

No. 08-205

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In the Supreme Court of the United States

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CITIZENS UNITED,

*Appellant,*

v.

FEDERAL ELECTIONS COMMISSION,

*Appellee.*

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

**BRIEF OF AMICUS CURIAE  
ALLIANCE DEFENSE FUND  
IN SUPPORT OF APPELLANT**

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Benjamin W. Bull  
*Counsel of Record*

Erik W. Stanley  
ALLIANCE DEFENSE FUND  
15100 N. 90<sup>TH</sup> Street  
Scottsdale, AZ 85260  
(480) 444-0020

Robert J. McCully  
SHOOK, HARDY & BACON  
LLP  
2555 Grand Blvd.  
Kansas City, MO 64108

Tyson C. Langhofer  
Megan E. Garrett  
Court T. Kennedy  
Thomas A. Simpson  
Nicholas G. Frey  
STINSON MORRISON  
HECKER LLP  
1625 N Waterfront  
Pkwy, Suite 300  
Wichita, KS 67206

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## INTEREST OF *AMICUS* IN THIS CASE<sup>1</sup>

ALLIANCE DEFENSE FUND (“ADF”) is a not-for-profit public interest organization that provides strategic planning, training, and funding to attorneys and organizations regarding religious civil liberties and family values. ADF and its allied organizations represent hundreds of thousands of Americans who believe strongly in these topics, and who have a right to express those views through this nation’s political process. ADF’s allies include more than 1,200 lawyers and numerous public interest law firms, many of whom have been recently pressed into service to represent individuals and organizations being harassed for expressing their viewpoints in the political arena.

ADF has advocated for the rights of Americans to exercise their religious beliefs and to express those beliefs in the political arena. ADF has been directly or indirectly involved in at least 500 cases and legal matters, including cases before this Court such as *Good News Club v. Milford Central Schools*, 533 U.S. 98 (2001), *Mitchell v. Helms*, 530 U.S. 793 (2000);

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<sup>1</sup> All parties have consented to the filing of this brief. No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than Amicus Curiae, its members, or its counsel made a monetary contribution to its preparation or submission.

*Agostini v. Felton*, 521 U.S. 203 (1997); and *Dale v. Boy Scouts of America*, 530 U.S. 640 (2000).

## SUMMARY OF ARGUMENT

ADF contends that the Bipartisan Campaign Reform Act of 2002 (“BCRA”), and specifically its provisions requiring the disclosure of names and addresses of anyone who contributes \$1,000.00 or more for the purpose of furthering an electioneering communication, operate as an unconstitutional restraint upon an individual’s First Amendment right to express his or her political viewpoints in the public arena, to the extent that the BCRA’s definition of “electioneering communication” is interpreted to extend in any manner whatsoever to anything other than express advocacy or its functional equivalent.

ADF first contends that this Court has already addressed this First Amendment concern by limiting the BCRA’s definition of “electioneering communications,” so that the only communications regulable under any provision of the BCRA are those that are capable of no interpretation other than an appeal to vote for or against a specific candidate. *See Fed. Election Comm’n v. Wisconsin Right to Life, Inc.*, 127 S. Ct. 2652 (2007) (“*WRTL*”). As such, the trial court’s decision that the BCRA’s disclosure provisions apply more broadly is erroneous and should be reversed.

Alternatively, ADF contends that the instant case presents the Court with the opportunity to ensure that the BCRA’s disclosure provisions operate in

such a fashion as to ensure that Americans continue to have “the liberty to discuss publicly and truthfully all matters of public concern without previous restraint or fear of subsequent punishment.” *First Nat’l Bank of Boston v. Bellotti*, 435 U.S. 765, 776 (1978). This liberty to express one’s political views without fear of reprisal is one that pre-dates the very formation of our Constitution; it is a right that has existed throughout the life of this great nation; it is a freedom that now hangs in the balance as clearly evidenced by events emanating from the most recent election cycle. The Court has the opportunity to preserve this very critical privilege accorded to the people of this country, by reversing the decision of the trial court, and holding that the BCRA’s disclosure provisions do not apply so broadly as to encompass speech beyond express advocacy or its functional equivalent.

## ARGUMENT

**I. THERE EXISTS A STRONG AND HISTORICALLY PROTECTED INTEREST IN PROMOTING AND PRESERVING AN INDIVIDUAL'S RIGHT TO EXPRESS HIS OR HER POLITICAL VIEWPOINTS. THIS COURT HAS CONSISTENTLY SUBJUGATED GOVERNMENTAL INTERESTS, SUCH AS THOSE FOUND IN THE BCRA, TO THOSE INDIVIDUAL RIGHTS WHEN ADDRESSING ISSUE ADVOCACY.**

The United States Constitution states that “Congress shall make no law...abridging the freedom of speech.” U.S. Constitution amend. I. This Court has recognized that political speech “occupies the core of the protection afforded by the First Amendment.” *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 346 (1995). “Discussion of public issues...[is] integral to the operation of the system of government established by our Constitution. The First Amendment affords the broadest protection to such political expression in order ‘to assure [the] unfettered interchange of ideas for the bringing about of political and social changes desired by the people.’” *Buckley v. Valeo*, 424 U.S. 1, 14 (1976) (quoting *Rita v. United States*, 354 U.S. 476, 484 (1957)). The *McIntyre* Court further noted that these principles extend equally to issue-based elections, and that issue advocacy “is the essence of First Amendment expression.” *McIntyre*, 514 U.S. at 347.

It comes as no surprise, then, that this Court has taken an exacting view of any governmental attempt to regulate political speech. *See WRTL*, 127 S. Ct. at 2664 (“Because BCRA §203 burdens political speech, it is subject to strict scrutiny.”); *McIntyre*, 514 U.S. at 347 (“When a law burdens core political speech, we apply ‘exacting scrutiny,’ and we uphold the restriction only if it is narrowly tailored to serve an overriding state interest.”); *Bellotti*, 435 U.S. at 786 (constitutionality of proposed restriction “turns on whether it can survive the exacting scrutiny necessitated by a state-imposed restriction of freedom of speech.”).

When this Court has turned that “exacting scrutiny” upon legislation calling for the disclosure of identifying information about either the author of, or a supporter of, some particular speech, it has consistently drawn a distinction between speech that is unambiguously campaign-related (i.e., in support of or in opposition to a particular candidate) and speech that is not unambiguously campaign-related. The Court first articulated this distinction in *Buckley*, 424 U.S. at 80-81, where it was faced with a constitutional challenge to the disclosure requirements of the Federal Election Campaign Act (“FECA”). The Court determined that the disclosure requirement in question potentially suffered from vagueness and overbreadth issues, but then cured those issues by construing the disclosure requirement to reach only those expenditures that were used for “communications that expressly advocate the election or defeat of a clearly identified candidate.” *Id.* at 80. The *Buckley* Court used this

same narrowing construction to preserve the “limitation on expenditures” provisions of the FECA against invalidation on the same vagueness and overbreadth grounds. *Id.* at 42-44. *See also McConnell v. Fed. Election Comm’n*, 540 U.S. 93, 121-22 (2003). There was no distinction drawn in the way that the term “expenditures” was to be interpreted for purposes of determining whether the speech could be regulated – it was the type of speech at issue, and not the manner of restriction, that proved paramount.

