[***Editing Note:*** *Page numbers from the reported opinion, 752 F.3d 827, are indicated* ***(*827)****.*]

[Doc. 64-1, filed May 20, 2014]

United States Court of Appeals
For the Ninth Circuit

No. 11-17884

PROTECTMARRIAGE.COM – YES ON 8, A PROJECT OF CALIFORNIA RENEWAL; NATIONAL ORGANIZATION FOR MARRIAGE CALIFORNIA, Yes on 8, Sponsored by National Organization for Marriage; NATIONAL ORGANIZATION FOR MARRIAGE CALIFORNIA PAC; JOHN DOE #1, an individual,
Plaintiffs, Appellants,

v.

DEBRA BOWEN; ROSS JOHNSON; CALIFORNIA SECRETARY OF STATE; KAMALA HARRIS, in her official capacity as Attorney General of the State of California; EUGENE HUGUENIN, JR.; LYNN MONTGOMERY; RONALD ROTUNDA; ANN MILLER RAVEL, in her official capacity as Chair of the Fair Political Practices Commission; SEAN ESKOVITZ, in his official capacity as Commissioner of the Fair Political Practices Commission; DEPARTMENT OF ELECTIONS CITY AND COUNTY OF SAN FRANCISCO;

DENNIS J. HERRERA, City Attorney for the City and County of San Francisco; DEAN C. LOGAN; JAN SCULLY,
Defendants, Appellees.

Appeal from the United States District Court for the Eastern District of California
Morrison C. England, Jr., Chief District Judge, Presiding

Argued and Submitted
October 11, 2013—San Francisco, California

Filed May 20, 2014

Before: J. Clifford Wallace, Milan D. Smith, Jr., and Sandra S. Ikuta, *Circuit Judges.*

Opinion by Judge Milan D. Smith, Jr.;
Dissent by Judge Wallace

SUMMARY*

Civil Rights

The panel affirmed in part the district court's summary judgment and dismissed in part the appeal as non-justiciable in an action challenging California's Political Reform Act of 1974, which requires political committees to report certain information about their contributors to the State, specifically, semi-annual disclosures identifying those individuals who have contributed more than $100 during or after a campaign, in addition to each contributor's address, occupation and employer.

Appellants are political committees that supported the November 2008 passage of Proposition 8, which before it was invalidated, amended the California Constitution to provide that only marriage between a man and a woman is valid or recognized in California. Arguing that their donors have been harassed as a result of Political Reform Act disclosures, appellants asserted that the Act's $100 reporting threshold and post-election reporting requirements were facially unconstitutional in the context of ballot initiatives.

The panel held that *Family PAC v. McKenna*, 685 F.3d 800, 809–11 (9th Cir. 2012), directly precluded appellants' challenge to the $100 threshold. The panel further held that the government's interest in disclosing contributions to ballot initiative committees was not merely a pre-election interest. The panel therefore affirmed the district court's judgment with regard to appellants' facial challenges to the post- election reporting requirements.

The panel dismissed the appeal as non-justiciable with regard to appellants' as-applied challenges. The panel held that to the extent that appellants sought an injunction requiring the State to purge records of their past disclosures, any claim for such relief was moot given that the information has been publicly available on the Internet and in hard copy for nearly five years. To the extent that appellants sought a forward-looking exemption from the Political Reform Act's requirements, the panel held such claim was not ripe. The panel remanded with instructions that the district court vacate the portion of its opinion concerning appellants' as-applied challenges.

Dissenting in part, Judge Wallace disagreed with the majority's determination that appellants' as-applied challenges were non-justiciable.

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*This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

COUNSEL

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OPINION

830 M. SMITH, *Circuit Judge. Appellants bring facial and as-applied challenges to California's Political Reform Act of 1974, Cal. Gov. Code. §§ 81000-91014 (PRA), and seek (1) an injunction exempting them from the PRA's future reporting deadlines, and (2) declaratory and injunctive relief requiring the State to purge all records of Appellants' past PRA disclosures. The district court granted summary judgment in favor of the State of California on all counts. We affirm the district court's judgment with regard to Appellants' facial challenges. We dismiss this appeal as non-justiciable with regard to Appellants' as-applied challenges. And, we remand with instructions that the district court vacate the portion of its opinion concerning Appellants' as-applied challenges.

FACTUAL AND PROCEDURAL BACKGROUND

The PRA requires political committees to report certain information about their contributors to the State. Specifically, political ***831** committees must file semi-annual disclosures, which, among other things, identify those individuals who have contributed more than $100 during or after a campaign, in addition to each contributor's address, occupation, and employer. Cal. Gov. Code §§ 84200, 84211(f). The State of California then publishes this information on the website of the California Secretary of State (the Secretary), and produces hard copies upon request.

Appellants, to whom we refer as the Prop 8 Committees or the Committees, are political committees that supported the November 2008 passage of Proposition 8. That proposition amended the California Constitution to provide that "[o]nly marriage between a man and a woman is valid or recognized in California." Cal. Const., Art. I, § 7.5. Proposition 8 was subsequently invalidated. *See Hollingsworth v. Perry,* 133 S. Ct. 2652, 2660, 186 L. Ed. 2d 768 (2013) (citing *Perry v. Schwarzenegger,* 704 F. Supp. 2d 921, 1004 (N.D. Cal. 2010)).

Prior to Proposition 8's passage, the Prop 8 Committees submitted disclosures to comply with the PRA's semi-annual reporting deadlines. These disclosures were published on the Secretary's website, and are available in hard copy. Following Proposition 8's passage, the Committees initiated this action in the United States District Court for the Eastern District of California, challenging the constitutionality of the PRA's disclosure require-

ments both facially and as applied to them. The Committees argued that their donors have been harassed as a result of the Committees' PRA disclosures, and they sought (1) an injunction exempting them from the PRA's future reporting deadlines, and (2) declaratory and injunctive relief requiring the State to purge all records of their past PRA disclosures.

On January 30, 2009, the district court denied Appellants' motion for a preliminary injunction. Appellants did not appeal the district court's order under 28 U.S.C. § 1292(a). Instead, they complied with the PRA's January 31, 2009 disclosure deadline, reporting those contributors who donated after October 19, 2008 and before December 31, 2008. The Secretary published these disclosures on her website, and made them publicly available in hard copy.[1] On November 4, 2011, the district court granted summary judgment in favor of the State on all counts. Appellants timely appealed, asking us to reverse the judgment of the district court and to order the State to purge all records of Appellants' PRA disclosures.

We have jurisdiction under 28 U.S.C. § 1291. We review a district court's grant of summary judgment de novo. *Bias v. Moynihan*, 508 F.3d 1212, 1218 (9th Cir. 2007). We review questions of justiciability de novo. *Bell v. City of Boise*, 709 F.3d 890, 896 (9th Cir. 2013).

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[1] Appellant "National Organization for Marriage California PAC" was subsequently formed, and joined in Plaintiffs' Third Amended Complaint.

DISCUSSION

I. Facial Challenges

Appellants assert that the PRA's $100 reporting threshold and "post-election reporting requirements" are facially unconstitutional in the context of ballot initiatives. Our decision in *Family PAC v. McKenna* directly precludes Appellants' challenge to the $100 threshold. 685 F.3d 800, 809-11 (9th Cir. 2012) (holding that $25 and $100 contribution disclosure thresholds survive "exacting scrutiny" in the context of ballot initiatives). Appellants' facial challenge to the post-election reporting requirements fails as well.

*832 A. Legal Standard

Contribution disclosure requirements are subject to "exacting scrutiny." *Citizens United v. FEC*, 558 U.S. 310, 366-67, 130 S. Ct. 876, 175 L. Ed. 2d 753 (2010); *Buckley v. Valeo*, 424 U.S. 1, 44, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976). In applying exacting scrutiny, we first ask whether the challenged regulation burdens First Amendment rights. If it does, we then assess whether there is a "substantial relation" between the burden imposed by the regulation and a "sufficiently important" governmental interest. *Citizens United*, 558 U.S. at 366-67; *Family PAC*, 685 F.3d at 805-06 (citing *Human Life of Wash. Inc. v. Brumsickle*, 624 F.3d 990, 1005 (9th Cir. 2010)).

Although disclosure is generally "a less restrictive alternative to more comprehensive regulations of speech," *Citizens United,* 558 U.S. at 369, contribution disclosure requirements may burden First Amendment rights by, among other things, deter-

ring "individuals who would prefer to remain anonymous from contributing," *Family PAC,* 685 F.3d at 806-07 (internal quotation marks omitted). To justify these burdens and to survive exacting scrutiny, "the strength of the governmental interest must reflect the seriousness of the actual burden on First Amendment rights." *Doe No. 1 v. Reed,* 561 U.S. 186, 130 S. Ct. 2811, 2818, 177 L. Ed. 2d 493 (2010) (internal quotation marks omitted).

The Supreme Court recognizes three substantial government interests that campaign contribution disclosure requirements may serve. *Buckley,* 424 U.S. at 66-68; *see also Doe*, 130 S. Ct. at 2819-21. First, disclosure requirements may serve a substantial "informational interest" by providing the electorate with information about the source of campaign money, the individuals and interests seeking their vote, and where a particular ballot measure or candidate falls on the political spectrum. *Buckley*, 424 U.S. at 66-67; *Family PAC*, 685 F.3d at 806. This interest is particularly important in the ballot initiative context. As we explained in *Family PAC*:

> The governmental interest in informing the electorate about who is financing ballot measure committees is of great importance. Disclosure enables the electorate to give proper weight to different speakers and messages ... by providing the voting public with the information with which to assess the various messages vying for their attention in the marketplace of ideas ... . Given the complexity of the issues and the unwillingness of much of the electorate to independently

> study the propriety of individual ballot measures, we think being able to evaluate who is doing the talking is of great importance ... . Disclosure also gives voters insight into the actual policy ramifications of a ballot measure. Knowing which interested parties back or oppose a ballot measure is critical, especially when one considers that ballot-measure language is typically confusing, and the long-term policy ramifications of the ballot measure are often unknown.

Family PAC, 685 F.3d at 808-09 (internal quotation marks and citations omitted); *see also Human Life of Wash. Inc.*, 624 F.3d at 1006 ("[T]he high stakes of the ballot context only amplify the crucial need to inform the electorate ... .").

Disclosure requirements may also help preserve the integrity of the electoral process by deterring corruption and the appearance of corruption. *Doe*, 130 S. Ct. at 2819; *Buckley,* 424 U.S. at 67 (explaining that disclosure requirements deter "those who would use money for improper purposes either before or after ***833** the election"). This interest extends generally to "promoting transparency and accountability in the electoral process," and those states that allow ballot initiatives "have considerable leeway to protect the integrity and reliability of the initiative process." *Doe*, 130 S. Ct. at 2819 (citations and quotations omitted).

