweights like former Republican presidential candidate Mitt Romney and Democratic Senate majority leader Harry Reid, businesspeople like the Marriotts and entertainers like Glenn Beck and *Twilight* novelist Stephenie Meyer. The passage of Prop 8 was the church's latest display of its power: individual Mormons contributed half of the proposition's $40 million

war chest despite constituting only 2% of California's population. LDS spokesman Michael Otterson says, "This is a moment of emergence." (See pictures of Stephenie Meyer's career.)

But that emergence has its costs. Even as Mormons have become more prominent, they have struggled to overcome lingering prejudices and misrepresentations about the sources of their beliefs. Polls suggest that up to half of Americans would be uncomfortable with a Mormon President. And though the Prop 8 victory was a high-water mark for Mormon political advocacy, it also sparked a vicious backlash from gay-rights activists, some of whom accused Mormons of bigotry and blind religious obedience.

The LDS regards such charges as the product of ignorance. It sees itself as primarily apolitical; on issues on which it has taken a stand, the church's positions have been roughly consistent with other conservative faiths. But Mormon activism, when it occurs, does differ from the American norm in significant ways, because of both the dominating role played by LDS President and Prophet Thomas Monson and the church's remarkable electoral cohesion. After the California Supreme Court's ruling to uphold Prop 8, gay-rights groups announced their intent to return same-sex marriage to the California ballot in 2010, almost challenging the Mormons to respond. By championing the California traditional-marriage initiative so forcefully and successfully the first time, the Mormon church has stepped onto America's next big cultural battleground. But in figuring out if it should pick up the gauntlet again, the Mormons, who feel they have so much else to offer, must consider whether the issue is becoming a referendum on Mormonism itself.

What Mormons Believe

"Our Message for the World," says M. Russell Ballard Jr., one of the 14 apostles just under Monson, "is that we are His children, we lived with Him before we came here ... we're striving to keep His commandments so that when we die we can be entitled to receive all the blessings that the Heavenly Father has for His children." Ballard adds emphatically, "People like to make it complex. But it's really pretty simple."

See the top 10 religion stories of 2008.

See pictures of John 3:16 in pop culture.

Actually, it's pretty complex. Beyond some (extremely) colorful details, there are two radical Mormon theological deviations from conventional Christianity, both of which have at least some bearing on the gay-marriage battle. The first is an expansion of the drama of salvation. In creedal Christianity, Jesus' divinity, incarnation, teachings, death and resurrection are the entire point. Mormons, too, believe in Christ as Saviour and model and are as committed as any other Christians to his emulation. But they also believe we existed prenatally as God's "spirit children," that our earthly life is an interlude for learning and testing and that we continue developing after death. The best Mormons may become in the afterlife parents to their own batch of spirit children. "As Man is, God once was; as God is, Man may become," goes the couplet by the fifth Mormon President, Lorenzo Snow. This unusual scheme underlies Mormon sunniness, industriousness and charity. Says Jana Riess, a comparative-religions expert who converted to Mormonism and is a co-author of Mormonism for Dummies: "There's no other Christian theology as beautifully open to human beings' eternal

potential." (See people finding God on YouTube.)

Gays constitute a notable exception. Some Mormons have a conventional view of homosexuality as sin. But their marriage preference has an additional aspect. The return to God is accomplished by heterosexually founded families, not individuals, and only as a partner in a procreative relationship can a soul eventually create spirit children. "I've had personal experience with gay people, and I weep with them," says official LDS historian Marlin Jensen, but the "context for our being so dogged about preserving the family is that Mormons believe that God is their father and that they have a heavenly mother and that eventually their destiny is to become like that." The alienation felt by gay Mormons was highlighted in 2000, when one of them, 32-year-old Stuart Matis, committed suicide on the steps of the Los Altos, Calif., church headquarters.

The second politically controversial Mormon teaching is the belief in a living, breathing Prophet — in Salt Lake City. Prophets have even more authority than Popes do in Catholicism; among other things, they are able to add to Scripture. Because they make key decisions with their apostles, the model is oligarchic rather than absolute, but it still vests extraordinary influence in Monson, his two counselors and his apostles, who transmit orders downward through the Salt Lake City — based general authorities, regional stake presidents and local pastors called bishops. (See pictures of spiritual healing around the world.)

Mormons bristle at the notion of "blind obedience" to the Prophet. The faith makes much of free will, and each believer divines his path privately with the help of reason, prayer and the Holy Spirit. But most often, the outcome of that process affirms the Prophet's instructions. The combination of free-will rhetoric and de facto obedience produces what Stephen Carter, editor of the independent Mormon magazine Sunstone, calls "people who are psychologically healthy, have a good sense of direction and who are for the most part ready to follow orders."

The Organized Mormon

Richard and Joan Ostling, authors of Mormon America, calculated that pious Mormons devote an astonishing 20 hours a week to church-related activities, an expectation Richard Ostling says exists in "no other big denomination." Constant interaction through Bible study, family home evenings, Mormon scout troops and other community-building activities yield a practiced, seamless unity more common to much smaller insular groups like the Amish and ultra-Orthodox Jews.

The biggest manifestation of that unity is one of America's largest private welfare networks, a charitable wonder called the Bishop's Storehouse system that kept thousands of LDS members off the dole during the Great Depression (and is humming again). In the past, the only knock against the church's largesse was that it aided mostly Mormons: the Ostlings write that in the 14 years ending in 1997, the LDS spent a paltry $30.7 million in cash on non-Mormon humanitarian aid. But that changed in the late '90s, and humanitarian expenditures in 2008 alone topped $110 million (including noncash donations). "We're there when the tornadoes hit and hurricanes hit and the volcanoes explode," says Ballard. Notes Marian Sylvestre of the Bay Area Red Cross, which developed a fruitful cooperation with Pimentel: "They're quiet soldiers with plenty of resources."

See pictures of a drive-in church.

Read "What Is Mormonism? A Baptist Answer."

It's precisely those resources, though, that have drawn the LDS into the eye of the country's biggest cultural tempest. The church embraced church-state separation in the 1800s and explicitly recognizes the right of independent-minded officeholders like Romney and Reid to make their own calls. Retail politics, however, is different. Although Salt Lake City officially rejects wading in on most issues, it makes a large exception: matters of morals, with an emphasis on gender debates. Mormon activists helped halt the Equal Rights Amendment in the 1970s and '80s and gay marriage in Hawaii (1998) and California (2000). (Read "What Romney Belives.")

Prop 8 constituted a kind of perfect political storm of theology, demographics and organization. At the Alameda Meeting House last June (as at other Mormon churches statewide), a letter from Monson and his counselors advised believers to "do all you can to support the proposed constitutional amendment by donating of your means and time." A string of Protect Marriage coalition meetings followed. They never occurred on LDS property, but they were overwhelmingly Mormon in attendance and sought Mormon support. Alaina Stewart, a church member, was asked to employ a list of "who in the ward we thought could contribute. We'd call and say, 'We're asking you to give such and such an amount,'" she says.

Some declined. A senior church official had promised Mormons who disagreed on Prop 8 that "we love them and bear them no ill will." This played well in Alameda, where many LDS members ferry their children to classmates' birthday parties thrown by same-sex parents. Stewart says she intended from the start to vote yes. But she adds, "I can certainly understand why members of the gay community wanted to receive this rite. I think there were ward members on the fence, thinking, Why not give them marriage?"

But the general authorities in Salt Lake City increased the pressure. A broadcast to all churches outlined the pro-8 ground campaign, with titles like "Thirty People in Each Ward" and "More than Four Hours per Week." Craig Teuscher, the Alameda ward's regional stake president, reiterated in church the seriousness of Monson's request to congregants.

The new push for the proposition had a rational side: the church claimed that the legalization of gay marriage would threaten its tax-exempt status if it refused to perform gay nuptials. (Most legal scholars disagree.) But belief in Monson's supernatural connection also played a big role. Says Stewart: "The Prophet's telling us to stand up. When he speaks, you're realizing that there may be things that I don't see." Asks Gayle Teuscher, the stake president's wife: "If I believe that the Prophet is a true prophet of God and disregard his counsel, what does that say about my belief in God?" Sunstone's Carter says most Mormons who explained their stance for his publication "said, 'The Prophet has a longer view than we do' or 'It was revealed to me.'" Clark Pingree, a Bay Area Mormon gay activist, says that of the various Mormon pro-8 rationales, the Prophet-made-me-do-it line was "the most infuriating, because people say, 'I'm showing my faith by voting against what I know in my heart.' It's a force field you will never penetrate."

Politics — or Persecution?

Proposition 8 won by less than 5% of the vote. Individual Mormons contributed $20 million of its $40 million war chest. Asked whether the belief in prophecy, transmuted into funding and activism, could have been decisive, David Campbell, a University of Notre Dame political scientist (and a Mormon) who has studied LDS political activity, says, "I think that's arguable, in the positive sense of the word." Many Alameda congregants who had initially refused Stewart's fundraising efforts changed their mind; she exceeded her goals. Mormons made calls, placed flyers and planted lawn signs. They thought they were being good citizens.

Watch a gay marriage wedding video.

See more about Mormonism.

That has made the aftermath of Prop 8 all the more disturbing to them. Furious gay-rights activists targeted the church, picketing temples in several states. A prominent Mormon Sacramento musical-theater director was hounded from his job. Tom Hanks declared the Mormons "un-American." (He later apologized.) Alameda Mormons like Pimentel read fire-breathing quotes in the San Francisco *Chronicle* and fielded "Dear Neighbor" notes.

Says Stewart: "I hear they threw bags of urine at a temple. If we had lost, it never would have occurred to me to react that way." Three months after the election, she says, "I don't feel quite the same way about our community." She felt frozen out of conversations among other parents. "You think, This will go away. But it doesn't seem to. I think about my kids in school," she says. "I want them to be accepted, to feel it's O.K. to be different." Of course, this is precisely the sentiment motivating the gay-marriage movement. (See pictures of the gay rights movement.)