Accordingly, from the time of the *Buckley* decision in 1976 up to the passage of BCRA in 2002, individuals were allowed to express, or support the expression of, political viewpoints, retaining the choice of whether to publicly identify themselves as an advocate of those viewpoints. At the same time, the government’s interest in ensuring the integrity of the election process was met, to the greatest extent constitutionally permitted.

The BCRA’s passage in 2002 now threatens this balance. Indeed, if the decision of the trial court were allowed to stand, the balance will clearly have been upset, and individuals will find their First Amendment rights to express, or support the expressions of, political viewpoints significantly hampered. Like the FECA that was the subject of the *Buckley* opinion, the BCRA, by its terms, seeks to impose contribution and expenditure limitations, and also seeks to impose disclosure requirements, again mandating the reporting of names and addresses of individuals contributing more than a threshold

amount towards a particular campaign. What the BCRA did differently from the FECA (as narrowed by the *Buckley* Court) was to include an expansive definition of the types of speech purportedly falling under its control.

The BCRA, by its terms, specifies “significant disclosure requirements for persons who fund electioneering communications.” *McConnell*, 540 U.S. at 190. “Electioneering communications” is a new term coined “to replace the narrowing construction of FECA’s disclosure provisions adopted by [the Supreme Court] in *Buckley*.” *Id.* at 189. The term “electioneering communication” encompasses any “broadcast, cable, or satellite communication that (a) referred to a clearly identified candidate for Federal office, (b) was made within the 60 days before a general election or within the 30 days before a primary election involving that candidate, and (c) was targeted to the relevant electorate. 2 U.S.C. §434 (f)(3)(A)(i).<sup>2</sup> As enacted, the BCRA extended to speech having nothing to do with a particular candidate’s campaign if that speech happened to breathe a word of the candidate within the

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<sup>2</sup> Interestingly, Congress foresaw the very issue being debated here, and enacted an alternative definition for “electioneering communication” to be used in the event the original is found wanting in a Constitutional sense. That alternative definition requires the communication to do much more than simply “refer” to a candidate; indeed, the communication must (a) either support a candidate, or oppose a candidate, for that office, and (b) be suggestive of no plausible meaning other than an exhortation to vote for or against a specific candidate. 2 U.S.C. §434 (f)(3)(A)(ii).

prescribed blackout period. Congress clearly intended to broaden the regulatory coverage; any such broadening results inevitably in a constriction of individual liberties.

Fortunately for the preservation of those individual liberties, this Court stepped into the discussion and, with its decision in *WRTL*, announced that “enough is enough.” 127 S. Ct. at 2672. The *WRTL* Court acknowledged “the governmental interest in preventing corruption and the appearance of corruption” in election campaigns. *Id.* at 2672 (quoting *Buckley*, 424 U.S. at 45). To meet that interest, the Court approved regulations which focused upon the potentially detrimental efforts of using campaign contributions to secure political *quid-pro-quo*s from current and potential officer holders. It was that interest which persuaded the Court to approve a certain amount of speech regulation. But, it was the Court’s clear understanding of that interest that also prompted it to draw the distinction between “express advocacy” and “issue advocacy.” *See WRTL*, 127 S. Ct. at 2672; *Buckley*, 424 U.S. at 42-44, 80-81. And, the *WRTL* opinion is abundantly clear that the Court intends that distinction to continue throughout the framework of the BCRA. BCRA’s reach simply does not extend to communications that are not express advocacy or its functional equivalent. 127 S. Ct. at 2673. Specifically, “[i]ssue ads...are by no means equivalent to contributions, and the quid-pro-quo corruption interest cannot justify regulating them.” *Id.* at 2672.

While the specific type of regulation addressed by the *WRTL* opinion was BCRA §203 (limits on corporate contributions), it is clear that the opinion extends to BCRA §201 (disclosure requirements) as well. For it was not the nature of the regulation that drove the Court's holding – it was the nature of the speech that the government was trying to regulate that was paramount. The *WRTL* Court did not spend its time discussing distinctions and nuances of the various regulatory schemes; instead, its decision was instead devoted to discerning those distinctions and nuances between express advocacy and issue advocacy. The BCRA continues but one overarching term as to what speech triggers regulatory coverage, that being “electioneering communication.” The *WRTL* Court has determined that that term must be construed so as to reach only express advocacy or its functional equivalent if it is to pass constitutional scrutiny. *See also North Carolina Right to Life, Inc. v. Leake*, 525 F.3d 274, 280-84 (4<sup>th</sup> Cir. 2008) (relying in part upon *WRTL* to invalidate North Carolina campaign finance law as unconstitutional in that its scope went beyond both “express advocacy” and its “functional equivalent.” Fourth Circuit focused upon the type of speech regulated, and not the type of regulation; the Court invalidated the entire regulatory scheme to the extent it went beyond “express advocacy and its functional equivalent.”)

In the instant case, all parties agree that the advertisements at issue are neither express advocacy nor its functional equivalent. Trial Court Memorandum Opinion, at p. 10. As such, the

advertisements are not subject to regulation of any sort under the BCRA. Subjecting them to such regulation, in light of their recognition as something other than express advocacy communications, clearly imposes unconstitutional burdens upon those individuals or entities seeking to propound such speech. Accordingly, the decision of the trial court granting summary judgment to the FEC should be reversed.

**II. THE COURT SHOULD FOLLOW ITS LONG-STANDING PRECEDENTS AND CONTINUE TO DISTINGUISH BETWEEN EXPRESS ADVOCACY AND ISSUE ADVOCACY WHEN FACED WITH REGULATORY SCHEMES COMPELLING DISCLOSURE OF A SPEAKER'S IDENTIFYING INFORMATION.**

**A. First Amendment Rights to Freedom of Speech and Association are Core, Fundamental Rights.**

Alternatively, if the BCRA's provisions have not been limited by *WRTL* to apply only to express advocacy, the BCRA must be so narrowed to uphold its constitutionality. The rights to political speech and free association are core, fundamental rights that include the right to anonymity. These rights have been afforded specific protections throughout this nation's history and are deemed essential to the functioning of a democratic society. Any limitation on these rights is subject to exacting scrutiny and can be upheld only if it is narrowly tailored to serve an overriding state interest. The BCRA, to the extent its restrictions are applied to anything other than express advocacy, is unconstitutional against these standards.