Finally, disclosure requirements may permit accurate record-keeping. "[D]isclosure requirements are an essential means of gathering the data necessary to detect violations of ... contribution limitations." *Buckley,* 424 U.S. at 68. Such records fur-

ther enhance the public's future associational rights by offering voters information about which policies those seeking their vote have previously endorsed.

Both the Supreme Court and our court have rejected facial challenges to contribution disclosure requirements in several cases, holding that these substantial interests outweigh the modest burdens that the challenged disclosures impose on First Amendment rights. *See, e.g., Doe,* 130 S. Ct. at 2820 (holding that a state law authorizing private parties to obtain copies of referendum petitions is "substantially related to the important interest of preserving the integrity of the electoral process"); *Family PAC,* 685 F.3d at 805-11; *Human Life of Wash. Inc.,* 624 F.3d at 1013-14; *Alaska Right To Life Comm. v. Miles,* 441 F.3d 773, 791-92 (9th Cir. 2006).

B. Application

The PRA imposes reporting requirements on ballot committees, which require them to disclose the names of, and other identifying information about, contributors who donate $100 or more. The PRA's reporting deadlines are semi-annual. Accordingly, donations that are made prior to an election, but after the final pre-election reporting deadline, are reported after the election concludes. Appellants argue that this requirement is unconstitutional, because a state's only interest in disclosure is its interest in an informed electorate, and this interest allegedly expires with the election's conclusion. We reject Appellants' narrow view of the government's interest in disclosure.

A state's interests in contribution disclosure do not necessarily end on election day. Even if a state's interest in disseminating accurate information to voters is lessened after the election takes place, the state retains its interests in accurate record-keeping, deterring fraud, and enforcing contribution limits. As a practical matter, some lag time between an election and disclosure of contributions that immediately precede that election is necessary for the state to protect these interests. In this case, for example, Appellants' contributions surged nearly 40% (i.e., by over $12 million) between the final pre-election reporting deadline and election day. Absent post-election reporting requirements, California could not account for such late-in-the-day donations. And, without such reporting requirements, donors could undermine the State's interests in disclosure by donating only once the final pre-election reporting deadline has passed. Accordingly, we hold that the government's interest in disclosing contributions to ballot initiative committees is not merely a pre-election interest, and we affirm the district court's judgment with regard to Appellants' facial challenges.

II. As-Applied Challenges

Appellants also challenge the PRA disclosure requirements as applied to themselves.

To the extent that Appellants seek an injunction requiring the State to purge records of their past PRA disclosures, any claim for such relief is moot. To the ***834** extent that Appellants seek a forward-looking exemption from California's PRA requirements, such a claim is not ripe. Accordingly, we dismiss as non-justiciable Appellants' appeal

from the district court's judgment rejecting their as-applied claims, and we direct the court to vacate this portion of its opinion.

A. Mootness

Article III's "case-or-controversy" requirement precludes federal courts from deciding "questions that cannot affect the rights of litigants in the case before them." *DeFunis v. Odegaard,* 416 U.S. 312, 316, 94 S. Ct. 1704, 40 L. Ed. 2d 164 (1974) (per curiam) (quoting *North Carolina v. Rice,* 404 U.S. 244, 246, 92 S. Ct. 402, 30 L. Ed. 2d 413 (1971)).

1. Present Controversy

a. Legal Standard

It is not enough that a case presents a live controversy when it is filed. *FEC v. Wisc. Right To Life, Inc.,* 551 U.S. 449, 461, 127 S. Ct. 2652, 168 L. Ed. 2d 329 (2007). An actual controversy must exist at all stages of federal court proceedings. *Spencer v. Kemna*, 523 U.S. 1, 7, 118 S. Ct. 978, 140 L. Ed. 2d 43 (1998). This means that, at all stages of the litigation, the plaintiff "must have suffered, or be threatened with, an actual injury traceable to the defendant [that is] likely to be redressed by a favorable judicial decision." *Id*. (quoting *Lewis v. Cont'l Bank Corp*., 494 U.S. 472, 477, 110 S. Ct. 1249, 108 L. Ed. 2d 400 (1990)). "[T]he judicial branch loses its power to render a decision on the merits of [a] claim," *Nome Eskimo Cmty. v. Babbitt,* 67 F.3d 813, 815 (9th Cir. 1995), when a federal court can no longer effectively remedy a "present controversy" between the parties, *Doe,* 697 F.3d at 1238 (quoting *Feldman v. Bomar*, 518 F.3d 637, 642 (9th Cir. 2008)).

We are unable to effectively remedy a present controversy between the parties where a plaintiff seeks to enjoin an activity that has already occurred, and we cannot "undo" that action's allegedly harmful effects. *Foster v. Carson,* 347 F.3d 742, 746 (9th Cir. 2003) (citing *Bernhardt v. Cnty. of Los Angeles,* 279 F.3d 862, 871 (9th Cir. 2002)); *see also Seven Words LLC v. Network Solutions,* 260 F.3d 1089, 1095 (9th Cir. 2001). For example, "once a fact is widely available to the public, a court cannot grant 'effective relief' to a person seeking to keep that fact a secret." *Doe,* 697 F.3d at 1240; *see also Islamic Shura Council of S. Cal. v. FBI,* 635 F.3d 1160, 1164 (9th Cir. 2011); *In re Copley Press, Inc.,* 518 F.3d 1022, 1025 (9th Cir. 2008) ("Once information is published, it cannot be made secret again."). For this reason, "a case seeking to keep a document secret is moot once third parties have control over copies of the document." *Doe*, 697 F.3d at 1239 (quoting *C & C Prods., Inc. v. Messick*, 700 F.2d 635, 636-37 (11th Cir. 1983)). A case is similarly moot where a plaintiff seeks to enjoin specific parties from disclosing information that has already been published across the Internet. *Doe*, 697 F.3d at 1240.

b. Application

Appellants' request for an injunction requiring the State to purge all records of their PRA disclosures does not present a live controversy.

Before commencing this lawsuit, Appellants voluntarily complied with all PRA reporting requirements, and they have continued to do so throughout this litigation. Appellants most recently filed PRA disclosures on January 17, 2014—more

than two years after filing this appeal. Each PRA disclosure that Appellants have ***835** submitted is published on the Secretary's website, and is publicly available in hard copy.[2]

The record is replete with evidence that Appellants' PRA disclosures have been accessed and republished by third parties. Appellants themselves provided detailed documentation of several websites that have published their contributors' names, employers, and addresses. Appellants also represent that: (1) one site allows individuals to search for "any city and print a map graphically illustrating the name, address, [contribution] amount, occupation, and employer of each individual in that city who contributed to Prop. 8"; (2) "at least two major California newspapers have compiled searchable databases ... that enable easy access to look up Prop. 8 contributors"; and (3) Time Maga-

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[2] Specifically, since the PRA's January 31, 2009 reporting deadline, "ProtectMarriage.com - Yes on 8, a Project of California Renewal" has made seven additional filings. There was no committee activity between January 2009 and June 2011, but filings were made in June 2011, July 2011, January 2012, July 2012, January 2013, and July 2013. "National Organization for Marriage California - Yes on 8, Sponsored by National Organization for Marriage" has made two filings since the January 2009 deadline, in July 2009 and January 2010. There has been no committee activity since January 2010. Finally, "National Organization for Marriage California PAC" was formed subsequent to the November 2008 election, and joined in Plaintiffs' Third Amended Complaint. It has only made one filing, in July 2010, and its only donor was the National Organization for Marriage. In each instance, the information filed with the Secretary of State was posted on the Internet, and was and is available in hard copy.

zine directed its readership to a website that publishes the information contained in Appellants' PRA disclosures.

In light of the disclosures, and their vast dissemination, we can no longer provide Appellants with effective relief. The information that Appellants seek to keep private has been publicly available on the Internet and in hard copy for nearly five years. Third parties already have control over this information. Moreover, we have no way of knowing how many individuals have: (1) viewed Appellants' PRA disclosures; (2) retained copies of the disclosures or their contents; or (3) reproduced the disclosures. Accordingly, we cannot remedy Appellants' alleged harms, and their request for an injunction requiring the State to purge their past PRA disclosures does not present a live controversy.[3]

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[3] Our dissenting colleague does not dispute that our precedent compels this conclusion. Rather, Judge Wallace argues that *Doe* was wrongly decided in light of *Church of Scientology of California v. United States*, 506 U.S. 9, 113 S. Ct. 447, 121 L. Ed. 2d 313 (1992). In *Church of Scientology*, the Supreme Court held that the improper disclosure of privileged audio tapes to the IRS did not moot a claim to destroy or return those tapes. *Id.* at 13. But *Church of Scientology* involved a finite set of tangible records that had only been disclosed to a party to the action. Accordingly, the Court was able to clearly identify each person who had viewed the information, and order that each copy be returned or purged. Conversely, in this case, as in *Doe*, the challenged information is in the hands of third parties over whom we lack jurisdiction, and it has been widely available on the Internet for several years. It is now impossible to identify how many people have viewed this information, locate every reproduction of this information, and prevent the information's con-

***836 2. Capable of Repetition, Yet Evading Review**

We further hold that Appellants' request for injunctive relief does not fall within the mootness exception for cases that are "capable of repetition, yet evading review."

a. Legal Standard

As we explain above, a federal court loses its jurisdiction to reach the merits of a claim when the court can no longer effectively remedy a present controversy between the parties. *Doe*, 697 F.3d at 1238 (quoting *Feldman*, 518 F.3d at 642); *Nome Eskimo Cmty*., 67 F.3d at 815. There is an exception to this rule, however, where an otherwise moot action is "capable of repetition, yet evading review." *Lewis,* 494 U.S. at 481. Under the "capable of repetition, yet evading review" exception, we will decline to dismiss an otherwise moot action if we find that: "(1) the challenged action is in its duration too short to be fully litigated prior to cessation or expiration, and (2) there is a reasonable expectation that the same complaining party will be subject to

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tinued disclosure. As in *Doe*, the widespread disclosure of Appellants' PRA disclosures precludes us from providing the "effective relief" that the Supreme Court recognized in *Church of Scientology*. We also observe that even if Judge Wallace were correct that *Doe* was wrongly decided, we would still be bound by *Doe*'s holding unless and until the Supreme Court announces a "clearly irreconcilable" rule, or our court, sitting en banc, announces an alternate rule. *Miller v. Gammie*, 335 F.3d 889, 900 (2003) (en banc). As noted, *Church of Scientology* is not "clearly irreconcilable" with *Doe*.

the same action again." *Wisc. Right to Life, Inc.,* 551 U.S. at 462 (internal quotation marks omitted).