But as a Mormon concern, it long predates Prop 8. For a century, the Mormon church had a rocky and sometimes bloody relationship with American culture at large; persecution by "gentiles" became key to LDS self-understanding. But thanks to their industry, optimism and civic-mindedness, many Mormons have found their place in the American fabric. Ballard says, "We'd like to be seen as mainstream — if that means being part of the national conversation about issues of morality and having our members respected as contributing members of society. But we have to hang on to what's true, regardless of where society goes." He adds, "We've never felt that we were being more understood or more appreciated, at least in my 30 years as a general authority." Ballard helped supervise an outreach program during the heightened "Mormon Moment" of the Romney campaign as apostles fanned out to visit media editorial boards. However, he contends that the "real power" determining public perception of his faith is "when a member of the church meets his neighbor, and the neighbor sees that he has objectives to his life and is finding happiness in his field. That's starting to happen all over." (See pictures of Mitt Romney on the campaign trail.)

Not everyone is as upbeat. Christopher Bigelow, a publisher and satirist (he edited the Sugar Beet, a kind of LDS Onion), says, "In the 20th century, we were allowed to grow and even gain a measure of respect." But Bigelow sees that as a mere "doughnut hole" in a darker dynamic. Gay marriage, he says, belongs to a class of

behaviors increasingly tolerated in the broader society that the church must nonetheless oppose. He dips into an old but potent vocabulary: "As civilization keeps moving from standards we think God wants people to hold, it's inevitable that we expect persecution." Back in Alameda, Stewart's husband Brad says about Prop 8, "I hope I never have to do it again," but adds grimly, "I expect that I will."

The Dilemma of Deployment

The Church has not decided on its future role in the gay-marriage debate. The heat surrounding Prop 8 may die down by next year. "Talking about what may or may not happen in 2010 would be speculation, and I wouldn't want to do that," says Apostle Quentin Cook. The LDS abstained from same-sex-marriage battles in Iowa and New England. But avoiding a California rematch may be tougher. Notre Dame's Campbell says, "If it appeared that the church sat out next time because it was criticized this time, there might be a credibility question." But given a national trend toward supporting gay marriage, he asks, "Does the church want the public to identify it primarily as a political body opposing an issue that comes back again and again?"

Jay Pimentel, for one, will be spared that profoundly tricky question — for now. Shortly after the "Dear Neighbor" letter, Salt Lake City tapped him to lead all missionary activity in eastern Germany. The move entails sacrifices; he'll be leaving his job and uprooting an adult son with special needs. But it will put him in a field where the LDS has concerns — its spectacular international growth has begun to plateau — and incidentally remove him from any 2010 proposition battle.

Is he relieved? "I might feel relief," he says finally. "Or I might feel a kind of longing, a desire to be there." Then Pimentel expresses an archetypal LDS sentiment: "I like to help where I can be helpful."

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Prop. 8 foes plan protest at Long Beach Hyatt

By James Rasmussen, Staff Writer

Posted: 05/12/2009 09:12:21 PM PDT

LONG BEACH - Gay activists will be protesting at the Hyatt Regency Long Beach this afternoon because an owner of another Hyatt hotel is a strong opponent of gay marriage and last year made a six-figure donation to the Yes on Proposition 8 campaign.

The event is co-sponsored by the Long Beach Coalition for Good Jobs and a Healthy Community and has two demands of the Hyatt Corp.: the first is for Hyatt to publicly support marriage equality and the second is for Hyatt to sever all ties with Doug Manchester.

This protest comes after Manchester, owner of the Manchester Grand Hyatt in San Diego, donated $125,000 to help put California's Proposition 8 on the ballot last November.

Hyatt spokesman Mike Murchison said Tuesday that he had no comment on the protest at this time.

The Manchester Grand Hyatt and leaders of the lesbian, gay, bisexual and transgender community in San Diego have been butting heads since July when groups called for a boycott of the hotel during the San Diego Gay Pride Parade.

In a phone interview for San Diego television station KGTV's Web site published July 10, 2008, Manchester said the boycott is just another tactic in the labor group's long-time effort to unionize the hotel.

Manchester added that he supported gay and lesbian employees who work at his hotel, but he said his Catholic faith motivates him to support traditional marriage.

The coalition is not calling for a boycott of the Hyatt Hotel, but pledges to hold the Hyatt Long Beach and its owner and operator, The Hyatt Corp., accountable for their relationship to Manchester.

The press conference, which is open to the public, will be held at 5p.m. today at the Hyatt Regency, 200 S. Pine Ave.

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FOCUS - 10 of 45 DOCUMENTS

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Daily News (New York)

February 3, 2009 Tuesday
SPORTS FINAL EDITION

SECTION: NEWS; Pg. 8

LENGTH: 287 words

HEADLINE: ARTIST DRAWS GAYS' IRE FOR SAME-SEX NUPS BAN SUPPORT

BYLINE: BY NANCY DILLON DAILY NEWS WEST COAST BUREAU CHIEF With Edgar Sandoval in Chappaqua, N.Y.

BODY:

LOS ANGELES - A New York artist known for her colorful canvases of drag queens and gay pride parades gave $1,000 to help pass California's ban on same-sex marriage.

Maureen Mullarkey, 66, made her sizable contribution to the National Organization for Marriage's "Yes on 8" fund in June, a Daily News review of campaign records found.

The Westchester County woman was one of tens of thousands who poured a total of more than $83 million into the coffers of **Proposition 8** support groups - money that helped convince California voters to overturn an earlier court decision granting gays the right to marry in the Golden State.

Questioned outside her home in tony Chappaqua - the same town where Bill and Hillary Clinton live - she refused to discuss her donation last night.

When asked how she could have donated money to fight gay marriage after making money from her depictions of gays, she just said, "So?"

"If you write that story, I'll sue you," she said.

On her Web site, Mullarkey says gay parades are a "marvelous spectacle" and "assertion of solidarity."

"It is an erotic celebration loosed for a day to keep us all mindful that Dionysus is alive, powerful and under our own porch," said Mullarkey, a former art critic for the now-defunct New York Sun.

Gay activists felt betrayed at word of Mullarkey's donation.

"If I were a buyer of her work, I wouldn't buy it anymore," said Charles Leslie, co-founder of Leslie/Lohman Gay Art Foundation in Manhattan.

Leslie stopped short of calling for a boycott of Mullarkey's work, but the **threat** of boycotts was part of the reason supporters of **Proposition 8** asked a judge to keep secret the names of most donors.

The federal judge denied the request last Thursday.

ndillon@nydailynews.com

LOAD-DATE: February 3, 2009

K-72

A Note From the Editors

It is not the policy of *Synapse* to run opinion articles anonymously, but we have broken that rule to publish the accompanying article on Proposition 8.

We do so because we think it is important for all shades of opinion within the campus community to be heard. We do so because we have printed many articles from those opposing Prop 8, but hadn't received any from the other side.

Efforts were made to get the writer to agree to use his name, but he refused, citing fear of harassment. While we devoutly hope that would not be the case, we were sobered by a column on November 23 by the *San Francisco Chronicle's* Editorial Page Editor John Diaz. He wrote:

A supporter of Proposition 8, fed up with what he believed was the gay community's and "liberal media's" refusal to accept the voters' verdict, fired off a letter to the editor.
"Please show respect for democracy," he wrote, in a letter we published.
What he encountered instead was an utter lack of respect for free speech.
Within hours, the intimidation game was on. Because his real name and city were listed – a condition for publication of letters to The Chronicle *– opponents of Prop. 8 used Internet search engines to find the letter writer's small business, his Web site (which included the names of his children and dog), his phone number and his clients. And they posted that information in the "Comments" section of SFGate.com – urging, in ugly language, retribution against the author's business and its identified clients.*

We at *Synapse* would like to think that this would never happen at UCSF, but finally decided to let the accompanying article run anonymously, to spare the writer of any of the harassment that has occurred since the passage of Prop 8.

In this democracy, the way to rectify errors at the polls is to convince a majority at a future election of the rightness of your cause. No matter how passionately one feels about an issue, it is important to maintain a civil dialogue and a reasoned debate.

We welcome any and all comments from the campus community. Email them to us at synapse@ucsf.edu

The Editors

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Exhibit L

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* Admitted *pro hac vice*

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KRISTIN M. PERRY, SANDRA B. STIER, PAUL T. KATAMI, and JEFFREY J. ZARRILLO, Plaintiffs, v. 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. HOR-	CASE NO. 09-CV-2292 VRW **DECLARATION OF HAK-SHING WILLIAM TAM IN SUPPORT OF DEFENDANT-INTERVENORS' MOTION FOR A PROTECTIVE ORDER** Date: September 25, 2009 Time: 10:00AM Judge: Chief Judge Vaughn R. Walker Location: Courtroom 6, 17th Floor

TON, 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,

Defendants,

and

PROPOSITION 8 OFFICIAL PROPONENTS DENNIS HOLLINGSWORTH, GAIL J. KNIGHT, MARTIN F. GUTIERREZ, HAK-SHING WILLIAM TAM, and MARK A. JANSSON; and PROTECTMARRIAGE.COM – YES ON 8, A PROJECT OF CALIFORNIA RENEWAL,

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I, Hak-Shing William Tam, make the following declaration pursuant to 28 U.S.C. § 1746:

1. I am a resident of California over 18 years of age, and my statements herein are based on personal knowledge.

2. I am one of the Official Proponents of the California ballot measure in 2008 known as Proposition 8. I am also a Defendant-Intervener in this case. As an official proponent I had private communications regarding political strategy and my own personal political and moral views with other members of ProtectMarriage.com and the campaign.

3. In addition to being an Official Proponent, I volunteered as the head of a coalition of Asian churches whose membership also had an interest in the passage of Proposition 8. The coalition communicated with interested churches about the campaign and encouraged them to get out and vote. As the head of this coalition, I had numerous private communications reflecting mine and others' deeply held political and religious views and our thoughts on political strategy and petitioning the government. I engaged in these communications as part of this coalition, not in my capacity as an official proponent of Proposition 8. I am very concerned that Plaintiffs' broad discovery requests make no distinction in this regard and would require me to produce all such private communications because they were between me and a "third-party."