Throughout its history, this Court has consistently extolled the virtues and necessity of vigorously protecting the First Amendment's freedom of speech and association. "The liberty of opinion keeps governments themselves in due subjection to their duties." *Grosjean v. Am. Press Co., Inc.*, 297

U.S. 233, 247-48 (1936) (quoting Erksine's Speeches 525 (High's ed.)). The fundamental right of free speech "reflects the belief of the framers of the Constitution that exercise of the right[] lies at the foundation of free government by free men." *Schneider v. Irvington*, 308 U.S. 147, 161 (1939). "There is some modicum of freedom of thought, speech and assembly which all citizens of the Republic may exercise through its length and breadth, which no State, nor all together, nor the Nation itself, can prohibit, restrain or impede." *Thomas v. Collins*, 323 U.S. 516, 543 (1945). Inherent in the right to free speech are the rights of freedom of association and assembly. *De Jonge v. Oregon*, 299 U.S. 353, 364 (1937); *NAACP v. Alabama*, 357 U.S. 449, 460 (1958). "The essential characteristic of these liberties is, that under their shield many types of life, character, opinion and belief can develop unmolested and unobstructed." *Cantwell v. Connecticut*, 310 U.S. 296, 310 (1940).

**B. Political Speech is an Integral Part of Free Speech and Association Rights.**

This Court has long recognized that political speech, in particular, lies at the core of these "indispensable" and "great" freedoms. *See McIntyre*, 514 U.S. at 346 (1995); *Thomas*, 323 U.S. at 529-30. "Competition in ideas and governmental policies is at the core of our electoral process and of the First Amendment Freedoms." *Williams v. Rhodes*, 393 U.S. 23 (1968). After all, "the best test of truth is the power of the thought to get itself accepted in the

competition of the market.” *Abrams v. United States*, 250 U.S. 616, 630 (1919).

Our form of government is built on the premise that every citizen shall have the right to engage in political expression and association. This right was enshrined in the First Amendment of the Bill of Rights. Exercise of these basic freedoms in America has traditionally been through the media of political associations. Any interference with the freedom of a party is simultaneously an interference with the freedom of its adherents.

*Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957) (plurality opinion).

The recognition and protection of the right to engage in political speech is protected even though the exercise of such rights are likely to be abused or offensive. Tensions may arise in the realm of political belief and speech, where “the tenets of one man may seem the rankest error to his neighbor.” *Cantwell*, 310 U.S. at 310. Despite this friction and the propensity of persons to exaggerate, vilify, or even make false statements, “the people of this nation have ordained in the light of history, that in spite of the probability of excesses and abuses, these liberties are, in the long view, essential to enlightened opinion and right conduct on the part of the citizens of a democracy.” *Id.* The liberty of free speech “was not protected because the forefathers

expected its use would always be agreeable to those in authority or that its exercise always would be wise, temperate, or useful to society”; instead, “this liberty was protected because they knew of no other way by which free men could conduct representative democracy.” *Thomas*, 323 U.S. at 545-46 (Jackson, J., concurring). “[P]olitical speech by its nature will sometimes have unpalatable consequences, and, in general, our society accords greater weight to the value of free speech than to the dangers of its misuse.” *McIntyre*, 514 U.S. at 357. Accordingly, this Court has been, and always should be, “extremely reticent to tread” into the liberty of political expression. *Sweezy*, 354 U.S. at 250 (plurality opinion).

**C. The Right to Choose Anonymity is an Important Part of Engaging in Political Speech.**

An integral part of the freedom of speech and association is the right of the speaker to maintain his or her anonymity. *McIntyre*, 514 U.S. at 342; *NAACP*, 357 U.S. at 462. “[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.” *McIntyre*, 514 U.S. at 342. Historically, pamphlets and leaflets have been “weapons in the defense of liberty.” *Talley v. California*, 362 U.S. 60, 62 (1960) (quoting *Lovell v. Griffin*, 303 U.S. 444, 452 (1938)). Some of these “weapons” were either signed with pseudonyms or anonymous; indeed “[a]nonymous pamphlets,

leaflets, brochures and even books have played an important role in the progress of mankind.” *See id.* at 63 n.3, 64. Patriots from the Revolutionary War era concealed their authorship or distribution so as to avoid potential prosecution; the writer of the Letters of Junius is still unknown; and even the Federalist Papers were published without disclosing the authors’ true identities. *Id.* at 65. History has shown that “it is plain that anonymity has sometimes been assumed for the most constructive purposes.” *Id.* In fact, “an advocate may believe her ideas will be more persuasive if her readers are unaware of her identity. Anonymity thereby provides a way for a writer who may be personally unpopular to ensure that readers will not prejudge her message simply because they do not like its proponent.” *McIntyre*, 514 U.S. at 343.

History also teaches “that in times of high emotional excitement minority parties and groups which advocate extremely unpopular social or governmental innovations will always be typed as criminal gangs and attempts will always be made to drive them out.” *Gibson v. Fla. Legis. Investigation Comm’n*, 372 U.S. 539, 571 (1963) (Douglas, J., concurring). A vital relationship exists between the freedom of association and privacy in those associations and there are times during which the government cannot compel group members to be publicly identified. *NAACP*, 357 U.S. at 462; *Talley*, 362 U.S. at 65. “[W]hether a group is popular or unpopular, the right of privacy implicit in the First Amendment creates an area into which the Government may not enter.” *Gibson*, 372 U.S. at 569

(Douglas, J., concurring). “Inviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs.” *NAACP*, 357 U.S. at 462. “[I]dentification and fear of reprisal might deter perfectly peaceful discussions of public matters of importance.” *Talley*, 362 U.S. at 65. “Persecuted groups and sects from time to time throughout history have been able to criticize oppressive practices and laws either anonymously or not at all.” *Id.* at 64.

**D. One of Purposes of Allowing Anonymity is to Allow Expression without Fear of Reprisal, a Purpose Whose Importance Has Been Highlighted by Recent Events.**

The purpose underlying the Constitution’s protection of an individual’s right to maintain anonymity in speech is no less prominent today than it was during the writing of the Federalist Papers or during the days of the Civil Rights campaigns. The adverse consequences which may result from the voicing of one’s political expression are just as likely today as they have been at any time in this nation’s history. One has to look no further than this past election cycle for real-world examples of the reprisals which have been exacted on persons who have done nothing more than exercise their constitutionally protected right to express their political opinions.

The most recent examples of persons suffering from retributive acts for political speech come from

California. Proposition 8 was a ballot proposal that restricted the definition of marriage as to between a man and a woman. Cal. Const. art. 1, § 7.5. Similar to the provisions of BCRA at issue here, the California Government Code requires any committee that supports or opposes a ballot measure to disclose the name, address and employer of any individual that makes a contribution to that committee in an amount over \$100. Cal. Gov't Code §84211. The same code requires the California Secretary of State to post that information on the internet. *Id.* §§ 84600–12.