For a controversy to be "too short to be fully litigated prior to cessation or expiration," it must be of "*inherently* limited duration." *Doe,* 697 F.3d at 1240 (emphasis added). This is so because the "capable of repetition, yet evading review" exception is concerned not with particular lawsuits, but with classes of cases that, absent an exception, would *always* evade judicial review. *Id.* at 1240-41; *see also Bunker Ltd. P'ship v. United States (In re Bunker Ltd. P'ship),* 820 F.2d 308, 311 (9th Cir. 1987) ("[t]he exception was designed to apply to situations where the type of injury involved inherently precludes judicial review"); 13C Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedures: Jurisdiction and Related Matters* § 3533.8.2 (3d ed. 2013) (collecting cases). Notably, regardless of any injunction that might issue, a woman can only obtain an abortion so long as she remains pregnant. *Roe v. Wade*, 410 U.S. 113, 125, 93 S. Ct. 705, 35 L. Ed. 2d 147 (1973). We can only invalidate a temporary injunction so long as that injunction remains in effect. *Carroll v. President & Comm'rs of Princess Anne,* 393 U.S. 175, 178-79, 89 S. Ct. 347, 21 L. Ed. 2d 325 (1968); *Enyart v. Nat'l Conference of Bar Exam'rs, Inc.*, 630 F.3d 1153, 1159-60 (9th Cir. 2011). And where a purportedly invalid law inhibits a political candidate or party's ability to win an election, we can only remedy that impediment before the election occurs. *Norman v. Reed*, 502 U.S. 279, 288-89, 112 S. Ct. 698, 116 L. Ed. 2d 711 (1992). We recognize these types of controversies as "inherently limited in duration," be-

cause they will only ever present a live action until a particular date, after which the alleged injury will either cease or no longer be redressible. The limited duration of such controversies is clear at the action's inception.

Actions seeking to enjoin future conduct are different. Such actions only become moot if the challenged conduct actually occurs and causes an injury that cannot be reversed. These actions are not of "inherently limited duration," because the challenged conduct might never occur. And, a court can ensure that a live controversy persists until the action is fully litigated by enjoining the challenged conduct until the litigation concludes. *See Doe*, 697 F.3d at 1240-41.

Because mootness concerns whether we have power to hear a case, we apply the "capable of repetition, yet evading review" exception sparingly, and only ***837** in "exceptional situations." *Lewis,* 494 U.S. at 481. Controversies that are not of "inherently limited duration" do not create "exceptional situations" justifying the rule's application, because, even if a particular controversy evades review, there is no risk that future repetitions of the controversy will necessarily evade review as well. As we have explained, "[t]he exception was designed to apply to situations where the type of injury involved inherently precludes judicial review, not to situations where ... [review is precluded as a] practical matter." *Bunker*, 820 F.2d at 311.

For this reason, where preliminary injunctive relief is available to maintain a live controversy, it is of no consequence to the mootness inquiry that a particular party has failed to actually obtain such

relief. "[A] party may not profit from the 'capable of repetition, yet evading review' exception ... where through his own failure to seek and obtain [prompt relief] he has prevented [an] appellate court from reviewing the trial court's decision." *Id.* at 311; *see also Newdow v. Roberts,* 603 F.3d 1002, 1008-09, 390 U.S. App. D.C. 273 (D.C. Cir. 2010). In such circumstances, we have no power to hear the action, and the controversy must be resolved in a future action presenting a live dispute. *Doe,* 697 F.3d at 1241; *see also Headwaters, Inc. v. Bureau of Land Mgmt.,* 893 F.2d 1012, 1016 (9th Cir. 1990) (holding that a party may not invoke the "capable of repetition, yet evading review" exception where its failure to obtain prompt relief has prevented judicial review); *Bunker,* 820 F.2d at 311.

Lawsuits seeking to enjoin the disclosure of sensitive information do not fall into the mootness exception for cases that are "capable of repetition, yet evading review," because there is no inherent limit on the duration of such controversies. For example, in a case challenging campaign contribution disclosure requirements, the court can maintain a live controversy by issuing an order that either: (1) temporarily excuses the plaintiffs from complying with the challenged requirements; or (2) temporarily precludes the state from disclosing the challenged information. *Doe*, 697 F.3d at 1240-41. Whether a party actually obtains such an order in a particular case does not affect our jurisdictional inquiry. *See id*.

b. Application

The "capable of repetition, yet evading review" exception does not apply to Appellants' claims, be-

cause there was no "inherent limit" on the duration of this controversy. A court order temporarily excusing Appellants from the PRA's reporting deadline or enjoining the state from publicly disclosing Appellants' filings could have permitted the parties to fully litigate this case on the merits. Appellants simply failed to obtain such an order.

After the district court denied Appellants' motion for a temporary restraining order, Appellants did not file an interlocutory appeal, nor did they seek an injunction pending appeal. By the time Appellants' claims reached us, the information that Appellants seek to keep private had been publicly available for nearly five years. If Appellants were to bring a similar action in the future, their claims would not, by their nature, again evade review, because a different litigation strategy could maintain a live controversy until the action's final resolution.[4]

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[4] In concluding that this controversy is justiciable, the dissent argues that under *Enyart*, the "capable of repetition, yet evading review" exception considers whether the circumstances of a particular litigation allowed a party to fully litigate its claims before they became moot. But *Enyart* dealt with an issue of an entirely different nature.

It is well established that when a party challenges a temporary injunction and that party will likely face a similar injunction in the future, the injury caused by that injunction is "capable of repetition, yet evading review." *Carroll*, 393 U.S. at 178-79. This is so because any injury caused by a temporary injunction ends when the injunction expires, and no court order can extend the duration of the controversy past the injunction's expiration. *Enyart* involved a straightforward application of this rule. We merely held that a challenge to a temporary injunction remained justiciable after the injunction expired because there was a reasonable expectation that

In reaching this conclusion, we emphasize that the justiciability of disputes concerning ***838** the disclosure of sensitive information may well turn on whether preliminary relief is granted at an action's inception. As this case demonstrates, the premature disclosure of information can eviscerate a live controversy. Nevertheless, the fact that preliminary relief is technically *available* to maintain a live controversy will also deprive federal courts of jurisdiction to consider the action as one that is "capable of repetition, yet evading review." Accord-

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the appellants would be subject to the same injunction in the future. 630 F.3d at 1159-60.

The dissent reasons that, because we considered the duration of the challenged injunctions in *Enyart*, we should consider this litigation's timeline in assessing whether Appellants' claims "evade review." In so doing, the dissent highlights that there was only one day between the issuance of the district court's order denying preliminary injunctive relief and the PRA's January 31, 2009 disclosure deadline.

The dissent errs with regard to the time-frame that is relevant to whether a controversy inevitably "evades review." As we explain above, a controversy "evades review" only if it is of "inherently limited duration." *Bunker*, 820 F.2d at 311 ("[t]he exception was designed to apply to situations where *the type of injury involved* ... [evades review] by [its] nature" (emphasis added)). A case is not of "inherently limited duration" if a court order could maintain a live controversy until the action is fully litigated.

While the timing of the district court's order made it difficult for Appellants to maintain a live controversy in this case, we can no longer redress Appellants' alleged injuries, and we therefore lack jurisdiction over this appeal. Despite the dissent's contrary assertions, the poor timing of the district court's order cannot confer jurisdiction upon us that would not otherwise exist.

ingly, we advise courts to exercise the utmost caution at the early stages of actions concerning the disclosure of sensitive information, and to consider this "mootness Catch-22" when assessing whether the denial of preliminary relief will likely result in irreparable harm. *See Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20, 129 S. Ct. 365, 172 L. Ed. 2d 249 (2008).

B. Ripeness

Finally, Appellants urge that they are entitled to an injunction exempting them from complying with future PRA disclosure requirements, because they expect to participate in future campaigns opposing same-sex marriage. This claim for forward-looking relief is not ripe for judicial review.

1. Legal Standard

The ripeness doctrine seeks to identify those matters that are premature for judicial review because the injury at issue is speculative, or may never occur. *Alcoa, Inc. v. Bonneville Power Admin.,* 698 F.3d 774, 793 (9th Cir. 2012); *see also Abbott Labs. v. Gardner,* 387 U.S. 136, 148, 87 S. Ct. 1507, 18 L. Ed. 2d 681 (1967). "For adjudication of constitutional issues, concrete legal issues, presented in actual cases, not abstractions, are requisite." *United Pub. Workers of Am. (C.I.O.) v. Mitchell,* 330 U.S. 75, 89, 67 S. Ct. 556, 91 L. Ed. 754 (1947) (internal quotations omitted). Concrete legal issues require more than mere "hypothetical threat[s]," and ***839** where we can "only speculate" as to the specific activities in which a party seeks to engage, we must dismiss a claim as nonjusticiable. *Id.* at 90.

We have explained that "the ripeness inquiry contains both a constitutional and a prudential component." *Thomas v. Anchorage Equal Rights Comm'n,* 220 F.3d 1134, 1138 (9th Cir. 2000) (en banc). The constitutional component overlaps with, and is often indistinguishable from, the "injury in fact prong" of our standing analysis. *Id.* Whether we view injury in fact as a question of standing or ripeness, "we consider whether the plaintiff[] face[s] a realistic danger of sustaining a direct injury as a result of the statute's operation or enforcement ... or whether the alleged injury is too imaginary or speculative to support jurisdiction." *Id.* at 1139 (internal quotation marks and citations omitted). If this constitutional requirement is not satisfied, we lack jurisdiction, and we need not consider the prudential component of the ripeness inquiry.

We typically look to three factors to assess whether a pre-enforcement challenge is ripe for review under Article III. *Id.* We first consider whether the plaintiff articulates a "concrete plan to violate the law." *Id.* (internal quotation marks omitted). With regard to this prong, "[a] general intent to violate a statute at some unknown date in the future" is not sufficient, *id*, and the plaintiff must establish a plan "that is more than hypothetical," *Wolfson v. Brammer*, 616 F.3d 1045, 1059 (9th Cir. 2010).

Next, we typically look to whether the government has "communicated a specific warning or threat to initiate proceedings" under the statute. *Thomas*, 220 F.3d at 1139. Our analysis under this second prong is somewhat different, however, in a pre-enforcement challenge that alleges a free

speech violation under the First Amendment. *See Wolfson*, 616 F.3d at 1059-60. In such actions, the plaintiff need not establish an actual threat of government prosecution. *Id.* Rather, the plaintiff need only demonstrate that a threat of potential enforcement will cause him to self-censor, and not follow through with his concrete plan to engage in protected conduct. *Id.*

Finally, we consider the history of past prosecution or enforcement under the statute. *Thomas,* 220 F.3d at 1140. Under this third prong, "the government's active enforcement of a statute [may] render[] the plaintiff's fear [of injury] ... reasonable." *Id.*

Weighing these factors, we will only conclude that a pre-enforcement action is ripe for judicial review if the alleged injury is "reasonable" and "imminent," and not merely "theoretically possible." *Id.* at 1141. A claim is not ripe where "[t]he asserted threat is wholly contingent on the occurrence of unforeseeable events," or where the plaintiffs do not "confront a realistic danger of sustaining a direct injury as a result of the statute's operation or enforcement." *Id.* (internal quotation marks and citations omitted).