4. If I am required to disclosure such communications, whether the non-public communications I had as an official proponent or the communications I had as the head of a coalition interested in Proposition 8, it would affect how I communicate in the future. I would change what I say, who I feel I can speak to, and who I associate with for fear that such communications would not remain private as they were intended.

5. I am also concerned about disclosing such communications because I am aware of many instances of harassment and retaliation against supporters of Proposition 8 that occurred after their support for the ballot initiative or their affiliation with Protect Marriage became public. For example, a friend in my church was beaten by a person when he was passing out "Yes on 8" flyers. Another friend's house was vandalized with spray paint graffiti. Another friend's name was put

online as a donor to Proposition 8. Her boss saw the webpage and warned her about supporting Proposition 8. A good number of friends got their Proposition 8 yard signs stolen or vandalized.

6. I personally experienced harassment and retaliation due to my affiliation with Protect Marriage. My car was vandalized. In response to public communications I made regarding Proposition 8, I was called derogatory names, threatened to be killed, and told to leave the country.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

Executed on September 15, 2009

Hak-Shing William Tam

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* Admitted *pro hac vice*

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KRISTIN M. PERRY, SANDRA B. STIER, PAUL T. KATAMI, and JEFFREY J. ZARRILLO, Plaintiffs, v. ARNOLD SCHWARZENEGGER, in his official capacity as Governor of California; EDMUND G. BROWN, JR., in his official capacity as Attorney General of California; MARK	CASE NO. 09-CV-2292 VRW **DECLARATION OF SARAH TROUPIS IN SUPPORT OF DEFENDANT-INTERVENORS' MOTION FOR A PROTECTIVE ORDER** Date: September 25, 2009 Time: 10:00 a.m. Judge: Chief Judge Vaughn R. Walker

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,

Defendants,

and

PROPOSITION 8 OFFICIAL PROPONENTS DENNIS HOLLINGSWORTH, GAIL J. KNIGHT, MARTIN F. GUTIERREZ, HAK-SHING WILLIAM TAM, and MARK A. JANSSON; and PROTECTMARRIAGE.COM – YES ON 8, A PROJECT OF CALIFORNIA RENEWAL,

Defendant-Intervenors.

Location: Courtroom 6, 17th Floor

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* Admitted *pro hac vice*

I, Sarah E. Troupis, make the following declaration pursuant to 28 U.S.C. § 1746:

1. I am a resident of Indiana over 18 years of age, and my statements herein are based on personal knowledge.

2. This declaration is made in support of Defendant-Intervenors' motion for a protective order.

3. ProtectMarriage.com is a Defendant-Intervenor in this case.

4. I am an attorney who represents ProtectMarriage.com as a plaintiff in another case—a lawsuit challenging various election disclosure provisions of California law. The case is styled as *ProtectMarriage.com v. Bowen*, No. 09-0058 (E.D. Cal., filed Jan. 7, 2009).

5. One of ProtectMarriage.com's assertions in the *Bowen* case is that California laws requiring the public disclosure of the identity of certain referendum campaign donors violate the First Amendment by chilling core political speech. As part of its factual showing in that case, ProtectMarriage.com has submitted nearly 60 declarations of individuals who attested to harassment and threats leveled against them because of their support of traditional marriage.

6. I was the attorney responsible for collecting these declarations. As part of that process, I spoke with each of the declarants, who reported to me many instances of harassment and threats as a result of their support for Prop. 8.

7. True and correct copies of those declarations, as filed in the *Bowen* case, are available on the District Court for Eastern District of California's PACER website. *See* Docs # 32-33, 35-40, 45, 113-162, *ProtectMarriage.com v. Bowen*, No. 09-00058 (E.D. Cal. filed Jan. 9, 2009). The declarations of Does 1 through 9 were filed in support of ProtectMarriage.com's motion for a preliminary injunction. The majority of the declarations—those of Does 10 through 58—were filed in support of ProtectMarriage.com's motion for summary judgment.

8. I have had several other individuals who support traditional marriage come to me with incidents of harassment and threats they suffered because of their support for traditional marriage. Even though we have a protective order in place in the *Bowen* case that allows individuals to submit declarations under seal, these individuals were unwilling to submit declarations because of the fear that, despite the protective order, their names would become public knowledge and they would be subject to further threats and harassment.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

Executed on September 15, 2009

Sarah E. Troupis

EXHIBIT 33

Volume 5

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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, Defendants.	San Francisco, California Friday January 15, 2010

TRANSCRIPT OF PROCEEDINGS

Reported By: *Katherine Powell Sullivan, CRR, CSR 5812*
Debra L. Pas, CRR, CSR 11916
Official Reporters - U.S. District Court

1 **Q.** Oh, you have it now?
2 **A.** Yes. Sorry.
3 **Q.** All right. So, as I was saying, line 15:
4 "How does the married biological family
5 structure affect family processes in a way
6 different from cohabiting couple where only
7 one parent is related to the child affect
8 family processes?
9 "Objection. Form.
10 **"ANSWER:** I don't think family structure
11 affects family processes."
12 You gave that testimony, right?
13 **A.** Yes.
14 **Q.** Okay. Now, if we were to randomly look at a thousand
15 married heterosexual couples, and then compare them with a
16 random selection of a thousand cohabiting couples, you would
17 find a difference if we didn't hold constant for other factors
18 that are related to relationship quality, correct?
19 **A.** You said if we did not control for those?
20 **Q.** Yes.
21 **A.** Yes, you probably would.
22 **Q.** I'd like to direct your attention to binder 2, tab 22.
23 This is a report by the Child Trends research group. And it's
24 written by Kristin Anderson Moore. And she is a -- she works
25 at Child Trends and a has -- were you aware that she's won the

1 American Psychological Association's Distinguished Contribution
2 Award?
3 **A.** I wasn't aware of that, but I'm pleased. She certainly
4 deserves it.
5 **MR. THOMPSON:** Your Honor, we'd ask the Court to take
6 judicial notice of DIX26.
7 **MR. MCGILL:** We object, Your Honor.
8 This is an article that was relied upon by their
9 expert, Dr. Loren Marks, who they have withdrawn as a witness.
10 And it seems to me improper for them to try to get the
11 materials their other expert relied upon through my expert,
12 through some kind of judicial notice.
13 **THE COURT:** Well, I think the witness can be asked
14 about the article. Whether it will be admitted into evidence
15 may be another matter.
16 **MR. THOMPSON:** Well, your Honor, if I just may
17 respond to that with two points.
18 First of all, we withdrew Dr. Marks and the other
19 experts because of the concerns about the video recording. As
20 the Court will note, they were withdrawn on the eve of trial,
21 before we had the stay from the Supreme Court. They were
22 extremely concerned about their personal safety, and did not
23 want to appear with any recording of any sort, whatsoever. And
24 so that's one issue.
25 But second and apart from that is, there's no

1 limitation on the Court's ability to take judicial notice of
2 this sort of material. It's precisely the sort of thing that
3 the Supreme Court, in Brown, and Roe, and Grutter, and Lawrence
4 took judicial notice of.
5 **THE COURT:** Well, and there's nothing that prevents
6 you from putting this document before the witness and getting
7 his reaction to it. That's what I'm suggesting that you do.
8 **MR. THOMPSON:** Yes, Your Honor. Okay. Very well.
9 **BY MR. THOMPSON:**
10 **Q.** All right. So, now, turning to page -- let's see. It's
11 the second page of this document, what we've -- and it's at the
12 last carryover sentence.
13 She talks about -- the author states:
14 "It is not simply the presence of two
15 parents, as some have assumed, but the
16 presence of *two biological parents*" -- and
17 they've italicized *"two biological*
18 *parents*" -- "that seems to support children's
19 development."
20 You didn't even consider this document when you put
21 together your first report, did you?
22 **A.** I don't know whether I considered it or not. I've
23 certainly seen it. It's a research review put together by
24 these very well-respected people as a public education
25 document. It's not a scholarly publication; although, it does

EXHIBIT 34

Volume 1

Pages 1 - 213

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, Defendants.	San Francisco, California Monday January 11, 2010

TRANSCRIPT OF PROCEEDINGS

Reported By: *Katherine Powell Sullivan, CRR, CSR 5812*
Debra L. Pas, CRR, CSR 11916
Official Reporters - U.S. District Court

1 occasions, I can't imagine why he wouldn't want his opening
2 statement preserved for the record.
3 (Laughter)
4 So the public can hear what he has to say. And same
5 goes for Mr. Olson.
6 And given the fact that this is a temporary stay, and
7 the stay order does not mention anything about restricting the
8 ability of the court to capture the images on the cameras and
9 preserve them in the event the stay is lifted and Judge
10 Kozinski issues his order, we think that would be a good
11 solution so then the materials could be posted when those --
12 those things happen.
13 **THE COURT:** Well, that's very much of a possibility
14 as presently matters stand.
15 The only transmission of these proceedings is to the
16 overflow courtroom in this courthouse. Any transmission beyond
17 that is not permitted, pending some further order of the
18 Supreme Court or the Court of Appeals, and, indeed, Chief Judge
19 Kozinski, who would be directing the pilot project.
20 I think your request is a fair one. But in the event
21 that there is no recording permitted after the issue is finally
22 settled, if a recording is made, some disposition of that
23 recording would have to be dealt with. And perhaps this is a
24 matter that we can deal with after we learn what the rule is
25 going to be in this case.

EXHIBIT 35

Judicial Conference Committee on Court Administration and Case Management
Guidelines for the Cameras Pilot Project in the District Courts

In September 2010, the Judicial Conference authorized a three-year pilot project to evaluate the effect of cameras in district court courtrooms, video recordings of proceedings therein, and publication of such video recordings by making them available through www.uscourts.gov, as well as participating courts' websites, if so desired. (JCUS-SEP 10, pp. 3-4). The pilot is national in scope, consisting of up to 150 individual judges from districts chosen to participate by the Federal Judicial Center (FJC), in consultation with the Court Administration and Case Management Committee (CACM).

At the Conference's direction, the CACM Committee promulgated these guidelines under which the pilot program must proceed. The Conference also authorized this Committee to periodically amend the guidelines, as necessary, to assist the pilot participants.