Many persons who contributed to organizations that supported the passing of Proposition 8 have suffered greatly as a direct result of their donation. Examples of retributive acts against donors in favor of the measure are prevalent and widespread. John R. Lott & Bradley Smith, Donor Disclosure Has Its Downsides, Wall St. J., December 26, 2008 (Appendix, Exhibit A). Supporters of Proposition 8 have been subjected to threatening and harassing phone calls, emails, and postcards. *See ProtectMarriage.com v. Bowen*; 2:09-cv-00058-MCE-DAD (E.D. California January 7, 2009), Complaint ¶ 31. Some of the phone calls and emails have been accompanied by death threats. *Id.* One such message relayed to a supporter “Consider yourself lucky. If I had a gun I would have gunned you down along with each and every other supporter....I’ve also got a little surprise for Pasor [sic] Franklin and his congregation of lowlife’s [sic] in the coming future....He will be meeting his maker sooner than expected....If you thought 9/11 was bad, you haven’t

seen anything yet.” *Id.* Churches and religious organizations have also been targeted for their support of Proposition 8. *Id.* ¶33. Two temples owned by the Church of Jesus Christ of Latter-day Saints and a Knights of Columbus facility received envelopes containing a suspicious white powdery substance. *Id.*

Although much retaliation has come in the form of personal attacks and threats, the retribution has come in economic form as well. *See* Lott & Smith, Donor Disclosure Has Its Downsides. Scott Eckern, director of the nonprofit California Musical Theater in Sacramento, and Richard Raddon, director of the L.A. Film Festival, were both forced to resign from their jobs after their employers were targeted for protests and boycotts because of the individuals’ campaign donations to “Yes on 8”, the committee established to advocate for the passage of Proposition 8. Likewise, a store owner in California that personally donated money to ProtectMarriage.com – Yes on 8, displayed a yard sign, and made phone calls on behalf of the campaign received retaliation because of the owner’s personal support for Proposition 8. *ProtectMarriage.com v. Bowen*; 2:09-cv-00058-MCE-DAD, Decl. of [John Doe #1] in Support of Plaintiffs’ Motion for Preliminary Injunction, ¶¶ 2–27 (Appendix 2). Fliers referencing the owner’s support of Proposition 8 were posted on cars parked in the store’s parking lot, the store was picketed twice, harassing phone calls were made, and efforts were undertaken to cause persons to boycott the store because of the owner’s personal support of Proposition 8. *Id.* at ¶¶ 8, 10–15. Additionally,

Facebook groups have been created urging persons to boycott the store, a sponsored link on Google was purchased and the website referenced the owner's donation and urged a boycott, and negative reviews were posted on other websites based only on the store owner's personal donation to Proposition 8. *Id.* at ¶¶ 10–14.

The harassment which supporters of Proposition 8 have been subjected to goes beyond economic acts, extending to property damage, and physical violence. For example, in November, 2008, someone used a “Yes on 8” yard sign posted on property owned by a Lutheran Church and a heavy object to break a large window on the church building. *ProtectMarriage.com v. Bowen*; 2:09-cv-00058-MCE-DAD, Decl. of [John Doe #3] in Support of Plaintiffs’ Motion for Preliminary Injunction, ¶¶ 9-16 (Appendix 3). Churches owned by the Church of Jesus Christ of Latter-day Saints have been vandalized, one of which had the words “No on 8” spray painted upon it. Adrienne S. Gaines, Radical Gay Activists Seek to Intimidate Christians, *Charisma Magazine*, Nov. 19, 2008, *available at* <http://www.charismamag.com/cms/news/archives/111908.php> (last visited Dec. 5, 2008) (Appendix 4). Other churches were egged and toilet-papered, had a window broken, marquee vandalized, flags stolen, and adhesive poured onto a doormat, keypad and window. *Id.* Other businesses’ buildings were spray painted with messages like “Prop H8TE.” Vandals Spray Paint Signs in Downtown Fullerton, *Orange County Register*, Oct. 20, 2008, *available at* <http://www.ocregister.com/articles/macdonald-one->

[police-2200383-paint-vandals#](#) (last visited Dec. 5, 2008) (Appendix 5).

There have been many acts of physical violence relating to support given for Proposition 8. A group participating in a prayer walk was accosted by a crowd of individuals that threw hot coffee on and pushed group members. Gaines, Radical Gay Activists Seek to Intimidate Christians, Charisma Magazine, Nov. 19, 2008. One individual was hit with a Bible, pushed to the ground, and kicked. *Id.* The group's leader was threatened with death. *Id.* Another 69-year-old Palm Springs woman was allegedly pushed and spit on by protestors opposing Proposition 8. *Id.*

The harassment has become so severe that some of the contributors to the "Yes on 8" committee have filed a lawsuit in federal district court to have their names removed from the California Secretary of State's website. *See ProtectMarriage.com – Yes on 8 v. Bowen*; 2:09-cv-00058-MCE-DAD (E.D. Calif. January 7, 2009). The Complaint in that lawsuit alleges that supporters of Proposition 8 have been subjected to threats, harassment and reprisals for their support of Proposition 8. *ProtectMarriage.com v. Bowen*; Complaint ¶ 31. The reprisals are well-coordinated and are solely designed to punish the supporters of Proposition 8 for exercising their respective freedom of speech and association. In fact, opponents of Proposition 8 have gone so far as to establish a website that is designed to identify supporters of Proposition 8 and encourages donations to the website in order to "take action" against those

that supported Proposition 8. *See* <http://www.californiansagainst hate.com>. There is also a website that plots the disclosed names, addresses, occupations, and employers of purported Proposition 8 supporters on a Google street map with the language: “Proposition 8 changed the California state constitution to prohibit same-sex marriage. These are the people who donated in order to pass it.” *See Prop. 8 Maps*, <http://www.eightmaps.com> (last visited Jan. 13, 2009).

Acts of reprisal are not limited to harassing financial supporters of controversial initiative petitions such as Proposition 8. Opponents of some initiative petitions have targeted individuals that merely attempted to collect the required number of signatures in order to place the measure on the ballot. In 2006, signature gatherers for the Tax and Spending Control (“TASC”) initiative petition filed a lawsuit against Nevadans for Nevada, a group formed to oppose the ballot measure. Molly Ball, Tax and Spending Control Backers’ Foes Get Physical, *Las Vegas Rev. J.*, June 7, 2006. (Appendix 6). The lawsuit alleged that opponents intimidated petition signers, blocked access to petitions and poured soda over the petitions. *Id.* That lawsuit resulted in a court order commanding workers for Nevadans for Nevada to abide by a set of rules that would allow the TASC group to collect signatures. Carri Geer Thevenot, Judge Chides Ballot Groups, *Las Vegas Rev. J.*, June 9, 2006. (Appendix 7).