The application of these principles is illustrated in *Renne v. Geary*, 501 U.S. 312, 111 S. Ct. 2331, 115 L. Ed. 2d 288 (1991), in which the Supreme Court dismissed a challenge to a provision in the California constitution prohibiting political parties and committees from endorsing, supporting, or opposing candidates for nonpartisan offices. In that case, the Republican Committee submitted an affidavit stating:

> It is the plan and intention of the Republican Committee to endorse candidates for nonpartisan offices in as many future elections as possible. The Republican Committee would like to have ***840** such endorsements publicized by endorsed candidates in their candidate's statements in the San Francisco voter's pamphlet, and to encourage endorsed candidates to so publish their endorsements by the Republican Committee.

Id. at 317.

In holding that the Republican Committee did not present a ripe controversy, the *Renne* Court explained that "[the Committee] d[id] not allege an intention to endorse any particular candidate ... . [and there is] no factual record of an actual or imminent application of [the challenged provision] sufficient to present the constitutional issues ... ." *Id.* at 321-22 (citations omitted).

2. Application

At this stage, any as-applied challenge based on Appellants' future activity fails to "tender[] the underlying constitutional issues in clean cut and concrete form." *Socialist Labor Party v.* Gilligan, 406 U.S. 583, 588, 92 S. Ct. 1716, 32 L. Ed. 2d 317 (1972) (quoting *Rescue Army v. Mun. Court*, 331 U.S. 549, 584, 67 S. Ct. 1409, 91 L. Ed. 1666 (1947)). The only information that we have regarding Appellants' intended future activities is that Appellants expect to participate in future campaigns opposing same-sex marriage, and that, in so

doing, they wish not to comply with the PRA's disclosure requirements.

Appellants have not offered any information regarding when they may next support a campaign opposing same-sex marriage, what type of campaign they will support, where they will support it, what their involvement will entail, or whether their donors will likely face personal harassment. Without this information, we cannot discern a concrete plan to engage in protected conduct. Rather, the scant information that Appellants provide merely demonstrates "[a] general intent to [engage in protected conduct] at some unknown date in the future," along with a speculative fear that Appellants' donors may be personally harassed as a result of disclosing their contributions to such an effort. *Wolfson*, 616 F.3d at 1059. These hypothetical plans and fears do not create an immediate threat of self-censorship. And, as in *Renne*, there is no factual record of the State's bringing PRA enforcement actions against those who do not comply with the statute's disclosure requirements. *Renne*, 501 U.S. at 321-22. Accordingly, any claim based on Appellants' future activities is not ripe under the *Thomas* factors.

In reaching this conclusion, we emphasize that we have "no right to pronounce an abstract opinion upon the constitutionality of a [s]tate law," *Poe v. Ullman*, 367 U.S. 497, 504, 81 S. Ct. 1752, 6 L. Ed. 2d 989 (1961). As-applied challenges to contribution disclosure laws are fact-specific in nature. Whether a group will succeed in asserting such a challenge depends on factors such as the group's size, the nature of the campaign, the political tenor

in the community, and the actions of third parties and government entities. *See Brown v. Socialist Workers '74 Campaign Comm. (Ohio)*, 459 U.S. 87, 89-92, 103 S. Ct. 416, 74 L. Ed. 2d 250 (1982). Unlike *California Pro-Life Council, Inc. v. Getman*, 328 F.3d 1088 (9th Cir. 2003) and *New Mexicans for Bill Richardson v. Gonzales*, 64 F.3d 1495 (10th Cir. 1995)—upon which the dissent relies—any opinion that we could issue regarding Appellants' forward-looking claims would require us to speculate about the nature of events that might take place at some unknown time in the future, and to declare the constitutionality of a state law in the context of these uncertain circumstances. Under Article III, we lack the authority to issue such an opinion. *See Renne*, 501 U.S. at 323 ("[a] ***841** determination of the ... constitutionality of legislation[,] in advance of its immediate adverse effect in the context of a concrete case[,] involves too remote and abstract an inquiry for the proper exercise of the judicial function").

CONCLUSION

For the foregoing reasons, we affirm the district court's judgment with regard to Appellants' facial challenges. We dismiss this appeal as non-justiciable with regard to Appellants' as-applied challenges, and we remand these claims to the district court with instructions that the court vacate the portion of its opinion concerning Appellants' as applied challenges. *See Bunker*, 820 F.2d at 313. Appellants shall bear costs on appeal.

AFFIRMED in part; DISMISSED in part; and REMANDED with instructions.

WALLACE, Circuit Judge, dissenting in part:

I do not disagree with the majority's disposition of Appellants' facial challenges. The majority is correct that our precedent, including our decision in *Family PAC v. McKenna*, 685 F.3d 800 (9th Cir. 2012), forecloses those challenges. However, I disagree with the majority's determination that Appellants' as-applied challenges are non-justiciable.

The majority offers three rationales for its holding that Appellants' as-applied challenges are non-justiciable. First, the majority concludes that those challenges are moot, insofar as various Internet websites have republished the information contained in Appellants' disclosures. (Majority Op. at 14.) Second, the majority concludes that Appellants cannot avail themselves of the "capable of repetition, yet evading review" exception to mootness. The majority reaches this conclusion on the ground that this exception only applies to cases in which there is an "inherent limit" on the "duration of [the] controversy," and faults Appellants for not seeking and obtaining immediate relief from our court after the district court denied their motion for a temporary restraining order. (*Id.* at 17-22.) Finally, the majority concludes that insofar as Appellants seek an injunction exempting them from complying with future disclosure requirements, this claim is not ripe because it rests on merely speculative contentions from Appellants about their future activities. (*Id.* at 22-27.)

For the reasons stated below, I disagree with each of these three conclusions. Accordingly, I re-

spectfully dissent from the majority's decision to dismiss Appellants' as-applied challenges as non-justiciable.

I.

The majority holds that Appellants' request for an injunction requiring California to purge all records of their disclosures does not "present a live controversy." (Majority Op. at 14.) The majority's reasoning as to this issue relies on our decision in *Doe No. 1 v. Reed*, 697 F.3d 1235 (9th Cir. 2012). However, I believe that *Reed* was wrongly decided, as Judge Randy Smith explained in his concurrence in that case. *See id.* at 1241 (N.R. Smith, J., concurring in the judgment).

Reed involved facts much like those presented in this appeal. The plaintiffs in that case sought an injunction preventing the State of Washington from releasing to the public the names of people who signed petitions supporting a referendum. *Id.* at 1237. Because those petitions were "already widely available on the [I]nternet," the majority dismissed the case as moot. *Id.*

***842** While Judge Randy Smith concurred with the judgment, he wrote separately to explain that "Supreme Court precedent makes clear" that the case was not moot, insofar as "continued government disclosure of confidential materials can be prevented." *Id.* at 1241. As he explained, our court could have afforded the plaintiffs a "viable remedy, albeit a much less effective remedy than they originally sought." *Id.* As he further explained, there were several respects in which a "viable remedy" was available from us. First, our court could have

"fashion[ed] *some* form of meaningful relief" by "ordering the [State] to destroy or return any and all copies [of the petitions] it may have in its possession," because the State's "*continued possession* of those materials" itself constituted an "affront to the [citizen's] privacy." *Id.* at 1242-43, *quoting Church of Scientology of Cal. v. United States*, 506 U.S. 9, 12-13, 113 S. Ct. 447, 121 L. Ed. 2d 313 (1992). Second, he pointed out that the majority had "mistakenly assume[d] that every person in the United States or the State of Washington has access to a computer to search for [the] petitions," whereas in actuality a significant percentage of the public either lacks access to the Internet or "would not know where to look for [the] petitions" on the Internet. *Id.* at 1243. Thus, by granting the plaintiffs the injunctive relief they requested, our court could have "prevent[ed] further government disclosure to individuals without access or desire to download petitions from non-government websites," which would have slowed or reduced "the dissemination of potentially private information." *Id.*, *citing Massachusetts v. E.P.A.*, 549 U.S. 497, 525, 127 S. Ct. 1438, 167 L. Ed. 2d 248 (2007).

I agree with the reasoning of Judge Smith's concurrence in *Reed*. I write here to emphasize that the Supreme Court's decision in *Church of Scientology of California v. United States* clearly states that the type of claim raised by the plaintiffs in *Reed*, and by Appellants in this case, is not moot. There, the Court acknowledged that there are circumstances in which the judiciary "may not be able to return the parties to the *status quo ante*," because there is "nothing a court can do to withdraw

all knowledge or information" once that information has been disseminated. *Church of Scientology,* 506 U.S. at 12-13. Nonetheless, *Church of Scientology* held that "a court can fashion *some* form of meaningful relief" in such circumstances. *Id.* The Court stated that "even if the Government retains only copies of the disputed materials," a citizen "still suffers injury by the Government's continued possession of those materials, namely, the affront to the [citizen's] privacy." *Id.* at 13. Accordingly, *Church of Scientology* held that "a court does have power to effectuate a partial remedy by ordering the Government to destroy or return any and all copies it may have in its possession," and further held that the "availability of this possible remedy is sufficient to prevent [a] case from being moot." *Id.*

The majority in *Reed* failed to recognize that *Church of Scientology* is controlling. Instead, it ignored the holding of *Church of Scientology* on the basis of its "commonsense conclusion that once a fact is widely available to the public, a court cannot grant any 'effective relief' to a person seeking to keep that fact a secret." *Reed*, 697 F.3d at 1240. It should go without saying, however, that the "commonsense conclusion" of two circuit judges cannot trump an express holding of the Supreme Court. *Church of Scientology* is still the controlling law of all circuits, including the Ninth Circuit. *Reed* cannot change that. Indeed, the majority should have interpreted ***843** *Reed* in such a way as to render it consistent with *Church of Scientology*.

As *Church of Scientology* makes clear, we could order the State of California to "destroy or return any and all copies" of Appellants' disclosures that

the State "may have in its possession." *Church of Scientology*, 506 U.S. at 13. Thus, under binding Supreme Court precedent, there is available to us a "possible remedy" that is" sufficient to prevent this case from being moot." *Id*.