The Conference also directed the CACM Committee to request that the FJC conduct a study of the pilot, and the FJC will prepare interim reports after the first and second years of the pilot.

1. General Provisions

a. Participating courts must abide by these guidelines as a condition for participating in this pilot program. These guidelines will remain in effect for the duration of the pilot, unless changed by the Conference or the CACM Committee acting on its behalf.

b. Only courts participating in the pilot program may record court proceedings for the purpose of public release.

c. The pilot is limited to civil proceedings in which the parties have consented to recording.

d. Courts participating in the pilot must amend their local rules (providing adequate public notice and opportunity to comment) to provide an exception to the Judicial Conference ban on recording for judges participating in the pilot consistent with the guidelines.

e. It is not intended that a grant or denial of a request to record a proceeding be subject to appellate review insofar as it pertains to and arises under these guidelines, except as otherwise provided by law.

f. Courts participating in the pilot will record or control the recording of proceedings. Recordings by other entities or persons, unless hired by or under the control of the court, are not allowed.

g. Courts participating in the pilot program will be expected to cooperate with the FJC and the CACM Committee in collecting study-specific data needed by the FJC to evaluate the pilot project on behalf of the CACM Committee.

2. Selection of Cases for Video Recording

a. The presiding judge will select cases for participation in the pilot, although parties to a case or the media may request video recording of the proceedings. Participating judges should consider recording different types of proceedings (e.g., trial and non-trial proceedings; a variety of case types; proceedings of varying sizes such as hearings, large cases, and multidistrict litigation; and proceedings with varying levels of expressed public interest).

b. Under any circumstances, proceedings may not be recorded without the approval of the presiding judge.

c. Parties must provide consent to the recording of each proceeding in a case. Consent to the recording of one proceeding in a case will not be construed as consent to any other proceeding in a case.

d. The court may

(1) establish a procedure for obtaining party consent to the recording of a proceeding selected for the pilot, including a time frame by which consent must be given; and

(2) in its discretion, hold a hearing to address objections by parties, witnesses, or others to the recording or posting of a recording for public access. Such hearings should not be recorded.

e. Using forms provided by the FJC, courts should gather data on and report to the FJC on the consent process, including which parties did not provide consent and the reasons why they did not consent.

3. Cameras and Equipment

a. Judges participating in the pilot should use the following equipment configuration for recording proceedings:

(1) Optimally, there should be at least three but no more than four cameras with microphones to record the proceedings in the courtroom. The cameras should be inconspicuous and fixed on the judge, the witness, the lawyers' podium, and/or counsel tables.

(2) The security cameras in the courtroom should not be used to record the proceedings for the pilot.

(3) There should also be a feed from the electronic evidence presentation system.

(4) The recording equipment should transmit the camera inputs to a switcher that incorporates them onto one screen. The recording equipment also should include an encoder to record the file for posting.

(5) The presiding judge should have a switch or be able to direct staff to stop a recording if the judge deems it necessary. The pilot recordings are not simulcast; thus, the judge can choose not to post the video for public view.

b. The Administrative Office will develop technical guidelines for the digital video recording equipment and will provide those guidelines to the courts selected to participate in the pilot.

c. The Administrative Office is authorized to provide limited funding for equipment as well as technical support to courts participating in the pilot. Participating courts are discouraged from purchasing new equipment. A participating court is encouraged to use its existing recording equipment so long as the equipment meets the requirements of the pilot. The court should contact the Administrative Office's Court Administration Policy Staff to request assistance and/or online/distance training for court personnel to use new or pre-existing equipment.

4. Managing the Recording

a. A presiding judge may refuse, limit, or terminate the recording of an entire case, portions thereof, or testimony of particular witnesses: in the interests of justice; to protect the rights of the parties, and witnesses, and the dignity of the court; to assure the orderly conduct of proceedings; or for any reason considered necessary or appropriate by the presiding judge.

b. The following must not be recorded:

(1) Privileged communications between the parties and their attorneys, non-public discussions between attorneys, and sidebar conversations between attorneys and the presiding judge, without the express permission of the judge.

(2) Jurors or alternate jurors while in the jury box, the courtroom, the jury deliberation room, or during recess, or while going to or from the deliberation room at any time. Coverage of the prospective jury during *voir dire* is also prohibited.

c. The court should remind all persons present in the courtroom that a recording is taking place, so as to limit noise, side conversation, and other disturbances.

d. Nothing in these guidelines will prevent a court from placing additional restrictions, or prohibiting recording or broadcasting in designated areas of the courthouse.

e. The court should help ensure that personal information covered by Fed. R. Civ. P. 5.2 and the Judicial Conference privacy policy not be uploaded for public view, including providing warnings to attorneys, parties, witnesses, and jurors about disclosing confidential and personal information.

f. If security concerns arise, the judge might consider consulting with the United States Marshals Service regarding the video recording of the judge.

5. Operating the Equipment

a. A court employee, such as a courtroom deputy, or a private contractor controlled by the court, must control the recording equipment. The Administrative Office will provide online/distance training to existing court personnel on operating the recording equipment and handling the digital

files. Courts are also encouraged to seek the assistance of court personnel from other districts who have experience with the recording equipment.

b. In order to control the costs of the cameras pilot program, courts are discouraged from contracting with a private vendor for purchasing, installing, and operating the necessary equipment. If a court finds it necessary to contract with a private vendor, such a vendor must be under the authority and control of the court, including any recording activity, any files created, and the posting of recordings for public access. Moreover, the court should contact the Administrative Office's Court Administration Policy Staff for assistance in locating and contracting with the vendor.

c. The media or its representatives will **not** be permitted to create recordings of courtroom proceedings.

6. Storage and Access to Recordings

a. It is preferable that recordings of proceedings should be broken down into one- to four-hour increments (shorter time-frames are preferable due to the size of these digital files), but only as resources and equipment permit. Unless the presiding judge deems otherwise, recordings of court proceedings should be made publicly available within a few hours. Recordings should be made according to the following procedures:

(1) Recordings of court proceedings will be stored on a national server (www.uscourts.gov) to prevent burdening the operations of local court automation systems and to provide data to the FJC for the required study. Courts may also maintain a link to their recordings on their public website. Regardless of how the link is accessed, all access will be tracked on the judiciary's video hosting service.

(2) The judiciary's video hosting service will provide a unique, stable URL for use on www.uscourts.gov and on a court's own website.

b. The Administrative Office will prepare an educational instructional video to assist the courtroom deputy and court staff regarding publishing the file.

c. The court should be mindful of protecting sensitive and private information and of Judicial Conference requirements regarding transcripts in civil

proceedings. The court may wish to consider creating a procedure by which the parties may request that the recording, or a portion thereof, not be made publicly accessible due to privacy concerns.

d. In the event that the presiding judge decides not to make the recording publicly available, the judge must document, using the forms provided by the FJC, the reasons for the decision and send that information to the FJC.

e. The decision to upload the recording is final, and the recording will automatically be made available to the public through a national server (www.uscourts.gov) and, at the court's discretion, through a link on its public website.

f. The digital recordings emanating from the pilot (as well as any transcripts made from the recordings) are not the official record of the proceedings, and should not be used as exhibits or part of any court filing.

g. The court may wish to designate certain court personnel to coordinate media questions, and confer with the Administrative Office's Office of Public Affairs in handling those requests.

EXHIBIT 36

2009 WL 693638 (U.S.) (Appellate Brief)
Supreme Court of the United States.

CITIZENS UNITED, Appellant,
v.
FEDERAL ELECTION COMMISSION, Appellee.

No. 08-205.
March 17, 2009.

On Appeal From The United States District Court For The District Of Columbia

Reply Brief for Appellant

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*I RULE 29.6 STATEMENT

The corporate disclosure statement included the Brief for Appellant remains accurate.

West Headnotes (2)

1 **Constitutional Law** Corporate Expenditures
Elections Campaign Literature, Publicity, or Advertising

Can the prohibition on corporate electioneering communications in the Bipartisan Campaign Reform Act (BCRA) be constitutionally applied to a feature-length documentary film about a political candidate funded almost exclusively through noncorporate donations and made available to digital cable subscribers? U.S.C.A.

Const.Amend. 1; Federal Election Campaign Act of 1971, § 321(b)(2), 2 U.S.C.A. § 441b(b)(2).

2 **Constitutional Law**Campaign Finance, Contributions, and Expenditures
ElectionsCampaign Literature, Publicity, or Advertising

Can the disclaimer, disclosure, and reporting requirements in the Bipartisan Campaign Reform Act (BCRA) be constitutionally applied to advertisements for a feature-length documentary film about a political candidate funded almost exclusively through noncorporate donations and made available to digital cable subscribers? U.S.C.A. Const.Amend. 1; Federal Election Campaign Act of 1971, §§ 304(f)(2), 321, 2 U.S.C.A. §§ 434(f)(2), 441d.

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*1 REPLY BRIEF FOR APPELLANT

The government defends its effort to criminalize Citizens United's political documentary by repeatedly invoking its authority, purportedly exercised "[s]ince 1907," to suppress political expression that might influence federal elections by individuals who have organized themselves into corporations or labor unions. FEC Br. 2; *see also id.* at 15.

If the government had started instead with the First Amendment's imperative that "Congress shall make *no* law … abridging the freedom of speech" (U.S. Const. amend. I (emphasis added)), it would have been forced to articulate some compelling constitutional justification for prohibiting dissemination of a 90-minute movie by a nonprofit, ideologically motivated group concerning the qualifications, character, and fitness of a candidate for the Nation's highest office. Because Citizens United's documentary engages in precisely the political debate the First Amendment was written to protect, only a narrow restriction carefully crafted to prevent actual or threatened electoral corruption could be used to suppress it.

Yet nowhere in its brief does the government make any effort to advance a remotely plausible theory as to how Video On Demand dissemination of Citizens United's movie could have been a corrupting influence in last year's Democratic Party presidential primaries. The government certainly does not even hint that Senator Clinton's opponents might have been so grateful for Citizens United's documentary movie that they might have been tempted to endow Citizens United or its members with *quid pro quo* benefits.