This brief discussion of recent reprisals exacted upon persons as a result of the exercise of their free

speech rights is indicative of the heated nature of political debate and of the tensions inherent within the political process. These examples should serve to remind this Court of the reasons why the First Amendment's protections have always extended to protecting one's right to voice his or her opinion, especially one of a political nature, anonymously. They should serve also to remind the Court of the need to guard against any weakening of these protections in the name of preventing campaign corruption, especially where the primary purpose and content of the speech is one of issue advocacy, and not express advocacy.

**E. Given the Purpose of Protecting One's Right to Express His or Her Political Issue Viewpoints Freely, this Court has Consistently Stood for Individual Freedoms.**

In recognition of the importance of such right, this Court has always imposed a strict scrutiny analysis upon any governmental restriction of such right. *See McIntyre*, 513 U.S. at 345-46; *NAACP*, 357 U.S. at 461, 466 (requiring a "compelling interest" and a "controlling justification" for deterring the right to associate); *Bates v. Little Rock*, 361 U.S. 516, 524 (1960) ("Where there is a significant encroachment upon personal liberty, the State may prevail only upon showing a subordinating interest which is compelling."). The proper standard of review to apply to this Court's review of the BCRA, therefore, is "exacting scrutiny," where the statute may be upheld "only if it is narrowly tailored to serve an

overriding state interest.” *McIntyre*, 514 U.S. 334, 345-46, 347.

The right to be free from compelled disclosure of one’s beliefs and associations has consistently been protected by this Court. In *Thomas*, the Court struck down a statute requiring labor union organizers to file a written request with the state before “soliciting” any members to join the union. 323 U.S. at 519. Prior to that time, the Court had largely failed to address the extent to which a state could require identification before speaking. *Id.* at 539. The Court held that “[s]o long as no more is involved than exercise of the rights of free speech and free assembly,” the right cannot be subject to a requirement of prior registration. *Id.* at 539-40. “A requirement that one must register before he undertakes to make a public speech to enlist support for a lawful movement is quite incompatible with the requirements of the First Amendment.” *Id.* at 540.

Decisions following *Thomas* further explained the right to remain free from compelled disclosure of identity and association. In *NAACP*, the Court found an order requiring production of the NAACP’s membership lists offended the Constitution inasmuch as privacy in associations may be indispensable to preserving the freedom to associate and the state did not demonstrate a “controlling justification” for the interference the order would create. 357 U.S. at 462. Further precedent was established in *Bates*, where convictions pursuant to a tax ordinance requiring the NAACP to reveal the identity of persons paying dues or making

contributions to the organization were stricken. 361 U.S. at 517-18. The record revealed that former NAACP members did not renew their memberships because of the ordinance and other members were harassed and threatened when the community became aware of their membership. *Id.* at 521-22. Under these circumstances, the compulsory disclosure “would work a significant interference with the freedom of association of their members” and, while partially attributable to private action, “was brought to bear only after the exercise of governmental power had threatened to force disclosure of the members’ names.” *Id.* at 523-24. Because the municipalities did not show justification sufficient to defend the interference, the convictions could not stand. *Id.* at 527; *see also Shelton v. Tucker*, 364 U.S. 479, 485-490 (1960) (although a state has a relevant interest in ensuring its teachers are competent and fit to teach, an inquiry into all associational connections the teachers have had in the past five years was a “comprehensive interference” with the teachers’ rights of association and went “far beyond what might be justified in the exercise of the State’s legitimate inquiry into the fitness and competency of its teachers”); *Talley*, 362 U.S. at 63-65 (ordinance barring the distribution of circulars unless they contained the identification of persons preparing, distributing, or sponsoring them was facially void; identification requirement infringed on the right of expression and dissemination of information).

*Buckley* was the first case to address compelled disclosure in the context of modern election campaign

laws. 424 U.S. at 1 (1976). The Court considered whether the campaign contribution disclosure requirements of the FECA were unconstitutionally vague. *Id.* at 76-77. FECA required political committees—with the threat of criminal fine or confinement, or both—to keep records of contributions and expenditures, including detailed information about persons who had contributed to the committee. *Id.* at 62-64. The committees were then required to submit quarterly reports containing the identity of those who contributed over \$100 in a calendar year. *Id.* at 63. FECA also required individuals and groups other than political committees or candidates to report independent expenditures of over \$100 to the Federal Election Commission. *Id.* at 63-64. However, FECA attempted to limit its application by defining “contributions” and “expenditures” as “the use of money or other objects of value ‘for the purpose of . . . influencing’ the nomination or election of any person to federal office.” *Id.* at 62-63 (citations omitted).

The Court concluded that the FECA disclosure provision was unconstitutionally vague as written because it “could be interpreted to reach groups engaged purely in issue discussion.” *Id.* at 79. In order for the FECA disclosure provision to be constitutional, it was necessary to interpret the provision in such a way that it would only apply in a limited number of circumstances: “(1) when they make contributions earmarked for political purposes or authorized or requested by a candidate or his agent . . . , and (2) when they make expenditures for communications that *expressly advocate the election*

*or defeat of a clearly identified candidate.” Id. at 80 (emphasis added).*

In conducting a similar analysis of a different section of FECA, the Court suggested that whether a communication meets the express advocacy test is a question of form over substance. *See id.* at 42-44. Indeed, the Court explained that limiting FECA’s reach to those communications containing “explicit words of advocacy” was necessary to give a speaker the ability to determine what will or will not subject him to FECA rather than leave the question to the “mercy of the varied understanding of his hearers and consequently of whatever inference may be drawn as to his intent and meaning.” *Id.* at 43 (quoting *Thomas*, 323 U.S. at 535). The Court more fully observed that:

[W]hether words intended and designed to fall short of invitation would miss that mark is a question both of intent and of effect. No speaker, in such circumstances, safely could assume that anything he might say upon the general subject would not be understood by some as an invitation. In short, the supposedly clear-cut distinction between discussion, laudation, general advocacy, and solicitation puts the speaker in these circumstances wholly at the mercy of the varied understanding of his hearers and consequently of whatever inference may be drawn as to his intent and meaning.

*Such a distinction offers no security for free discussion.* In these conditions it blankets with uncertainty whatever may be said. . . .

*Id.* at 43 (quoting *Thomas*, 323 U.S. at 535) (emphasis added).