The majority goes the opposite direction, and attempts to distinguish *Church of Scientology* by stating that *Church of Scientology* involved "a finite set of tangible records that had only been disclosed to a party to the action," whereas this case involves records that have been "widely available on the Internet for several years." (Majority Op. at 16 n.3.) Thus, the majority concludes that we cannot provide "the 'effective relief' that the Supreme Court recognized in *Church of Scientology*." (*Id*.) But this conclusion simply repeats the error of the panel in *Reed*. As pointed out above, *Church of Scientology* clearly holds that a case is not moot if we can "effectuate a partial remedy by ordering the Government to destroy or return any and all copies [of records] it may have in its possession." *Church of Scientology*, 506 U.S. at 13. The fact that records may have been "widely available" on the Internet is not relevant to the inquiry mandated by *Church of Scientology*. Again, that inquiry is whether we can "fashion *some* form of meaningful relief" by remedying the "injury" to citizens caused by the "Government's continued possession" of records, where that possession is an "affront" to the citizen's privacy. *Id.* at 12-13.

Church of Scientology teaches that courts should not declare a case moot if "*any* effective relief may be granted." *Forest Guardians v. Johanns*, 450 F.3d 455, 461 (9th Cir. 2006) (citation omitted).

As one of our sister circuits has explained, this is a "high threshold for judging a case moot," insofar as it requires that we find an appeal "moot in the constitutional sense only if events have taken place that make it impossible for the court to grant any effectual relief whatever." *United Artists Theatre Co. v. Walton*, 315 F.3d 217, 226 (3d Cir. 2003) (internal quotation marks and citation omitted). Both *Reed* and the majority in this case err by effectively lowering this standard, in contravention of *Church of Scientology*. That opinion tells us that we should find a case moot only if it is "impossible" for us to grant "any effectual relief whatever." *Church of Scientology*, 506 U.S. at 12. By contrast, the majority holds that this case is moot because it is *unlikely* that we will be able to provide *significant* effective relief. But that is not the standard set by *Church of Scientology*.

For the reasons stated above, and in accordance with the well-reasoned concurrence of Judge Randy Smith in *Reed*, I conclude that *Reed* was wrongly decided. Under the governing law of *Church of Scientology*, Appellants' as applied challenges are not moot. The majority should have distinguished *Reed* and followed *Church of Scientology*, not the opposite.[1]

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[1] As the majority observes, this panel is bound by the holding in *Reed* "unless and until the Supreme Court announces a 'clearly irreconcilable' rule, or our court, sitting en banc, announces an alternate rule." (Majority Op. at 16 n.3.) My purpose here is to explain the misguided reasoning of *Reed*, in the hope that our court will reconsider the erroneous rule it propounds, or distinguish *Reed* and follow the clear mandate of the Supreme Court in *Church of Scientology*.

***844** II.

Having concluded that Appellants' as-applied challenges are moot, the majority proceeds to consider whether those challenges may nonetheless be subject to the exception to mootness for injuries that are "capable of repetition, yet evading review." As discussed above, I do not believe that the as-applied challenges are moot. But even if they were moot, I believe that the majority errs in concluding that the "capable of repetition, yet evading review" exception to mootness does not apply to this case.

The majority correctly states that the "capable of repetition, yet evading review" exception applies where: "(1) the challenged action is in its duration too short to be fully litigated prior to cessation or expiration, and (2) there is a reasonable expectation that the same complaining party will be subject to the same action again." *Fed. Election Comm'n v. Wis. Right to Life, Inc.*, 551 U.S. 449, 462, 127 S. Ct. 2652, 168 L. Ed. 2d 329 (2007). In my view, Appellants satisfy both of these requirements. I consider each in turn.

A.

As to the first requirement, Appellants filed their original complaint on January 7, 2009, two months after the election on Proposition 8 took place. Under California law, Appellants were required to disclose the names of their contributors by January 31, 2009. As the majority observes, the district court denied Appellants' motion for a preliminary injunction on January 30, 2009. (Majority Op. at 7.) The next day, Appellants complied with the law and made their disclosures. (*Id.*) Such a

short span of time is clearly "in its duration too short" for a claim of this nature to be "fully litigated." *Wis. Right to Life,* 551 U.S. at 462.

The majority does not contend that this claim could have been "fully litigated" in so brief a time. Rather, it faults Appellants for failing to seek preliminary injunctive relief, and concludes that their failure to do so precludes this claim from falling under the "capable of repetition, yet evading review" exception to mootness. In reaching this conclusion, the majority relies upon our opinions in *Headwaters, Inc. v. Bureau of Land Management,* 893 F.2d 1012 (9th Cir. 1990), and *Bunker Ltd. Partnership v. United States,* 820 F.2d 308 (9th Cir. 1987). However, I believe that these opinions do not preclude us from deciding that the "capable of repetition, yet evading review" exception applies to this case.

In *Headwaters*, we stated that "[w]here prompt application for a stay pending appeal can preserve an issue for appeal, the issue is not one that will evade review." *Headwaters,* 893 F.2d at 1016. Likewise, in *Bunker* we stated that "a party may not profit from the 'capable of repetition, yet evading review' exception to mootness, where through his own failure *to seek and obtain a stay* he has prevented an appellate court from reviewing the trial court's decision." *Bunker,* 820 F.2d at 311 (emphasis added). But the abstract proposition stated in both of these cases—i.e., the proposition that if a party "fail[s] to seek and obtain a stay," that party may not avail itself of the "capable of repetition, yet evading review" exception to mootness—does not speak to the particular facts of *this*

case. As pointed out above, the district court issued its order on Appellants' motion for a preliminary injunction on January 30, 2009, while Appellants were required to make their disclosures by January 31, 2009. Thus, under the majority opinion, Appellants would have had a *single day* to "seek and obtain a stay" from our court in order to "profit from the 'capable of repetition, yet evading review' ***845** exception to mootness." *Id*. This draconian constraint is not established by the opinions cited by the majority, which merely speak in general terms of a party's obligation to "seek and obtain a stay" so as to enable our court to review the lower court's decision.

A recent case in one of our sister circuits emphasizes the unfair position in which Appellants have been placed by the majority's holding as to this issue. On December 20, 2013, the District of Utah held that Amendment 3 of the Utah Constitution is unconstitutional, and enjoined the State of Utah from enforcing various statutory provisions that "prohibit a person from marrying another person of the same sex." *Kitchen v. Herbert*, 961 F. Supp. 2d 1181, 2013 WL 6697874, at *30 (D. Utah 2013). A few hours after that order was issued, the State of Utah filed a motion to stay the order. *See Kitchen v. Herbert,* 2013 U.S. Dist. LEXIS 180087, 2013 WL 6834634, at *1 (D. Utah Dec. 23, 2013). Although the district court ordered expedited briefing, it did not rule on the motion to stay for three days. *See id*. It was not until two weeks later that the Supreme Court issued a stay pending final disposition of the appeal by the Tenth Circuit. *See*

Herbert v. Kitchen, 134 S. Ct. 893, 893, 187 L. Ed. 2d 699 (2014).

As this example illustrates, it is simply not realistic to expect a party to "seek and obtain a stay" within the span of a single day. Yet that is what the majority effectively requires. On the facts of this case, I would hold that our decisions in *Headwaters* and *Bunker* do not prohibit Appellants from satisfying the first requirement of the "capable of repetition, yet evading review" exception to mootness.

The majority asserts that the analysis above errs by focusing on the wrong "time-frame" for determining whether "a controversy inevitably 'evades review.'" (Majority Op. at 21 n.4.) The majority's contrary analysis hinges on its discussion of "types of controversies" that are "inherently limited in duration." (*Id*. at 17.) The majority argues that the mootness exception discussed here only applies to "inherently limited" controversies, which it defines as those that "will only ever present a live action until a particular date, after which the alleged injury will either cease or no longer be redressible." (*Id*. at 18.)

To my mind, the majority's discussion of an "inherently limited" controversy is somewhat metaphysical. The present controversy unquestionably had an "inherent limit": namely, January 31, 2009, when Appellants were required by law to make their disclosures. In the same way, a controversy involving a law that "inhibits a political candidate or party's ability to win an election" has, as *its* "inherent limit," the date of that election. (*Id*. at 18.) Whatever distinction might be drawn between the-

se two scenarios, it cannot be that only the latter has an "inherent limit."

Although the majority does not say as much, it appears to posit a distinction between controversies whose "inherent limit" is a real-world event and those whose "inherent limit" is an artificial creation of the legal system. An example of the former, which the majority regards as "[n]otabl[e]," is pregnancy, insofar as the date on which a baby is born is independent of anything the law might decree. (*Id*.) By contrast, the limit in this case was the disclosure deadline mandated by California state law.

This distinction is not established by the cases the majority cites. Moreover, I believe that this distinction, although crucial to the majority's holding, cannot be reconciled with our precedent. In effect, the majority has established a new test for determining whether this exception to mootness applies to a given case. Under ***846** the newly invented test of the majority, in cases in which the "inherent limit" on the controversy derives from some real-world event— such as a pregnancy—the exception will invariably apply. By contrast, in cases in which the "inherent limit" derives from an event that may be delayed via court order, the exception will *never* apply, because it will always be possible for a "court [to] ensure that a live controversy persists until the action is fully litigated by enjoining the challenged conduct until the litigation concludes." (*Id*. at 18.)

Although such a test may have a certain intuitive appeal, it is not the law of our circuit, as the majority's own citations indicate. The majority re-

lies on *Bunker*, which held that a party "may not profit" from this exception to mootness "where through *his own failure to seek and obtain* [prompt relief] he has prevented [an] appellate court from reviewing the trial court's decision." (*Id*. at 19, *citing Bunker,* 820 F.2d at 311 (emphasis added).) This citation demonstrates the obvious novelty of the test introduced by the majority. In *Bunker*, we held that the significant factor, in determining whether this exception to mootness applies, is a party's "own failure to seek and obtain" relief. That is, in our analysis of this exception to mootness we looked to the *party's own diligence* in seeking relief, rather than evaluating the case in the abstract and determining whether it was the "type[] of controvers[y]" that is invariably "inherently limited in duration." (*Id*. at 18.)

Put another way, the majority holds that this exception to mootness is only available in cases whose "limited duration ... is clear at the action's inception." (*Id*. at 18.) But the cases relied upon by the majority consider a party's "failure to obtain prompt relief" *during* an action. (*Id*. at 19.) If it were true that the question of whether this exception to mootness applies could be resolved solely by considering an action in abstract form from its "inception," then there would have been no reason for our prior cases to consider a party's "failure to seek and obtain" relief over the course of litigating the action. The new majority rule is inconsistent with our prior case law.