*2 Instead, the government rests its case on the simple but disturbing proposition that election-related speech by a union or corporation (unless licensed by the government as an "*MCFL*" corporation or defined by the government as "news media") is so inherently evil that it must be prohibited and, if attempted, punished as a felony with a five-year prison term. The government's position is so far-reaching that it would logically extend to corporate or union use of a microphone, printing press, or the Internet to express opinions - or articulate facts - pertinent to a presidential candidate's fitness for office.

Citizens United's documentary movie is condemned by the government as the functional equivalent of express advocacy because it focuses on, and criticizes, Senator Clinton's character, fitness, and qualifications for office. FEC Br. 18. Indeed, it is the government's position that the movie is to be suppressed precisely because it expresses a point of view on *issues* that bear upon a presidential candidate's suitability for the Nation's highest office. That is a perverse basis for

pronouncing election-related debate unworthy of First Amendment protection.

It is the government's deep suspicion of election-related debate - not Citizens United's efforts to participate in that debate - that "reflects a jaundiced view of American democracy." FEC Br. 25. That cynicism is flatly incompatible with any reasoned or historically grounded understanding of the First Amendment. As applied to Video On Demand dissemination of *Hillary: The Movie*, BCRA's criminalization of election-related debate plainly exceeds Congress's sharply limited authority to abridge the freedom of speech.

***3** The government's defense of its application of BCRA's message-distorting disclaimer requirements, donor-discouraging disclosure obligations, and resource-consuming reporting mandates is equally indefensible under the First Amendment. Even if, as the government asserts, governmental concerns less compelling than the prevention of *quid pro quo* corruption can sustain the imposition on speech of these burdens, expenses, and intrusions, the government's justification for doing so collapses under its own weight when scrutinized.

Whatever interest the government may have in facilitating the criminal enforcement of BCRA's substantive restrictions on "electioneering communications," that interest cannot be extended to communications that the government concedes do not constitute express advocacy or its functional equivalent and that are therefore beyond the reach of BCRA's prohibitions. Nor is the governmental interest in providing the public "information about participants in the electoral process" meaningfully advanced by application of the disclaimer, disclosure, and reporting requirements to messages that the government acknowledges are "not unambiguously election-related," and, in fact, may "have *nothing* to do with a candidate election." FEC Br. 12, 46. Even the relaxed scrutiny urged by the government is, after all, "*exacting*," and requires a "*substantial relation*" between the specific application of BCRA's commands and an important governmental objective. *Id.* at 37 (emphases added). Applying the full panoply of BCRA's disclaimer, disclosure, and reporting requirements to messages that have "*nothing*" to do with a candidate election cannot conceivably provide the public with "information about participants in the electoral process." On the other hand, that level ***4** of government intrusiveness and regulatory bureaucracy can, and surely will, stifle constitutionally protected speech that the public has a right to receive.

I. The Government's Suppression Of *Hillary: The Movie* Cannot Be Reconciled With The First Amendment.

In its opening brief, Citizens United demonstrated that: (1) nothing in BCRA's legislative record or the litigation record compiled in *McConnell* even remotely suggests that feature-length films that viewers must affirmatively choose to view pose a serious threat of *quid pro quo* corruption; (2) as applied to the speech of nonprofit ideological corporations like Citizens United, the FEC's one-corporate-dollar-and-you're-in-prison rule is far more restrictive than necessary to achieve the government's asserted (and invalid) objective of preventing business corporations from expressing political views in a manner that outstrips the public's support for those views; and (3)

Hillary: The Movie is open to a reasonable interpretation as a critical assessment of Hillary Clinton's political record and her " 'character, qualifications, [and] fitness for office." ' FEC Br. 18 (alteration in original). In response, the government and BCRA's sponsors concede the first and third points, and do not seriously dispute the second. While each is a sufficient basis for reversal of the judgment below, the long-stifled marketplace of political ideas would be well-served if the Court reversed on all three grounds.

*5 A. The Government's Brief Confirms That It Has No Compelling Interest In Suppressing Video On Demand Distribution Of Feature-Length Films.

Both the government and BCRA's congressional sponsors concede that neither the Congress that enacted BCRA nor the *McConnell* Court that upheld the statute on its face had before it *any evidence at all* that feature-length films distributed through Video On Demand contributed to the corruption of officeholders or the appearance of such corruption. *See* FEC Br. 27 (acknowledging "the apparent absence of evidence that such films had been the subject of widespread abuse"). Rather, as BCRA's sponsors explain, BCRA was "principally motivated by one practice[,] corporate and union funding of broadcasts and cablecasts of ads containing candidate-related advocacy." McCain Br. 17.[1] In keeping with that legislative record, the "voluminous" *McConnell* litigation record compiled by the government and BCRA's sponsors also focused on "corporate-funded ads" and purported to demonstrate that those same "corporate-funded broadcast attacks" contributed to the appearance of *quid pro quo* corruption of officeholders. FEC Br. 6, 27; *see also McConnell v. FEC,* 251 F. Supp. 2d 176, 555-57, 569-73 (D.D.C. 2003) (per curiam) (describing litigation record).

Footnotes

McConnell's rejection of the plaintiffs' facial challenges "was grounded in the evidentiary record before *6 the Court." *FEC v. Wisc. Right to Life, Inc.,* 127 S. Ct. 2652, 2664 (2007) ("*WRTL II*") (opinion of Roberts, C.J.). And "elephantine" though that record was (*McConnell*, 251 F. Supp. 2d at 209 n.40), the government can locate within it *not one word* about feature-length documentaries, much less feature-length films distributed through Video On Demand to citizens who request them.

1. In its efforts to apply BCRA § 203 to Video On Demand films, the government seeks to unmoor *McConnell*'s holding from the evidentiary record on which the government and, in turn, the Court had placed such great reliance. The government's argument proceeds in three steps: (1) The First Amendment allows the government to suppress "*all* forms of express advocacy" by corporations and labor unions, including "newspaper advertising or the Internet" (FEC Br. 25, 26); (2) express advocacy is constitutionally indistinguishable from the "functional equivalent" of express advocacy (*id.* at 26); and, therefore, (3) the First Amendment allows the government to suppress *all* functional equivalents of express advocacy. *See* FEC Br. 26 n.8 (claiming that limitations on Internet electioneering are not "constitutionally compelled"). Because the First Amendment permits it to restrict *any* corporate speech that it deems the functional equivalent of express advocacy - from broadcast advertisements to yard signs - "*McConnell*'s holding" should not be viewed as "limited to 30-second advertisements" and can be extended to cover films

selected through Video On Demand. *Id.* at 11. Or so says the government.

This is an audacious assertion of governmental power. If accepted, it is only by Congress's grace that BCRA's definition of "electioneering communication" is limited to broadcast communications that ***7** "can be received by 50,000 or more persons" and does not embrace the Internet, the printing press, and the soapbox. 2 U.S.C. § 434(f)(3)(C).[2] But the government's argument is deeply flawed: Even if one were to assume the truth of the government's major premise that it may prohibit any and all corporate express advocacy (a proposition that this Court might have assumed in *McConnell v. FEC*, 540 U.S. 93, 203-05 (2003), but has never actually held), its minor premise founders on its unstated assumption that the "functional equivalent of express advocacy" may be identified solely by reference to the *content* of a message.

1 *See also* 148 Cong. Rec. S2135 (daily ed. Mar. 20, 2002) (statement of Senator Snowe) (BCRA's definition of "electioneering communication" would apply to "so-called issue ads run on television and radio only").

What permits Congress to regulate certain classes of election-related speech is not simply its *content*, but rather its supposedly corrupting *effects* on officeholders. And the unmistakable holding of *WRTL II* is that speech may be viewed as the functional equivalent of proscribable express advocacy *only* to the extent that such speech is found to "pose the same dangers of actual or apparent *quid pro quo* arrangements as do large contributions." *WRTL II*, 127 S. Ct. at 2672 (opinion of Roberts, C.J.); *see id.* ("Issue ads like WRTL's are by no means equivalent to contributions, and the *quid-pro-quo* corruption interest cannot justify regulating them.").

***8** As the district court in *McConnell* observed, outside the realm of express advocacy, whether speech fairly can be viewed as the equivalent of an outsized campaign contribution must be determined not only by reference to its *content*, but also by evaluating its *efficacy* in influencing the outcome of an election. This is because the "risk of corrupting the political process" corresponds to the "effectiveness" of the speech in influencing election outcomes. 251 F. Supp. 2d at 646, 647 (Kollar-Kotelly, J.). The Congress that enacted BCRA recognized that the efficacy of campaign speech depends on its timing, its reach, and - critically, for this case - the form and medium in which it is delivered. Thus, "the principal focus of the congressional deliberations … was traditional ads" broadcast in the weeks leading up to the election. McCain Br. 15. Broadcast ads were the "most effective form of communicating an electioneering message" (*McConnell*, 251 F. Supp. 2d at 647 (Kollar-Kotelly, J.)), and thus presented the "most acute" "phase of the problem." *McConnell*, 540 U.S. at 208 (internal quotation marks omitted). Other media were not "as effective as television and radio advertising for conveying an electioneering message" and accordingly presented less of a "risk of corrupting the political process." *McConnell*, 251 F. Supp. 2d at 646 (Kollar-Kotelly, J.).[3]

2 In any event, it is not at all clear what the statutory definition of "electioneering communication" actually encompasses. BCRA defines the term "expenditure" to include a "payment … for any … electioneering communication" (2 U.S.C. § 441b(b)(2)), but simultaneously excludes from the definition of "electioneering communication" any "communication which constitutes an expenditure." *Id.* § 434(f)(3)(B)(ii). Such hopeless opacity is constitutionally intolerable in a statute that makes it a felony to engage in core First Amendment activity.

***9** To say, as the government now does, that it may restrict corporate electioneering speech

without regard to the form or medium in which the speech is delivered, is to say that it may restrict corporate electioneering speech without regard to whether the speech presents a danger of contributing to the *quid pro quo* corruption of officeholders. "This," as the Court said in *WRTL II*, "is not how strict scrutiny works"; "the *Government* must prove" that "a compelling interest supports *each application* of a statute restricting speech." 127 S. Ct. at 2664, 2671 (opinion of Roberts, C.J.). That the government may have a compelling interest in restricting speech that presents the "most acute" risks of corruption cannot itself justify restrictions on speech that presents no similar dangers.