Accordingly, the Court found that its construction of FECA would restrict the statute's application to "communications containing express words of advocacy of election or defeat, such as 'vote for,' 'elect,' 'support,' 'cast your ballot for,' 'Smith for Congress,' 'vote against,' 'defeat,' [or] 'reject.'" *Id.* at 44 n.52. The purpose of this requirement is to ensure that "[f]unds spent to propagate one's views on issues without expressly calling for a candidate's election or defeat are thus not covered." *Id.* at 44.

Even where express words of advocacy are used with respect to a clearly identified candidate, a group may be exempt from having to disclose its contributors if evidence is presented showing "a reasonable probability that the compelled disclosure of a party's contributors' names will subject them to threats, harassment, or reprisals from either Government officials or private parties." *Id.* at 71-72, 74 (citing *NAACP*, 357 U.S. at 462.). In such circumstances, the threat to the exercise of First Amendment rights and the risk of chilling speech is so serious that it outweighs the government's interest in requiring disclosure. *Id.* at 71, 73-74.

More recently, in *McIntyre*, this Court determined the extent to which the right to remain anonymous applied to documents that were “intended to influence the electoral process.” 514 U.S. at 344. The statute in question, relating only to publications intended to influence an election, required identifying information for the person or business responsible for the publication. *Id.* at 345-56. The state’s proffered interests of providing voters with additional relevant information and protecting against fraud and libel did not justify requiring an author to “make statements or disclosures she would otherwise omit” because the author’s identity added “little, if anything, to the reader’s ability to evaluate the document’s message.” *Id.* at 348-49. The state’s interest in providing additional information, therefore, was “plainly insufficient” to support the statute. *Id.* at 349. Preventing fraud and libel, the state’s other proffered interest, was “legitimate,” but insufficient to justify the statute. *Id.* at 349-50. Particularly, other state-law provisions protected against fraud, yet the statute at issue in *McIntyre* applied to all campaign literature, even those documents that were devoid of false or misleading statements. *Id.* at 349-51. As such, Ohio’s interests were insufficient to outweigh the infringement on the right to free speech. *See id.* at 357.

**F. This Court Should Again Stand for Individual Freedoms in Viewing Those Provisions of the BCRA that Could Be Interpreted to Encompass Issue Advocacy.**

The Constitution affords special protection to the anonymity of association and speech, especially for independent election-related activity. Under these standards, the provisions of the BCRA, as applied to speech other than express advocacy, is unconstitutional. The restrictions and forced disclosure imposed by the BCRA are akin to the unconstitutional statute considered in *McIntyre* inasmuch as they regulate independent political activity and require disclosure and identification for any writings referencing a candidate, regardless of whether the writing advocates for the candidate's election or defeat.

Nor have the BCRA's provisions been narrowly tailored, as can be seen from the alternate definition suggested by Congress in the event that the term "electioneering communications" is considered too broad. Conceivably, the lesser intrusion upon the right to speech, association and its concomitant right to anonymity served by the alternate definition will serve the government's interest to the same extent as the unconstitutionally broad definition currently adopted. The BCRA, therefore, cannot constitutionally apply to any communications that are not express advocacy or its functional equivalent. Any other interpretation imposes an unconstitutional restraint upon the exercise of First Amendment rights and deters the discussion of public matters of importance. Because the trial court's decision was based upon the BCRA, without limiting the reach of that Act to express advocacy communications, it is constitutionally flawed and must be reversed.

## CONCLUSION

*Amicus* Alliance Defense Fund respectfully request that this Court reverse the judgment of the District Court, and remand the case to that court for further proceedings.

Respectfully submitted,

Benjamin W. Bull  
*Counsel Of Record*  
Erik Stanley  
Alliance Defense Fund  
15100 North 9<sup>th</sup> Street  
Scottsdale, Arizona 85260  
(480) 444-0020

Tyson C. Langhofer  
Megan E. Garrett  
Court T. Kennedy  
Thomas A. Simpson  
Nicholas G. Frey  
Stinson Morrison Hecker LLP  
1625 North Waterfront Pkwy, Suite 300  
Wichita, Kansas 67206

Robert J. McCully  
Shook, Hardy & Bacon LLP  
2555 Grand Blvd.  
Kansas City, MO 64108-2613

*Attorneys for Amicus Curiae*

January 15, 2009

## APPENDIX 1

### Donor Disclosure Has Its Downsides

**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 Abbot & 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 coworkers) 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.*

APPENDIX 2

John Doe #1

James Bopp, Jr. (Ind. State Bar No. 2838-84)\*  
Barry A. Bostrom (Ind. State Bar No. 11912-84)\*  
Sarah E. Troupis (Wis. State Bar No. 1061515)\*  
Scott F. Bieniek (Ill. State Bar No. 6295901)\*  
BOPP, COLESON & BOSTROM  
1 South Sixth Street  
Terre Haute, Indiana 47807-3510  
Telephone: (812) 232-2434  
Facsimile: (812) 235-3685  
Counsel for All Plaintiffs

Timothy D. Chandler (Cal. State Bar No. 234325)\*\*  
ALLIANCE DEFENSE FUND  
101 Parkshore Drive, Suite 100  
Folsom, California 95630  
Telephone: (916) 932-2850  
Facsimile: (916) 932-2851  
Counsel for All Plaintiffs

\* *Pro Hac Vice Application Pending*

\*\* Designated Counsel for Service

United States District Court  
Eastern District of California

<p>ProtectMarriage.com, <i>et al.</i>  <i>Plaintiffs,</i></p>	<p>Case No. 2:09-CV-00058- MCE-DAD  <b>DECLARATION OF REDACTED IN SUPPORT</b></p>
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<p>v.</p> <p>Debra Bowen, <i>et al.</i>,</p> <p style="text-align: center;"><i>Defendants.</i></p>	<p><b>OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION</b></p> <p>Date: TBD Time: TBD Judge England</p>
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I, **REDACTED**, 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 on personal knowledge.

2. I supported the passage of Proposition 8.

3. In support of the passage of Proposition 8, I donated **\$XX,XXX** to ProtectMarriage.com – Yes on 8.

4. I own **REDACTED**, a local **REDACTED** store **REDACTED** in the Counties of **REDACTED**, **REDACTED**, and **REDACTED**. I have a total of **REDACTED** stores in this area.

5. My donation to ProtectMarriage.com – Yes on 8 was a personal one, but because one has to list an employer, I had to list the name of my business since I am self-employed.

6. In support of the passage of Proposition 8, I placed a yard sign in the front yard of my home.

7. In support of the passage of Proposition 8, I also made phone calls on behalf of the Proposition 8 campaign with a group of people from my church.

8. In October 2008, someone put flyers on all the cars in the parking lot of my [REDACTED] store. These fliers referenced my support of Proposition 8 and my financial contribution.

9. I believe that, because I was required to provide the name of my business when I made my personal donation to ProtectMarriage.com – Yes on 8, and because this information was made available to the public, my stores have been targeted for various forms of harassment.