Thus, the majority's holding here clearly creates new law for our circuit, and does so in a way that cannot be reconciled with our court's precedent.

The majority relies on *Reed* for its reasoning as to this point. (*Id*. at 18-20.) I quote below the entirety of the discussion of this issue in *Reed*:

> There was no inherent limit on the duration of this controversy. The district court granted a temporary restraining order the day after Plaintiffs filed their complaint in July 2009. The petitions were not released until October 2011. The release was not timed to a 27-month deadline inherent in this type of petition. And unlike [other] election-related cases granting an exception ... the issues in this case were not moot once the election was held. [citation omitted] Because it is reasonably foreseeable that this type of challenge could be fully litigated before becoming moot, this type of challenge does not evade review.

Reed, 697 F.3d at 1240-41.

Whatever might be said of this holding, it does not provide a justification for the novel test that the majority has invented.

In similar contexts, we have not relied upon the distinction used by the majority to preclude review of this case under this exception to mootness. Our recent decision in *Enyart v. National Conference of Bar Examiners, Inc.,* 630 F.3d 1153 (9th Cir. 2011), is instructive in this regard. In *Enyart*, we considered an appeal from preliminary injunctions entered by the district ***847** court. *Id.* At 1159. Those injunctions required the National Conference of Bar Examiners to allow the plaintiff to take certain bar examinations using "assistive software." *Id.* at 1156. We held that even though those injunctions only related to particular administrations of those

examinations, "which [had] since come and gone," the appeals were not moot because "the situation [was] capable of repetition, yet evading review." *Id.* at 1159. As we explained, "[d]ue to the limited duration of [the] injunctions," and in particular because "little more than a month passed between the issuance of the injunctions and the final execution of their terms," it was "practically" impossible for the appellant to obtain review of the district court's orders. *Id.* at 1160.

Thus, in *Enyart*, we held that a period of "little more than a month" rendered it "practically" impossible for a party to obtain appellate review. *Id.* By the same logic, it was almost certainly impossible for Appellants to obtain review from us of the district court's order on Appellants' motion for a preliminary injunction in the single day available to them.

The majority attempts to distinguish *Enyart* by stating that it "dealt with an issue of an entirely different nature." (Majority Op. at 20-21 n.4.) The point of my discussion of *Enyart*, however, is that it considered whether a party could "practically obtain appellate review" of a district court order. *Enyart*, 630 F.3d at 1160. This reinforces my point that the relevant inquiry, when considering this exception to mootness, is a *pragmatic* one—namely, whether it is practically possible for a party to obtain the appellate relief it needs—rather than the *metaphysical* one mandated by the majority.

In sum, because it was practically impossible under the facts of this case for Appellants to obtain appellate review, I would hold that Appellants have satisfied the first requirement of the "capable

of repetition, yet evading review" exception to mootness.

B.

In light of its conclusion that Appellants failed to satisfy the first requirement of the "capable of repetition, yet evading review" exception to mootness, the majority does not address the second requirement—namely, the requirement that there must be a "reasonable expectation that the same complaining party will be subject to the same action again." *Wis. Right to Life, Inc.*, 551 U.S. at 462. Because I believe the majority's conclusion as to the first requirement is erroneous, I proceed to consider the second requirement as well, so as to demonstrate that Appellants have completely satisfied the requirements for this exception to mootness.

In this case, Appellants have alleged that they intend to engage in future political activities against same-sex marriage and that they intend to continue soliciting donations to advance that position. Their Third Amended Complaint alleges that "Committee Plaintiffs believe potential contributors have been *and will continue to be* discouraged from contributing to their committees as a result of the threats and harassment directed at any individual supporting a traditional definition of marriage" (emphasis added). Moreover, at oral argument, counsel for Appellants stated that future ballot initiatives are being circulated and that Appellants' committees are ready to participate in such initiatives by filing amendment documents, at which point they would resume soliciting donations.

Under our precedent, this is sufficient to show a "reasonable expectation that [Appellants] ***848** will be subject to the same action again." *Id*. The case of *Wolfson v. Brammer,* 616 F.3d 1045, 1054 (9th Cir. 2010), is exactly on point. *Wolfson* involved an appellant who was a "candidate for judicial office in Arizona." *Id.* at 1051. The district court had dismissed the case as moot, insofar as Wolfson had lost his election and the district court found that he "did not intend to seek judicial office in the next election." *Id.* at 1052. We reversed, holding that the case was not moot under the "capable of repetition yet evading review" exception. *Id.* at 1052, 1054. In particular, we observed that Wolfson had to "establish a reasonable expectation that he [would] be subjected to the same action or injury again." *Id.* We concluded that he had established such a "reasonable expectation." *Id.* at 1055. In reaching this conclusion, which was predicated on our assessment that there was "more than sufficient evidence to support a finding that Wolfson intends to seek judicial office in the future," we relied on two facts. *Id.* at 1054-55. First, we observed that "Wolfson's complaint expresses an intention to seek judicial office in the future, and a desire to engage in prohibited conduct ... in future judicial elections." *Id.* Second, we observed that Wolfson had "eliminat[ed] any doubts" as to this issue by "represent[ing] in the present appeal that he intends to seek judicial office in a future election." *Id*.

The same type of evidence is present in this case. First, as stated above, Appellants' complaint expresses an intention to engage in similar conduct in the future, insofar as it alleges that future con-

tributors "will continue to be discouraged." Second, as is also pointed out above, Appellants' counsel represented in the present appeal that Appellants intend to engage in similar campaigns against same-sex marriage in the future. Therefore, under *Wolfson*, Appellants have established a "reasonable expectation" that they will be subject to the same action again, and thus have satisfied the second requirement of the "capable of repetition, yet evading review" exception to mootness.

III.

Finally, the majority invokes the ripeness doctrine to conclude that Appellants' "claim for forward-looking relief" is non-justiciable. (Majority Op. at 22.) The majority correctly identifies our guidelines for the ripeness inquiry, which we articulated in our en banc opinion in *Thomas v. Anchorage Rights Commission.* 220 F.3d 1134 (9th Cir. 2000) (en banc); *see also Alaska Right to Life Political Action Comm. v. Feldman,* 504 F.3d 840, 845, 849 (9th Cir. 2007) (following the ripeness analysis from *Thomas* in considering a "pre-enforcement challenge" to two canons of the Alaska Code of Judicial Conduct); *Jacobus v. Alaska,* 338 F.3d 1095, 1104-05 (9th Cir. 2003) (applying the ripeness analysis from *Thomas* in an action involving a challenge to a state campaign finance law). As *Thomas* explains, "the ripeness inquiry contains both a constitutional and a prudential component." *Thomas*, 220 F.3d at 1138 (citation omitted). First, there is a constitutional aspect to the ripeness inquiry, under which we ask three questions: (1) "whether the plaintiffs have articulated a 'concrete plan' to violate the law in question"; (2) "whether

the prosecuting authorities have communicated a specific warning or threat to initiate proceedings"; and (3) "the history of past prosecution or enforcement under the challenged statute." *Id.* at 1139. Second, there is a prudential aspect to the ripeness inquiry, under which we consider "the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration." *Id.* at 1141.

***849** In light of the ripeness inquiry described by *Thomas*, and in light of our consideration of that inquiry in a very similar context in *California Pro-Life Council, Inc. v. Getman,* 328 F.3d 1088 (9th Cir. 2003), I believe that Appellants' claim is ripe.

In *Getman*, we considered a similar challenge to California's campaign finance disclosure laws. *Id.* at 1091-92. As a threshold matter, we determined whether that challenge was ripe. *Id.* at 1093-95. The district court, following the approach set forth in *Thomas*, had concluded that the action was not ripe, insofar as California was not investigating the plaintiff for violations of the state's campaign finance disclosure law and had not threatened the plaintiff with prosecution. *Id.* at 1094. We held that the district court's interpretation of *Thomas* "must be rejected." *Id*. In doing so, we emphasized that in the context of First Amendment challenges, the "Supreme Court has endorsed what might be called a 'hold your tongue and challenge now' approach rather than requiring litigants to speak first and take their chances with the consequences." *Id.* (citation omitted). We determined that the "intended communication" that was the subject of the litigation was "arguably subject" to the "reporting and

disclosure requirements" of California's Political Reform Act (PRA)—i.e., the same act that is at issue in this case. *Id.* at 1095. From that fact alone, we concluded that the plaintiff had "suffered an injury as a result of the alleged unconstitutional statute," which meant that its claim was "necessarily ripe for review." *Id.* Likewise, here, it is beyond question that Appellants' intended future activities, as discussed above, are subject to the reporting and disclosure requirements of the PRA, which in turn means that their claims are "necessarily ripe for review."

Although the majority pays lip service to our ripeness analysis in *Thomas*, its actual resolution of this issue is largely reliant on the Supreme Court's decision in *Renne v. Geary,* 501 U.S. 312, 111 S. Ct. 2331, 115 L. Ed. 2d 288 (1991), which predates our opinion in *Thomas*. In my view, the majority's reliance on *Renne* is misguided. In the portion of *Renne* discussed by the majority, the Court stated that it could "discern no ripe controversy in the allegations that respondents desire to endorse candidates in future elections," insofar as the respondents did not "allege an intention to endorse any particular candidate, nor that a candidate wants to include a party's or committee member's endorsement in a candidate statement." *Id.* at 321. The Court went on to assert that the respondents had failed to "specify what form [the] support or opposition [of a particular candidate] would take." *Id.* at 322. Here, by contrast, we know that Appellants have a very particular intention, and that they have specified the form their opposition would take: they intend to oppose same-sex mar-

riage via ballot measures. Thus, because we held that the post-*Renne* case of *Getman* was ripe, I would hold that this case is ripe.

My view that *Renne* does not preclude us from holding that this case is ripe is further supported by the Tenth Circuit's well-reasoned opinion in *New Mexicans for Bill Richardson v. Gonzales,* 64 F.3d 1495 (10th Cir. 1995). In *Richardson*, the Tenth Circuit held that a plaintiff's constitutional challenge to a state campaign finance law was ripe. *Id.* at 1497. In particular, the court held that the "facts presented to the district court undoubtedly show[ed that] the existence of the New Mexico statute [had] created a direct and immediate dilemma with respect to [the plaintiff's] exercise of his First Amendment liberties." *Id.* at 1500. In this regard, ***850** the court considered affidavits submitted to the district court showing that the plaintiff had solicited campaign contributions in the past, and that the statute had "reduc[ed] the likelihood" that the plaintiff would be "able to obtain funds from contributors" in the future. *Id.* On the basis of these facts, the court concluded that it was "clear to us that the mere existence of the New Mexico statute has caused [the plaintiff] to engage in the activity of fund raising differently than he has in the past, rendering his ability to raise funds, and thus exercise his constitutionally protected rights, less effective." *Id.* at 1500-01. Therefore, the court concluded that there was "nothing speculative or uncertain about the harm to [the plaintiff's] fund raising activities brought about by" the statute, which in turn meant that the case was ripe. *Id.* at 1501-02.