2. The government and its *amici* alternatively contend that, because it harnesses "the power of the visual medium to promote a message," Video On Demand distribution of *Hillary: The Movie* is "[l]ike any other television advertisement"; it "poses exactly the same threats of potential corruption," and, accordingly, should be subjected to "the same financing restrictions as other broadcast advertisements." FEC Br. 11, 26; McCain Br. 17. But that just blinks reality. Except for the fact that it is likely to be viewed on a television, a feature-length film viewed through Video On Demand is nothing like a "television advertisement."

***10** Neither the government nor BCRA's sponsors dispute that viewers of Video On Demand films must "opt-in" to the communication at two levels: The viewer first must "dec[ide] to select [the film] from an on-screen menu," and then must choose to invest 90 minutes or more to view and listen to the film's message. FEC Br. 25; *see also* McCain Br. 15 (contrasting "advocacy that members of the public must first choose to view" with "broadcast ads that are imposed on television viewers"). Indeed, when BCRA's sponsors complain that Citizens United's arguments are "equally applicable" to "advocacy over the Internet (where access to content is typically user-initiated)," *id.* at 16, they implicitly concede Citizens United's argument that "Video On Demand service … is analogous in every relevant respect to an Internet user's download of video content." Citizens Br. 26.

BCRA's sponsors argue that, notwithstanding their self-selecting audiences, opt-in "narrowcasts" such as Video On Demand films pose "exactly the same threats of potential corruption" as the broadcast advertisements that were the "principal focus of the congressional deliberations." McCain Br. 15, 17. But after reviewing the available evidence, the *McConnell* district court explicitly rejected this argument, concluding that communications that require a viewer to "opt-in" do not "influenc[e] federal elections to the same degree as … broadcast advertising campaigns" and thus present a lesser "risk of corrupting the political process." 251 F. Supp. 2d at 646. And, at least implicitly, so did this Court when it recognized that "televised election-related ads" were the "most acute" "phase of the problem." *McConnell*, 540 U.S. at 207-08.

Years after embracing it (*see supra* note 3), the government now attacks the *McConnell* district ***11** court's reasoning, arguing that, even though Citizens United's film would have been delivered only to a self-selecting audience, "it would not follow that the film lacked electoral influence." FEC Br. 25. This misconceives Citizens United's (and the *McConnell* district court's) argument. Citizens United does not argue that Video On Demand transmission of

Hillary (if the FEC had permitted it) would not have had *any* "electoral influence." Citizens United's point is the same as that made by the *McConnell* district court with respect to webcasts: There is "no evidence" that such opt-in communications are "influencing federal elections to the same degree as … broadcast advertising campaigns." 251 F. Supp. 2d at 646 (Kollar-Kotelly, J.). When there is "no evidence" of significant "electoral influence," the government cannot presume the existence of a danger of corruption.

3. Finally, the government argues that Citizens United waived its right to rely upon the opt-in nature of its proposed speech by failing to argue below that the proposed Video On Demand transmission method made it improbable that the film would contribute to corruption. FEC Br. 23. For two reasons, the government is wrong.

First, Citizens United indisputably raised and preserved its argument that, "[u]nlike 'ads,' " "movies must be selected by a willing viewer." Br. Opp. Mot. to Dismiss or Affirm 12. And the government does not dispute Citizens United's argument (at 25) that a movie's length, separate and apart from its method of transmission, makes it an "opt-in" communication.[4]

3 This was not only the view of both the district court and this Court, but the government as well, which consistently defended BCRA as an appropriately tailored response to the unique threat of corruption posed by broadcast advertisements. *See* Brief for the Federal Election Commission at 93, *McConnell* (No. 02-1674) ("BCRA § 201's definition of 'electioneering communications' is limited to advertisements distributed by broadcast, cable, or satellite (*i.e.*, television or radio) … because those media reach the largest audience and are considered to be the most effective means of communicating an electioneering message"); *id.* at 115 ("broadcast advertisements are much more likely than other types of advertisements to cause the fact or appearance of [corruption]").

***12** Second, even if Citizens United did not invoke below the opt-in nature of Video On Demand programming, "in cases raising First Amendment issues," this Court "has an obligation to 'make an independent examination of the whole record' in order to make sure that 'the judgment does not constitute a forbidden intrusion on the field of free expression." ' *Bose Corp. v. Consumers Union of the United States, Inc.*, 466 U.S. 485, 499 (1984). As in cases alleging that a communication "is within one of the few classes of 'unprotected' speech," the question whether political speech presents a risk of corruption requires "judicial evaluation of special facts that have … constitutional significance." *Id.* at 503, 505. Here, those "facts … about the nature of video-on-demand" (FEC Br. 24) are not disputed by the government or its *amici* and are publicly ascertainable in any event. This Court should not - indeed, cannot - conclude that a film distributed through Video On Demand ***13** presents an intolerable risk of corruption without examining the characteristics of that medium.[5]

4 The government observes that the *McConnell* record contained evidence of several 30-minute "infomercials" broadcast by the National Rifle Association and argues that "nothing about the duration of *Hillary* separates it from" those infomercials. FEC Br. 28. The government seems to be implying that this Court decided in *McConnell* that BCRA's restrictions could be constitutionally applied to the NRA's infomercials - but *McConnell* did no such thing. The NRA introduced its issue-advocacy infomercials to demonstrate that BCRA's definition of "electioneering communication" captured a substantial amount of protected issue advocacy. This Court's rejection of the NRA's facial overbreadth challenge would not preclude the NRA from challenging BCRA's application to its infomercials (*Wisc. Right to Life, Inc. v. FEC*, 546 U.S. 410, 411-12 (2006) (per curiam)), and their presence in the *McConnell* record accordingly nets the government nothing.

B. The Government's Brief Identifies No Compelling Basis For Suppressing Corporate

Speech That Is Funded Almost Entirely By Individuals.

The government's attempt to prohibit the Video On Demand distribution of *Hillary* also suffers from a second - and even more fundamental - constitutional flaw: Where election-related speech is financed almost entirely by individuals gathered under the banner of a nonprofit advocacy corporation, like Citizens United, that speech presents no cognizable threat of corruption. Corporate speech funded predominantly by individuals does not generate the "corrosive and distorting effects of immense aggregations of wealth" that are purportedly associated with the electoral advocacy of for-profit corporations (*Austin v. Mich. State Chamber of Commerce,* 494 U.S. 652, 660 (1990)) because the "resources" of Citizens United and similarly funded nonprofits "are not a function of [their] success in the economic marketplace, ***14** but [their] popularity in the political marketplace." *FEC v. Mass. Citizens for Life, Inc.,* 479 U.S. 238, 258-59 (1986) ("*MCFL*").

The government urges the Court not to reach this issue because it supposedly is not presented in this case. FEC Br. 29. But whether the First Amendment prohibits the government from restricting corporate political speech funded predominantly by individuals is a "predicate to intelligent resolution off" - and thus fairly included within - one of the questions on which this Court granted review: Whether *Hillary: The Movie* is "subject to regulation as an electioneering communication." J.S. i; *United States v. Grubbs,* 547 U.S. 90, 94 n.1 (2006) (internal quotation marks omitted). If the government lacks the constitutional authority to prohibit electioneering communications funded predominantly by individuals, then the government necessarily is barred from regulating feature-length documentary movies financed in that manner. The Court therefore need not delay resolution of this important First Amendment question, which has been fully briefed by the parties and *amici* in this case. *See, e.g.*, NRA Br. 9-28.[6]

5 Nor should the Court hold, as the government urges (at 23 n.7), that a Video On Demand transmission to a single household actually "can be received by 50,000 or more persons." 2 U.S.C. § 434(f)(3)(C). When a communication is sent only to a single household - a fact universally true of Video On Demand transmissions, never disputed by the government, and so affirmatively embraced by its *amici* that they refer to such transmissions as "narrowcast[s]" (McCain Br. 15) - it is manifestly unreasonable to determine the number of people who can receive that "narrowcast" communication by reference to "the viewership of the *cable system.*" 11 C.F.R. § 100.29(b)(7)(i)(G) (emphasis added).

***15** On the merits, the government contends that it has a compelling interest in silencing the electoral advocacy of nonprofit corporations, even when that speech is funded overwhelmingly by individuals, because it imagines business corporations could use such nonprofits as "conduits" to circumvent BCRA's restrictions on corporate political speech. FEC Br. 32. The government's far-fetched speculation that a business corporation could exert electoral influence by donating small amounts to numerous advocacy groups is not remotely the type of concrete proof that strict scrutiny requires. If it were, the government would possess the constitutional authority to prohibit *individuals*' electioneering communications simply because a for-profit corporation could conceivably use an individual as a conduit for its own expenditures on electioneering communications. Such a restriction on individuals' independent expenditures would be flatly unconstitutional. *Buckley v. Valeo,* 424 U.S. 1, 46 (1976) (per curiam).

The government's "conduit" speculation also fails because it rests on the false premise that the

government has a compelling "interest in preventing the use of … corporations' treasury funds for electoral advocacy." FEC Br. 32. This Court rejected the same assertion in *First National Bank of Boston v. Bellotti*, 435 U.S. 765 (1978). *See id.* at 790 ("To be sure, corporate advertising may influence the outcome of the vote; this would be its purpose. But the fact that advocacy may persuade the electorate is hardly a reason to suppress it."). Subsequent cases ***16** have found compelling only the much narrower governmental interest in preventing distortion of the electoral marketplace by corporate speech that "ha[s] little or no correlation to the public's support for the corporation's political ideas." *Austin*, 494 U.S. at 660. *Bellotti* rejected that rationale, too (*see* 435 U.S. at 791 & n.30), but, it could not, in any event, be implicated by speech that is funded predominantly by individuals (*i.e.*, the "public"). When, as here, corporate dollars are outnumbered by "the public's support" 99-to-1, the corporate funding does not disturb - much less distort - the electoral marketplace.[7]

6 The government also argues that "the evidentiary record is inadequate to determine whether *Hillary* was in fact financed 'overwhelmingly' by individual donations." FEC Br. 30. But it is the *government's* burden to demonstrate that its asserted interest in preventing big corporate money from distorting electoral outcomes was implicated by Citizens United's speech. The record compiled by the government demonstrates that it was not. *See* J.A. 251a-52a (for-profit corporations were responsible for only $2,000 of the more than $200,000 that Citizens United received from donors who gave $1,000 or more to fund *Hillary*). Strict scrutiny does not permit the government to suppress speech on the basis of fanciful speculation that the Video On Demand distribution of *Hillary* (had it been permitted) might have been financed with hundreds of donations of $999.99 or less from for-profit corporations.