10. On the social networking website of Facebook, at least three “groups” have been formed urging boycotts of [REDACTED] (Boycott [REDACTED], Boycott [REDACTED], and Boycott [REDACTED] – Equality for All!!!). As of January 9, 2009, one of these groups had over 160 members.

11. Someone started [REDACTED] and for a portion of November 2008, paid for it to be a sponsored link on Google. What this means is that, when one searches for my company on websites that show Google’s sponsored links, [REDACTED] is the first website that appears on the list of sponsored links.

12. The website [REDACTED] makes reference to my personal donation in support of Proposition 8 and urges people to boycott my stores on the basis of my support

13. On Yelp.com, a website featuring reviews of local businesses and restaurants, several negative reviews of my stores have been posted. None of the reviews have anything to do with my business, but

instead reference my donation to ProtectMarriage.com – Yes on 8.

14. Various other websites have published negative reviews of my stores based solely on my donation to ProtectMarriage.com – Yes on 8.

15. Since the passage of Proposition 8, my REDACTED store has been picketed twice.

16. On November XX, 2008, there was a march in opposition to Proposition 8 in downtown REDACTED. The REDACTED Police Department called and informed me that they had received information that the protestors planned to march to my REDACTED store and picket there.

17. Several of the protestors who came to the REDACTED store on November XX, 2008 were fairly aggressive. They stood in front of the entrance to the store and attempted to give flyers to my customers stating that they should not shop at my stores because of my donation to Proposition 8. A true and correct copy of the flyer distributed by the picketers is attached to this Declaration as Exhibit A.

18. Several people arrived and were fairly aggressive. They stood in front of the entrance to the store and attempted to give flyers to my customers stating that they should not shop at my stores because of my donation to Proposition 8.

19. The second time that my REDACTED store was picketed, several people assembled in front of the

entrance to the store and tried to get my customers to sign some sort of petition.

20. The manager of the store told the protestors they could not block the entrances and exits of the store. The protestors refused to leave.

20. We called the REDACTED Police Department and asked them to ask the protestors to move to the sidewalk, since they were standing in front of the entrances and we believed they were trespassing, because the store is located on private property.

21. The REDACTED Police Department told me that the store is a public place and that the protestors were not trespassing. The Police Department refused to ask the protestors to relocate to the sidewalk.

22. After the passage of Proposition 8, an individual came into my REDACTED store, filled a shopping cart with groceries, and took it to the check-out line. Once the cashier had scanned in all of the items in the shopping cart, the individual announced that he was not going to buy anything because I supported Proposition 8, and left without paying for the items.

23. I have retained many but not all of the letters and hundreds of e-mails that my stores or I received because of my support of Proposition 8.

24. My stores received numerous harassing phone calls that referenced my support of Proposition 8.

25. Around 30-40 people have walked into my stores since the passage of Proposition 8 and expressed their displeasure about my support of Proposition 8.

26. Because of my concerns about product tampering in light of my support of Proposition 8, I have been forced to install an additional sixteen security cameras in my stores to protect the integrity and safety of our products.

27. These experiences will hinder me from donating to a cause similar to Proposition 8 in the future. I feel very strongly about the issue of same-sex marriage, but in the future I would support a measure like Proposition 8 more discretely and would not donate like this again. I feel it is very unfair that I could not make my donation a personal matter only and leave the name of my business out. As a result of my personal donation, my stores and my employees have been subject to harassment, and I feel this is not right.

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

Executed on: \_\_\_\_\_

**REDACTED**

APPENDIX 3

John Doe #3

James Bopp, Jr. (Ind. State Bar No. 2838-84)\*  
Barry A. Bostrom (Ind. State Bar No. 11912-84)\*  
Sarah E. Troupis (Wis. State Bar No. 1061515)\*  
Scott F. Bieniek (Ill. State Bar No. 6295901)\*  
BOPP, COLESON & BOSTROM  
1 South Sixth Street  
Terre Haute, Indiana 47807-3510  
Telephone: (812) 232-2434  
Facsimile: (812) 235-3685  
Counsel for All Plaintiffs

Timothy D. Chandler (Cal. State Bar No. 234325)\*\*  
ALLIANCE DEFENSE FUND  
101 Parkshore Drive, Suite 100  
Folsom, California 95630  
Telephone: (916) 932-2850  
Facsimile: (916) 932-2851  
Counsel for All Plaintiffs

*\* Pro Hac Vice Application Pending*

\*\* Designated Counsel for Service

United States District Court  
Eastern District of California

<b>ProtectMarriage.com, <i>et al.</i></b>	Case No. 2:09-CV-00058- MCE-DAD <b>DECLARATION OF</b>
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<i>Plaintiffs,</i>	<b>REDACTED IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION</b>
<i>v.</i>	
<b>Debra Bowen, <i>et al.</i>,</b>	
<i>Defendants.</i>	Date: TBD Time: TBD Judge England

I, **REDACTED**, 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 on personal knowledge.

2. I supported the passage of Proposition 8.

3. I am the pastor **REDACTED** of Lutheran Church in **REDACTED**, California.

4. Prior to the passage of Proposition 8, I stated to my congregation that the Bible supports marriage between one man and one woman, and that the members of my congregation should vote accordingly.

5. Prior to the passage of Proposition 8, an unknown person placed a "Yes on 8" yard sign on the church property, which remained standing on the property until sometime on November **X**, 2008 or November **X**, 2008.

6. Sometime between 10:00 p.m. on November **X**, 2008 and 8:00 a.m. on November **X**, 2008, the "Yes on

8" yard sign that had been placed on the church property and a heavy object, such as a rock, were used to break a large window of our church building. Pictures of the broken window and the "Yes on 8" sign are attached as Exhibit A. These pictures are a true and accurate representation of the broken window and "Yes on 8" sign as I discovered them on November 1, 2008.

7. Our denominational newspaper of the Lutheran Church, Missouri Synod, published a story about the incident, which is attached as Exhibit B. This account of the events is a true and accurate representation of the events that occurred.

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

Executed on: \_\_\_\_\_

**REDACTED**

## APPENDIX 4

### Radical Gay Activists Seek to Intimidate Christians

*Since Nov. 4, Christians have reported increased incidences of church vandalism and sometimes-violent attacks for their support of traditional marriage.*

[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**

## APPENDIX 5

### 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.

## APPENDIX 6

Jun. 07, 2006

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### **TAX AND SPENDING CONTROL: Backers: Foes get physical**

#### **Supporters sue, allege intimidation**

Swarming around signature-gatherers. Yelling and grabbing clipboards. Pouring a can of soda on a petition.

Such are the intimidating tactics circulators of the Tax and Spending Control ballot initiative petition allege are being used against them by a union-backed group.