Just as in *Richardson*, in this case the record contains ample affidavits submitted to the district court showing that Appellants have solicited contributions in the past, and that the State of California's disclosure of contributors' identifying information has reduced the likelihood that Appellants will be able to obtain funds from contributors in the future. Thus, as the Tenth Circuit concluded in *Richardson*, I would hold here that there is nothing "speculative or uncertain about the harm" to Appellants' fund-raising activities caused by California's campaign disclosure law, and that their claim is therefore ripe.

A separate reason for concluding that *Renne* does not block Appellants' claim is also provided by the Tenth Circuit's opinion in *Richardson*. The court in *Richardson* expressly considered *Renne*, and concluded that the case before it was ripe notwithstanding *Renne*. As the Tenth Circuit explained, *Renne*'s holding was largely predicated on the particular "facts presented" in that case, and especially on "the dubiousness of plaintiffs' standing to bring the case." *Id.* at 1501 n.1. The *Renne* plaintiffs' standing was "dubious[]" because they were a "group of individual voters" who were challenging a law that "regulated political parties and central committees." *Id*. That is, because the law at issue in *Renne* "contained no enforcement mechanism against individual voters and, indeed, did not even regulate the conduct of individual voters, it follow[ed] logically that [the plaintiffs] faced no threat of prosecution by virtue of that [law]." *Id*.

The Tenth Circuit found further support for this interpretation of *Renne* in Justice Stevens's concur-

ring opinion. Justice Stevens stated there that "[i]f such a challenge had been brought by a political party or a party central committee [i.e., by the type of plaintiff to whom the law was addressed], and if the complaint had alleged that these organizations wanted to endorse, support, or oppose a candidate for nonpartisan office but were inhibited from doing so because of the [law], the case would unquestionably be ripe." *Id., quoting Renne,* 501 U.S. at 325 (Stevens, J., concurring). Justice Stevens made it clear that his reservations about ripeness in the case were predicated on his belief that "an individual member of a party or committee may [not] sue on behalf of such an organization." *Renne*, 501 U.S. at 325 (citation omitted). Here, by contrast, it is clear that the California law at issue—i.e., the PRA—regulates Appellants' conduct, which means that the case "unquestionably [is] ripe." *Id.*

The majority attempts to distinguish both *Getman* and *Richardson* by asserting that, "[u]nlike" in those cases, "any opinion that we could issue regarding Appellants' forward-looking claims would require us to ***851** speculate about the nature of events that might take place at some unknown time in the future." (Majority Op. at 26-27.) But such "speculation" was present in *Getman*. In *Getman*, we held that a First Amendment challenge to a California's PRA was ripe after concluding that the plaintiff's "fear" that "enforcement proceedings might be initiated" by the State of California was reasonable. *Getman,* 328 F.3d at 1094-95. That conclusion, obviously, was "speculative," insofar as the State had never actually "evinced an

intent to prosecute [the plaintiff] for its voter publications." *Id.* at 1093.

Finally, the majority's rigid approach to the ripeness analysis errs by overlooking the well-established principle that in the First Amendment context, courts should apply the "requirements of ripeness ... less stringently." *Wolfson,* 616 F.3d at 1058; *see also Sullivan v. City of Augusta,* 511 F.3d 16, 31 (1st Cir. 2007) (explaining that "when free speech is at issue, concerns over chilling effect call for a relaxation of ripeness requirements"); *Peachlum v. City of York,* 333 F.3d 429, 434-35 (3d Cir. 2003) (explaining that First Amendment claims are "subject to a relaxed ripeness standard," and that courts have "repeatedly shown solicitude for First Amendment claims because of concern that, even in the absence of a fully concrete dispute, unconstitutional statutes ... tend to chill protected expression among those who forbear speaking because of the law's very existence"); *U.S. West, Inc. v. Tristani,* 182 F.3d 1202, 1209 (10th Cir. 1999) (explaining that "any chilling effect [a] statute may have on [a party's] First Amendment rights counsels in favor of ripeness").

In sum, I conclude that Appellants' forward-looking claims are ripe. As discussed above, I base this conclusion on our post-*Renne* precedents discussing ripeness in general, such as *Thomas*; our determination in *Getman* that a similar challenge to California's campaign finance disclosure laws was ripe; the Tenth Circuit's decision in *Richardson*, along with its crucial distinguishing of *Renne*; and the general principle that the requirements for

ripeness should be relaxed in the context of First Amendment claims.

IV.

The First Amendment "bars subtle as well as obvious devices by which political association might be stifled." *NAACP v. Overstreet,* 384 U.S. 118, 122, 86 S. Ct. 1306, 16 L. Ed. 2d 409 (1966) (Douglas, J., dissenting from dismissal of writ of certiorari). Regardless of our views on the merits of the controversy, the public marketplace of ideas should not be unnecessarily burdened. This case is justiciable. Therefore, I dissent.[2]

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[2] At page 6-7 of the majority opinion, a brief history of the litigation over the merits of Proposition 8 is provided. I add here more detail regarding the problems that arose during that litigation.

Before the district court, the Attorney General of California took the position that Proposition 8 was unconstitutional under the federal Constitution, while the other government defendants "refused to take a position on the merits" and "declined to defend Proposition 8." *Perry v. Schwarzenegger*, 704 F. Supp. 2d 921, 928 (N.D. Cal. 2010). After the district court held that Proposition 8 was unconstitutional under the federal Constitution, California's Attorney General decided not to appeal that decision. *See generally Hollingsworth v. Perry*, 133 S. Ct. 2652, 2659-60, 186 L. Ed. 2d 768 (2013). Subsequently, the California Supreme Court held that California law authorizes the "official proponents" of a voter-approved initiative to "appeal a judgment invalidating the measure when the public officials who ordinarily defend the measure or appeal such a judgment decline to do so." *Perry v. Brown*, 52 Cal. 4th 1116, 1127, 134 Cal. Rptr. 3d 499, 265 P.3d 1002 (2011). After the Supreme Court granted certiorari, however, it concluded that the official proponents of Proposition 8 lacked Article III standing to appeal the district court's judgment. *Hollingsworth*, 133 S. Ct. at 2668. Accordingly, the

Supreme Court vacated the Ninth Circuit's decision which had affirmed the district court. *Id*. at 2660, 2668.

As a consequence of *Hollingsworth*, the only federal court decision remaining that addresses the merits of Proposition 8 is the district court's decision, which by definition is without precedential authority. *See, e.g., Howard v. Wal-Mart Stores, Inc*., 160 F.3d 358, 359 (7th Cir. 1998). Thus, the *only* precedential appellate decision addressing the merits of Proposition 8 is the California Supreme Court's opinion in *Strauss v. Horton*, 46 Cal. 4th 364, 93 Cal. Rptr. 3d 591, 207 P.3d 48 (2009), which held that challenges to Proposition 8 "lack[ed] merit" under California law. *Id*. at 391. In fact, *Strauss*'s holding that Proposition 8 was a lawful amendment to the California Constitution is the final and only appellate decision on the merits of Proposition 8. *Id*.

To my knowledge, nothing in California law requires the Attorney General to defend the Constitution of California, and other duly enacted laws of the State of California, from challenges in the courts. Nonetheless, it seems clear that the confusion created by the decisions discussed above, and the resulting abrogation of the federal courts' decisions due to lack of standing, could have been avoided if the Attorney General of California had defended Proposition 8 on appeal in the federal courts. This suggests that the State of California would do well to consider legislating a process whereby the State's elected officials would be obliged to defend the State's duly enacted laws in court, rather than leaving it to the unfettered discretion of the Attorney General to pick and choose which of the State's laws he or she elects to defend.

[Doc. 313, filed August 19, 2014]

United States District Court
For the Eastern District of California

Civil No. 2:09-cv-00058-MCE-DAD

PROTECTMARRIAGE.COM – YES ON 8, et al.,
Plaintiffs,

v.

DEBRA BOWEN, ET AL.,
Defendants,

ORDER

This Court entered judgment in favor of Defendants on November 4, 2011. On May 20, 2014, a panel of the Ninth Circuit Court of Appeals issued an opinion: (1) affirming that judgment as to Plaintiffs' facial challenges; (2) dismissing the appeal as non-justiciable as to Plaintiffs' as-applied challenges; and (3) remanding for this Court to vacate its decision as to those latter claims. That court issued its mandate on July 25, 2014.

Accordingly, the Court now vacates its decision and judgment in Defendant's favor on Plaintiff's as-applied challenges only and instead dismisses

those causes of action as non-justiciable. The Clerk of the Court is directed to CLOSE this case.

IT IS SO ORDERED.

Dated: August 18, 2014

/s/ Morrison C. England, Jr.
MORRISON C. ENGLAND, JR.,
CHIEF JUDGE
UNITED STATES DISTRICT COURT

[Doc. 296, filed November 4, 2011]

United States District Court
For the Eastern District of California

Civil No. 2:09-CV-00058-MCE-DAD

PROTECTMARRIAGE.COM – YES ON 8, ET AL.,
Plaintiffs,

v.

DEBRA BOWEN, ET AL.,
Defendants,

JUDGMENT IN A CIVIL CASE

XX – **Decision by the court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

THAT JUDGMENT IS HEREBY ENTERED IN ACCORDANCE WITH THE COURT'S ORDER FILED ON 11/4/2011

Victoria C. Minor
Clerk of Court

ENTERED: November 4, 2011

by: /s/ G. Michel
Deputy Clerk

[***Editing Note:*** *Page numbers from the reported opinion, 830 F.Supp. 2d 914, are indicated* ***(*914)****.*]

[Doc. 295, filed November 4, 2011]

United States District Court
For the Eastern District of California

Civil No. 2:09-cv-00058-MCE-DAD

PROTECTMARRIAGE.COM – YES ON 8, el al.,
Plaintiffs,

v.

DEBRA BOWEN, et al.,
Defendants,

MEMORANDUM AND ORDER

***916** Presently before the Court are Plaintiffs'[1] Motion for Summary Judgment ("Plaintiffs' Motion"),

[1] Plaintiffs are ProtectMarriage.com - Yes on 8, a Project of California Renewal ("ProtectMarriage"); National Organization for Marriage California - Yes on 8, Sponsored by National Organization for Marriage ("NOM-California"); John Doe #1, an individual, and as a representative of the proposed Class of Major Donors; and National Organization for Marriage California PAC ("NOM-California PAC").