The government also objects to excluding Citizens United and similarly funded nonprofits from BCRA § 203 because doing so would purportedly "abandon [*MCFL*'s] existing bright-line rule for a more amorphous inquiry." FEC Br. 31 (citations omitted). But there is nothing "amorphous" about a judicial inquiry into whether the majority of the funding for a nonprofit corporation's speech is received from individuals. This standard can be applied just as easily as the existing *MCFL* framework, which inquires whether a nonprofit corporation received any funding from a for-profit corporation. And even if there were some marginal administrative benefit to the *MCFL* standard, efficiency alone could never constitute the compelling interest necessary ***17** to sustain the government's one-corporate-dollar-and-you're-in-prison funding restriction. *See Riley v. Nat'l Fed'n of the Blind, Inc.*, 487 U.S. 781, 795 (1988) ("the First Amendment does not permit the State to sacrifice speech for efficiency").

C. The Government's Brief Confirms That *Hillary: The Movie* Is Open To Interpretations Other Than As An Appeal To Vote.

The appeal-to-vote standard articulated in *WRTL II* presents a third constitutional barrier to the government's effort to suppress the distribution of *Hillary*. The movie is not the functional equivalent of express advocacy - and is therefore beyond the government's constitutional authority to proscribe - because it can reasonably be interpreted as a critical biographical assessment of Senator Clinton that provides viewers with information about her public record and political background.

The government's defense of its authority to suppress the movie rests on the proposition that *WRTL II* divided the universe of "electioneering communications" into two mutually exclusive categories: issue advocacy and express advocacy (and its functional equivalent). FEC Br. 20-21.

That is a false dichotomy. *WRTL II* did not purport to hold that *all* electioneering communications that do not constitute issue advocacy are necessarily express advocacy or its functional equivalent and are therefore susceptible to prohibition by the government.

Indeed, the government's distorted reading of *WRTL II* would lead to absurd results. Consider, for example, a hotel advertisement that mentions that a presidential candidate recently spent a night there. That advertisement is not issue advocacy - it does ***18** not "focus on a legislative issue" or "urge the public to contact public officials with respect to the matter" - nor is it an "appeal to vote for or against a specific candidate." *WRTL II,* 127 S. Ct. at 2667 (opinion of Roberts, C.J.). Accordingly, there must be an additional category of candidate-related speech that is neither express advocacy (or its functional equivalent) nor issue advocacy, and that - like issue advocacy - is beyond the government's constitutional authority to proscribe because it does not generate the specter of political corruption.

Whether *Hillary* is properly classified as issue advocacy or some other form of candidate-related speech, the salient fact remains that the movie *cannot* be classified as the functional equivalent of express advocacy because it is susceptible to reasonable interpretations other than as an appeal to vote against Senator Clinton. It is simply not the case, as the government contends (at 18), that every critical examination of a candidate's " 'character, qualifications, [or] fitness for office' " constitutes an appeal to vote for or against that candidate. If it were, then the government could ban a documentary movie examining whether Senator McCain - who was born in the Panama Canal Zone - is a natural born citizen qualified under the Constitution to be President, and countless other criticisms (or commendations) of our political leaders, even though those communications plainly would be susceptible to interpretations other than as an appeal to vote. The fact that after "voters hear[d] the information" that such a documentary conveyed, they might "choose - uninvited by the [movie] - to factor it into their voting decisions" does not transform a documentary designed to educate the public about a candidate's qualifications for office into an appeal to vote for or against that candidate. ***19** *WRTL II,* 127 S. Ct. at 2667 (opinion of Roberts, C.J.).
For similar reasons, the fact that *Hillary* presents a critical assessment of Senator Clinton's political background, character, and fitness for office does not convert the movie - which is designed to "convey[ ] information and educate [ ]" viewers about the political history of an important public figure - into an appeal to vote against Senator Clinton. *WRTL II,* 127 S. Ct. at 2667 (opinion of Roberts, C.J.). Indeed, a critical exposition of the political background and policy views of a former First Lady and sitting U.S. Senator is precisely the type of "uninhibited, robust, and wide-open debate and discussion that" the First Amendment protects and encourages. *Lamont v. Postmaster Gen.,* 381 U.S. 301, 307 (1965) (internal quotation marks omitted).[8]

7 If *Austin* is construed to stand for the broader proposition that any corporate advocacy in electoral settings is *per se* corrupting, then it should be overruled. The growing prevalence of massive independent expenditures by wealthy individuals (*WRTL II,* 127 S. Ct. at 2686 (opinion of Scalia, J.)) - has revealed the flaws in *Austin's* condemnation of corporate independent expenditures, which are no more likely to be corrupting than expenditures by individuals. *See* Citizens Br. 31. Simply put, *Austin* has failed the test of time.

Citizens United's argument that a proscribable "appeal to vote" must at a minimum contain an

unambiguous call to action is not - as the government misleadingly contends (at 22) - a plea for the return of the "magic words" framework administered by the FEC for nearly three decades after *Buckley*. There are an almost unlimited number of ways that an unambiguous call to electoral action can be communicated. *See, e.g.*, *FEC v. Furgatch*, 807 F.2d 857, 864 (9th Cir. 1987) ("Don't let him do it" is "susceptible of no other reasonable interpretation but as an exhortation to vote"). That the government is unable to ***20** identify even a single excerpt from *Hillary* that unambiguously exhorts viewers to action with respect to Senator Clinton does not mean that the "call to action" test lacks content. It instead means that *Hillary* very likely would be interpreted by viewers as something other than an appeal to vote.

II. The Burdens The Government Would Impose On Advertisements For *Hillary: The Movie* Violate The First Amendment.

The government contends that it possesses the constitutional authority to apply BCRA's disclaimer, disclosure, and reporting requirements to Citizens United's advertisements because "their airing during [pre-election] periods would implicate important governmental interests related to the federal electoral process." FEC Br. 36. But even if the interests that the government identifies - disseminating election-related information to the public and enforcing substantive prohibitions on corporate express advocacy and other unambiguous appeals to vote - were sufficient to justify the application of BCRA's disclaimer, disclosure, and reporting requirements to *some* advertisements that are not express advocacy or its functional equivalent, they would be insufficient to justify the application of those requirements to *Citizens United's* advertisements. Those advertisements are not "related to the federal electoral process," but instead encourage viewers to see a movie in the theater, purchase it on DVD, or download it through Video On Demand. The mere fact that Citizens United's movie advertisements mention the name of a candidate for federal office does not provide the government with an interest - "compelling," "important," ***21** or otherwise - in applying BCRA §§ 201 and 311 to those advertisements.

A. BCRA's Disclaimer, Disclosure, And Reporting Requirements Cannot Survive Strict Scrutiny.

The government argues that BCRA §§ 201 and 311 should be examined under "exacting scrutiny," which requires a "substantial relation" between a "sufficiently important" "governmental interest and the information required to be disclosed." *Buckley*, 424 U.S. at 64, 66; *see also* FEC Br. 37. This Court has repeatedly made clear, however, that *any* content-based restriction on speech must be narrowly tailored to further a compelling government interest. *See WRTL II*, 127 S. Ct. at 2664 (opinion of Roberts, C.J.); *MCFL*, 479 U.S. at 256, 261. The fact that BCRA's disclaimer, disclosure, and reporting requirements do not, on their face, " 'prevent anyone from speaking" ' (FEC Br. 37), but instead compel Citizens United to make statements that it "would rather avoid" (*Hurley v. Irish-Am. Gay, Lesbian & Bisexual Group of Boston*, 515 U.S. 557, 573 (1995)), does not exempt these government-imposed speech restrictions from the

stringent requirements of strict scrutiny. In the absence of a "compelling necessity" furthered by "narrowly tailored" means, the government may "not dictate the content of speech" (*Riley*, 487 U.S. at 798, 800) - including by requiring Citizens United to run oral and written disclaimers in its advertisements for *Hillary* and disclose the identity of the advertisements' financial backers.

The government does not even attempt to defend the application of these speech restrictions to Citizens United under strict scrutiny. And with good reason. The only compelling government interest ***22** that this Court has recognized in the campaign-finance setting - the interest in preventing corruption and the appearance of corruption (*WRTL II*, 127 S. Ct. at 2671-72 (opinion of Roberts, C.J.)) - is demonstrably inapplicable to Citizens United's advertisements, which concededly are not express advocacy or its functional equivalent. FEC Br. 36.

B. BCRA's Disclaimer, Disclosure, And Reporting Requirements Cannot Survive Exacting Scrutiny.

BCRA's disclaimer, disclosure, and reporting requirements fare no better under the government's watered-down "exacting scrutiny" standard. Neither the government's informational interest nor its enforcement interest is sufficient to sustain the application of these speech restrictions to movie advertisements that are wholly unrelated to any federal election.

1. The Government's Informational Interest Is Inapplicable To Citizens United's Advertisements.

The government contends that the application of BCRA's disclaimer, disclosure, and reporting requirements to Citizens United's advertisements promotes an "important" government interest because " '[i]ndividual citizens seeking to make informed choices in the political marketplace' have 'First Amendment interests' in learning how electoral advocacy is funded." FEC Br. 40 (quoting *McConnell*, 540 U.S. at 197). But the government never plausibly explains how the application of these speech-suppressing requirements to Citizens United's ten- and thirty-second movie advertisements is substantially related to its interest in promoting informed political decision-making.