On Tuesday, TASC's backers filed a lawsuit against Nevadans for Nevada, the group they allege has overstepped legal bounds to block the petition from getting on the ballot.

"The tactics of the blockers are a clear violation of the law," TASC's executive director, Bob Adney, said at a news conference Tuesday. "They're trying to silence people's voices."

He said the blockers' tactics might prevent TASC from getting the 83,156 valid voter signatures needed to get on the ballot.

Nevadans for Nevada Chairman Danny Thompson denied the allegations.

"We are not harassing them," he said. "All we are doing is exercising our First Amendment rights, just like they are. We don't use physical tactics."

Thompson said the petitioners were failing in their signature-gathering and seeking someone to blame.

"If they were successful in getting signatures, they wouldn't be suing our organization for exercising our rights," said Thompson, who also heads the state AFL-CIO.

The TASC initiative aims to amend the Nevada Constitution to limit the government's ability to spend money.

Its signature-gatherers, posted outside Department of Motor Vehicles offices, grocery stores and other high-traffic spots in the valley, have been the target of a first-of-its-kind effort in Nevada. The petition-blocking group has deployed its own workers at the same locations to hand out leaflets encouraging people to "Read the Fine Print and Decline to Sign!"

TASC's backers, in their lawsuit, allege that the petition-blockers, who they call "hired thugs," did more than hand out leaflets.

The lawsuit accuses the blockers of "illegally impeding and preventing" signatures from being

gathered "by intimidation, threats, coercion, violence, restraint, and/or undue influence."

As someone was signing the TASC petition, the lawsuit alleges, blockers approached TASC signature-gatherer Nichole Dickens and put their own papers on top of her clipboard. The blockers stood very close to the signer, talking loudly over Dickens, "thus confusing and intimidating the potential signer," who responded by walking away, the lawsuit alleges.

The lawsuit said such actions are illegal under a Nevada statute that prohibits "intimidation of voters" and that specifically mentions petitions.

"Whether or not we make it (onto the ballot) is not the issue," TASC's attorney, Joel Hansen, said. "The issue is, can petitioners gather in peace, or do they have to be intimidated and harassed?"

The lawsuit seeks a restraining order against the petition-blockers and a six-week extension of the June 20 petition deadline for TASC to make up for the time the lawsuit said the signature-gathering effort has been impeded.

It is scheduled for a Thursday hearing in Clark County District Court.

TASC also filed a complaint with the secretary of state's office calling for criminal charges to be filed against the petition-blockers.

The case echoes another case in which Hansen was involved. Two years ago, Hansen was the lawyer for Nevadans for Sound Government, which sued government entities including the DMV and the University of Nevada for preventing petitioners from gathering signatures on public property.

A judge ruled in the group's favor and gave an extension to the petitions, which aimed to repeal the 2003 tax increase and prohibit public workers from serving in the Legislature. But the two initiatives still did not make the ballot.

"This time it's not government interference, it's government employees' unions," Hansen said. "They are only going after our petition because they don't want this petition (TASC) to succeed."

Adney said: "Now we know the lengths to which the politically privileged will go to try to stop this. It scares them to death. All these unions have a vested interest in growing government, raising taxes and increasing spending."

Adney said the blockers' efforts had caused petitioners to become discouraged and gather fewer signatures or quit, meaning TASC had to spend more money on its signature-gathering.

Thompson said the accusations against Nevadans for Nevada, a coalition that includes several unions including teachers, police and firefighters, were implausible.

He said the group's workers were trained according to a strict set of guidelines that prohibit intimidation.

According to a memorandum provided by the group, the petition "educators" are specifically told not to block anyone's path, follow people or vehicles or "engage in harassing, threatening or abusive conduct."

The memo said, "Communications that are respectful will be more effective in carrying the message."

Thompson said his workers' only objective was to give people the facts before they signed the petition.

The union, which previously filed a lawsuit challenging the way TASC is explained on petitions, contends the fine print of the lengthy proposed constitutional amendment contains hidden provisions that people would not like if they knew about them.

"This is an important public policy issue," Thompson said. "Somebody should be saying, 'Hey, take a look at this before you sign.'"

## APPENDIX 7

Jun. 09, 2006

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### **Judge chides ballot groups**

#### **Petition backers, foes agree to rules**

A group of petition circulators and their opponents agreed to abide by a set of ground rules Thursday after a judge lectured them about First Amendment rights and common courtesy.

"What we have to do is we all have to get along, and we cannot have people harassing each other," District Judge Sally Loehrer told the parties during an afternoon hearing.

The matter came before Loehrer after the Committee for Tax and Spending Control filed a lawsuit Tuesday against a union-backed group called Nevadans for Nevada.

TASC, which is gathering signatures for a ballot question designed to limit government spending, alleged the opposing group had used intimidating tactics to deter voters from signing its petition.

Petition circulators have been working outside Department of Motor Vehicles offices, grocery stores and other high-traffic spots in the valley, and Nevadans for Nevada has deployed its own workers at the same locations to hand out leaflets

encouraging people to "Read the Fine Print and Decline to Sign!"

TASC's lawsuit sought a restraining order against the petition-blocking group, which denied engaging in harassment, and a six-week extension of the June 20 petition deadline.

TASC needs 83,156 valid voter signatures to get its question on the November ballot.

Loehrer refused to grant the extension request and said TASC had waited too long to bring the matter to court.

During Thursday's hearing, representatives of both groups agreed to abide by the following rules, which Loehrer incorporated into a court order:

- Neither the petition circulators nor their opponents may yell or use bullhorns.
- No representative of either group may touch the opposing group's supplies or agents.
- Neither group may have more than four workers at any location.
- No more than two representatives of either group may approach a voter at one time.
- If representatives of one group approach a voter first, representatives of the other group must remain at arm's length and not interrupt their conversation.

"Common courtesy says that when one person is speaking to another, another doesn't come up and butt in," Loehrer said.

Attorney Richard McCracken, who represents Nevadans for Nevada, initially opposed the so-called "first-in-time, first-in-right" rule.

"There's no constitutional requirement that one party stay silent because the other is speaking," the lawyer said.

He said the petition opponents need to approach voters before they sign their names, but Loehrer said the opponents can provide the voters with a form authorizing the removal of their signatures and deliver it to the Clark County clerk's office for them.

Gary Peck, executive director of the American Civil Liberties Union of Nevada, observed the hearing and said a court-ordered "first-in-time, first-in-right" rule would have been unconstitutional.

"The First Amendment doesn't say you're free to speak your mind unless you're being rude," Peck said.

But he said the parties can agree to play by a set of rules, as they did at Thursday's hearing.

Bob Adney, TASC's executive director, said that he thinks the new rules will allow his group to gather the necessary signatures by the deadline.