***23** a. BCRA purports to impose its disclaimer, disclosure, and reporting requirements on *any* broadcast, cable, or satellite communication that mentions a federal candidate during pre-election periods. The government apparently concedes, however, that there are at least some "electioneering communications" to which its informational interest is inapplicable, and it confines the application of BCRA §§ 201 and 311 to those advertisements that can "reasonably be construed as electoral advocacy" and that therefore "have an obvious potential to affect voting behavior." FEC Br. 42.

The government's attempt to narrow the scope of BCRA §§ 201 and 311 does not go nearly far enough. The government's contention that these requirements can constitutionally be applied to any advertisement susceptible to being interpreted as electoral advocacy disregards this Court's

previous conclusion that reporting requirements can only be applied to "spending that is *unambiguously* related to the campaign of a particular federal candidate." *Buckley*, 424 U.S. at 80 (emphasis added). The government's proposed standard is also hopelessly imprecise. To demand that - on pain of felony prosecution - a speaker guide its conduct based on whether a voter might "perceive a connection between an advertisement and an upcoming election" (FEC Br. 42) effectively requires speakers to comply with BCRA's disclaimer, disclosure, and reporting requirements in every one of the inevitably numerous instances where the government's malleable standard does not yield a clear result.

b. Even if one were to disregard prior precedent on disclosure requirements and overlook the practical shortcomings of the government's proposed standard, BCRA's disclaimer, disclosure, and reporting ***24** requirements still could not be constitutionally applied to Citizens United.

Citizens United's advertisements cannot "reasonably be construed as electoral advocacy." In fact, they are not even a distant cousin of "electoral advocacy." Citizens United's advertisements are not intended to promote the election or defeat of Senator Clinton, but instead to promote the movie *Hillary* - a biographical documentary about a prominent public figure - and encourage viewers to see the movie in a theater, purchase it on DVD, or download it through Video On Demand. While the government may have an important interest in helping citizens " 'make informed choices in the *political* marketplace," ' this Court has never suggested that the government has an equally important interest in facilitating "informed choices" in the movie marketplace. Indeed, if Citizens United's movie advertisements can reasonably be construed as electoral advocacy, then *any* advertisement mentioning a candidate's name - even a restaurant advertisement touting the President's recent visit or a college advertisement listing a U.S. Senator as an alumnus - would inevitably be subject to BCRA's disclaimer, disclosure, and reporting requirements, without regard to whether the advertiser actually intended to influence an election. The government's effort to narrow the reach of those statutory requirements is thus virtually meaningless because, according to the government, the mere mention of a candidate's name seems to be sufficient to convert an advertisement into electoral advocacy.

Tellingly, the government makes absolutely no effort to explain how the application of BCRA's disclaimer, disclosure, and reporting requirements to Citizens United's two ten-second advertisements would further its interest in enabling citizens to ***25** "learn[] how electoral advocacy is funded." Indeed, the government does not mention the ten-second advertisements anywhere in its six-page defense of its informational interest - a startling omission given that one of the issues before this Court is whether BCRA §§ 201 and 311 can constitutionally be applied to those advertisements.

The government's reluctance to discuss Citizens United's two ten-second advertisements becomes more understandable when the content of those advertisements is examined. One of the advertisements informs viewers that, "[i]f you thought you knew everything about Hillary Clinton … wait 'til you see the movie." Citizens Br. 8 n.1. The other humorously presents a "kind word about Hillary Clinton" from conservative commentator Ann Coulter - "[s]he looks good in a pant suit" - and then describes *Hillary* as "a movie about everything else." *Id.* The

advertisements do not mention an election, Senator Clinton's candidacy for office, her views on political issues - or anything else remotely related to the electoral process. It thus cannot reasonably be suggested that requiring Citizens United to report these advertisements to the FEC, disclose the advertisements' financial backers, and broadcast disclaimers identifying itself as responsible for the advertisements is substantially related to "the public interest in full information about participants in the electoral process" (FEC Br. 12) - which is probably why the government could not bring itself even to articulate that argument. And while applying BCRA §§ 201 and 311 to Citizens United's ten-second advertisements might provide the public with "full information" about their selection of movies, that, of course, is not an important government interest.

***26** The government does at least mount a defense of its application of BCRA §§ 201 and 311 to Citizens United's thirty-second advertisement, but it fails in its attempt to transmogrify that advertisement into "electoral advocacy." That advertisement presents three statements about Senator Clinton from public commentators - "[S]he's continually trying to redefine herself and figure out who she is," "Hillary's got an agenda," and "Hillary is the closest thing we have in America to a European socialist" - and then, like one of the ten-second advertisements, declares "[i]f you thought you knew everything about Hillary Clinton … wait 'til you see the movie." Citizens Br. 8 n.1. In the context of an advertisement for a critical biographical documentary about Senator Clinton, those statements cannot reasonably be construed as "electoral advocacy" for or against her candidacy. They are instead provocative statements about a controversial public figure that attempt to capture viewers' attention and generate interest in the documentary movie marketed by Citizens United. In another context - in an advertisement urging viewers to "Call Senator Clinton and tell her what you think about her voting record," for example - it may well be reasonable to construe the advertisement's statements as "electoral advocacy." Against the very different backdrop of an advertisement promoting the distribution of a movie, however, it is not plausible to conclude that Citizens United included these statements in its advertising for the purpose of opposing Senator Clinton's candidacy.

*27 2. The Government's Enforcement Interest Is Inapplicable To Citizens United's Advertisements.

The government's "interest in facilitating the enforcement of substantive regulation of contributions and funding sources" provides equally little support for the application of BCRA §§ 201 and 311 to Citizens United. FEC Br. 46.

The government asserts that its "ability to enforce BCRA Section 203's financing restrictions with respect to electioneering communications that *are* the functional equivalent of express advocacy would be impeded" if it could not rely on BCRA's disclaimer, disclosure, and reporting requirements to learn that a corporate-funded advertisement has been aired. FEC Br. 47. But the government has explicitly conceded that Citizens United's advertisements are *not* the functional equivalent of express advocacy (*id.* at 36), and this concession categorically forecloses its reliance on its enforcement interest to regulate those advertisements. *See Davis v.*

FEC, 128 S. Ct. 2759, 2775 (2008). Where the government is aware of an advertisement - and has concluded that the advertisement cannot be constitutionally prohibited under BCRA § 203 - the government's enforcement interest evaporates.

Moreover, the enforcement interest is only applicable, if at all, to BCRA's reporting requirement, which requires the person funding an electioneering communication to submit a statement to the FEC that identifies itself as responsible for the communication. 2 U.S.C. § 434(f)(2). BCRA's disclaimer and disclosure requirements do not provide the FEC with any additional information that could facilitate its enforcement of BCRA § 203's restrictions on corporate-funded ***28** electioneering communications. And, as applied to Citizens United, not even the reporting requirement could further the government's enforcement interest (or its purported informational interest, for that matter) because, as the government concedes, Citizens United "already discloses its identify at the website referred to in the advertisements." FEC Br. 51. In this case, then, the government's supposed enforcement interest is pure fiction.

3. The Burdens Imposed By BCRA §§ 201 And 311 Outweigh Any Government Interest In Applying Those Speech Restrictions To Citizens United.

Even if the government did have an informational or enforcement interest in applying BCRA's disclaimer, disclosure, and reporting requirements to Citizens United, those interests would be outweighed by the extraordinary burdens that those requirements impose on First Amendment freedoms - including the risk of harassment and retaliation faced by Citizens United's financial supporters, and the substantial compliance costs borne by Citizens United.

The government dismisses the risk of reprisal against Citizens United's supporters because the record does not document previous acts of retaliation. But the risk of reprisal against contributors to Citizens United - and other groups that espouse controversial ideological messages - has vastly increased in recent years as a result of the same "technological advances" that the government touts in BCRA's defense, which "make it possible … for the public to review and even search the [contribution] data with ease." FEC Br. 40-41. The widespread economic reprisals ***29** against financial supporters of California's Proposition 8 dramatically illustrate the unsettling consequences of disseminating contributors' names and addresses to the public through searchable websites (*see, e.g.*, CCP Br. 13; IJ Br. 13) - some of which even helpfully provide those intent upon retribution with a map to each donor's residence. *See* Brad Stone, *Prop 8 Donor Web Site Shows Disclosure Is 2-Edged Sword*, N.Y. Times, Feb. 8, 2009.

The chilling effect on First Amendment expression generated by the specter of retribution is substantiated by empirical studies, which have found that " '[e]ven those who strongly support forced disclosure laws will be less likely to contribute" ' where their personal information will be disclosed. IJ Br. 10 (quoting Dick Carpenter, *Disclosure Costs: Unintended Consequences of Campaign Finance Reform 8* (2007)). And this chilling effect on First Amendment freedoms is compounded by the extreme administrative burdens generated by BCRA's disclosure requirements, which are notoriously difficult to implement for even the lawyers and accountants

who advocacy groups are inevitably required to retain to monitor their disclosure obligations. *See id.* at 19 (discussing an empirical study in which none of the 255 participants was able to comply successfully with campaign disclosure requirements).

The fact that the record does not explicitly document the burdens that BCRA's disclaimer, disclosure, and reporting requirements impose on Citizens United's First Amendment rights is not a sufficient basis for discounting these very real impositions on Citizens United's freedom of expression. In this as-applied challenge, it is the *government* that bears the burden of establishing that BCRA's speech restrictions are compatible with the First Amendment ***30** (*WRTL II*, 127 S. Ct. at 2664 (opinion of Roberts, C.J.)) - and it therefore falls to the government to demonstrate that BCRA does not intolerably restrict Citizens United's First Amendment freedoms. The government has not met that burden.

CONCLUSION

The judgment of the district court should be reversed.

8 And it is precisely the type of inquiry undertaken by the news media, which - unencumbered by campaign finance laws - interviewed many of the same individuals featured in *Hillary. See, e.g., 60 Minutes* (CBS television broadcast Mar. 15, 1998) (interview with Kathleen Willey about alleged misconduct in the Clinton White House).

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