Defendants'[2] Motion for Summary Judgment ("Defendants' Motion") and Defendants' Motion to Strike ("Motion to Strike"). These matters came on for hearing before the Court at 2:00 p.m. on Thursday, October 20, 2011. For the following reasons, Plaintiffs' Motion for Summary Judgment is DENIED, and Defendants' Motion for Summary Judgment is GRANTED. Defendants' Motion to Strike is DENIED as moot.

BACKGROUND

A. Factual History

On November 4, 2008, the citizens of California adopted a ballot measure, Proposition 8, that changed the California Constitution such that marriage would thereafter exist only "between a man and a woman." Plaintiffs' Separate Statement of Undisputed Facts ("SSUF"), ¶ 29; Cal. Const. art. 1, § 7.5. Plaintiffs ProtectMarriage and NOM-California were primarily ***917** formed ballot committees established under California's Political Reform Act of 1974, Cal. Gov. Code § 81000 et seq. ("PRA"). Their specific purpose was to specifically support the passage of Proposition 8. SSUF, ¶¶ 1-2.

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[2] Moving Defendants are Debra Bowen, Secretary of State for the State of California, in her official capacity; Kamala D. Harris, Attorney General for the State of California, in his official capacity; Department of Elections - City and County of San Francisco; Dennis J. Herrera, City Attorney for the City and County of San Francisco, California, in his official capacity and as a representative of the Class of Elected City Attorneys in the State of California; and Ann Ravel, Sean Eskovitz, Elizabeth Garrett, Lynn Montgomery and Ronald Rotunda, members of the California Fair Political Practices Commission, in their official capacities.

Plaintiff John Doe #1 supported Proposition 8 and is considered a "committee" under the PRA because he contributed in excess of $10,000 to a committee that itself supported Proposition 8. Id., ¶ 3. In support of the Proposition 8 campaign, such committees raised in excess of $42 million from more than 46,000 individual contributors. See Declaration of Lynda Cassady, ¶ 15 and its attached chart. Plaintiff National Organization for Marriage California PAC ("NOM-California PAC"), to the contrary, was formed post-election to raise and spend money on ballot initiatives and candidates relating to the issue of marriage. SSUF, ¶ 4.

California's PRA requires committees such as Plaintiffs to report certain information regarding their contributors. Specifically, Plaintiffs are required to file semiannual reports including the name, street address, occupation, name of employer, (if self-employed, the name of the business), as well as the date and amount received during the period covered by the statement of anyone who contributes more than $100 to them, both during and after active campaigns. Cal. Gov. Code §§ 84200, 84211(f). This information is then available, inter alia, on the website of the California Secretary of State.

Plaintiffs allege that, as a consequence of their support of Proposition 8, their contributors have been subjected to threats of violence, harassment and reprisals. Plaintiffs further allege that the PRA's $100 reporting threshold is unconstitutional, both facially and as applied to Plaintiffs. Plaintiffs further maintain that the PRA's post-election reporting requirements and the failure to purge reports post-election are facially unconstitutional as well.

In support of their first claim, Plaintiffs submitted 58 John Doe Declarations (Plaintiffs' Exhibit 1). The first nine of those declarations were drafted in January 2009, and the rest were prepared prior to June 3, 2009. Plaintiffs have further provided a variety of media accounts, videos and articles pulled from various internet sources (Plaintiffs' Exhibits 3-4).

Plaintiffs' John Doe declarations document the following incidents that Plaintiffs allege constitute "threats, harassments and reprisals" sufficient to warrant exempting from disclosure the names of Plaintiffs' contributors:

- Establishments owned by or employing persons who contributed to or otherwise publicly supported Proposition 8 were the subjects of proposed boycotts. Declarations of John Doe #1, #53.
- Establishments whose owners supported or contributed to Proposition 8 were subject to picketing or protests. Declaration of John Doe #1.
- A protest took place at a declarant's in-home Proposition 8 political rally. Declaration of John Doe #4.
- Unsolicited phone calls, emails and letters voicing disagreement with the positions of those contributing to or supporting Proposition 8 were received by supporters of Proposition 8. Declarations of John Doe #1, #4-10, #17, #19, #22-23, #28-30, #51-54, #56.
- Flyers were circulated denouncing contributors' support of Proposition 8. Declaration of John Doe #2.

- "Yes on 8" bumper stickers and yard signs were vandalized or stolen. In at least one instance, a sign was used to break a church window. Declarations of John Does #3, #7-8, #13-14, ***918** #16, #18, #22, #24, #26, #31, #33-48, #50, #55-58.
- Cars of "Yes on 8" supporters were keyed or vandalized (i.e., windows were smashed or vehicles were egged and floured) and at least one supporter's home was egged and floured. Declarations of John Doe, #11-14.
- Individuals at "Yes on 8" sign waving events, protests or flyer distribution events encountered negative responses (including individuals shouting obscenities and arguing with sign-waivers, individuals blocking "Yes on 8" signs with "No on 8" signs, and in one instance, an individual throwing an object at a sign waver). Declarations of John Doe #13, #16, #25, #26.
- Conflicts arose with friends, family or neighbors. Declarations of John Doe #13, #15, #18, #20-21, #49.
- Individuals or businesses supporting Proposition 8 had negative reviews posted on a variety of websites. Declarations of John Doe #20, #27, #32, #51.

Most of the incidents alleged above were responses to public shows of support the declarants had made in favor of Proposition 8. See, e.g., Decl. of John Doe #4 (protest held outside the entrance to declarant's gated community when declarant held a fundraiser in support of Proposition 8 at his home); Decl. of John Doe #8 (declarant "attended numerous ral-

lies, three press conferences, and spoke at a number of churches ... [,] also participated on panel discussions" and "attended an election night gathering at a hotel ... with other supporters of Proposition 8" where the supporter's picture was taken and eventually published); Decl. Of John Doe #9 (photograph of individual at election night gathering prompted receipt of unsolicited messages on MySpace and Facebook accounts, emails and phone calls); Decl. of John Doe #20 (after seeing a yard sign supporting Proposition 8 in the yard of a shop owner, two neighbors advised declarant they would no longer frequent his store).

Although immaterial to the Court's decision, it is not at all clear from some of the declarations whether the alleged incidents were actually connected to a particular declarant's support of Proposition 8. See, e.g., Decl. Of John Doe #11 (individual maintaining "Yes on 8" yard signs on her lawn and a bumper sticker on her car had her car window smashed); Decl. of John Doe #13 (believes car was keyed in retaliation for posting "Yes on 8" bumper stickers); Decl. of John Doe #23 (believes the statue of Mary, Mother of Jesus, at his church was painted orange in connection with Proposition 8).

Plaintiffs' remaining evidence, Exhibits 3 and 4, is comprised of a collection of online media, including YouTube videos, blogs, court filings in other cases, and numerous articles.[3]

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[3] Defendants have moved to strike all evidence included in these Exhibits on the grounds that the contents: 1) are inadmissible hearsay; 2) exceed the scope of a stipulation entered into by the parties; 3) were not disclosed during discovery; or 4) were not properly authenticated. The Court is inclined to grant Defendants' Motion for a variety of reasons, not the least of which

Because the incidents reported within these Exhibits are highly repetitive, and perhaps deceptively overwhelming, they are catalogued by type of occurrence, rather than by exhibit number, here.[4]

- ***919 Yard sign theft and vandalism.** First, as with their Doe declarations, Plaintiffs' evidence recounts a variety of incidences of yard-sign theft and vandalism. In some instances church windows were broken or churches were spray-painted with "No on 8" messages. One church was egged and toilet-papered. Another had adhesive poured on a doormat, keypad and window. A neighborhood in San Bernardino was targeted by vandals who spray-painted cars, fences, garages and "Yes on 8" signs. Vandals also spray-painted residential and commercial buildings in Fullerton, and a church in San

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is that most of the exhibits are indeed hearsay. However, because consideration of the evidence included in these Exhibits does not alter the Court's decision, Defendants' Motion to Strike is instead DENIED as moot.

[4] The Court has referenced each exhibit in which the following facts are alleged to show, in part, that while Plaintiffs may characterize their evidence as "voluminous" or "overwhelming," in many instances the same events are reported repeatedly in multiple articles, creating the false impression that there is more here than closer inspection reveals. The Court notes also that, given the anonymous nature of the John Doe declarations, it is not clear whether any of the incidents alleged in those documents may overlap with any of the incidents documented in Exhibits 3 and 4. Based on the factual descriptions in some of the John Doe declarations, it is entirely possible that some of the above declarants are reporting incidences also reported below. Compare, e.g., Decl. of John Doe #29 with Exh. 4-96. Any potential unidentified overlap is immaterial, however, and thus will be ignored.

Francisco was spray-painted with swastikas and angry Proposition 8 messages. Likewise, in October, 2008, someone spray-painted "No on 8" on a San Jose couple's car and garage and on their neighbor's garage. Also in San Jose, someone painted an SUV with "Bigots Live Here" and an arrow pointing to a house that had a "Yes on 8" sign on the lawn. Some of the articles make mention that law enforcement responded and, in some instances, was even able to make arrests. Exhs. 4-7, 4-29, 4-30, 4-31, 4-32, 4-33, 4-34, 4-36, 4-37, 4-38, 4-39, 4-40, 4-41, 4-45, 4-46, 4-50.

- **Disclosure lists.** Plaintiffs also provide documentation of a number of websites that, in approximately November 2008, began publishing the names of individuals and businesses that contributed to Proposition 8. Some of Plaintiffs's evidence extends beyond Proposition 8 to websites reporting the names of supporters of similar issues in other states. Exhs. 4-10, 4-11, 4-12, 4-21, 4-28, 4-83, 4-84, 4-98, 4-99, 4-103, 4-105, 4-106, 4-108, 4-109, 4-110, 4-113, 4-114, 4-128, 4-138, 4-139, 4-142, 4-152, 4-153, 4-154.
- **Protests and rallies.** In addition, Plaintiffs provide evidence of protests and rallies undertaken in approximately November 2008. For example, a small group staged a peaceful "kiss-in" near the Mormon temple in Salt Lake City. Other protests had to be broken up by law enforcement and some protesters were arrested. Exh. 3-3, 3-8, 3-9, 4-64, 4-65, 4-66, 4-68, 4-69, 4-70, 4-71, 4-120.

- **Death threats.** Plaintiffs allege that, after participating in a rally in favor of Proposition 8 in front of City Hall, Fresno, California mayor Alan Autry and a local pastor received death threats. The pastor's church and house were also purportedly egged. According to Plaintiffs' evidence, police promptly investigated those threats and the pastor acknowledged he was confident in the investigation. Mayor Autry made clear that supporters of Proposition 8 should not "blame the gay and lesbian community" and that he believed "[m]ost of the opponents of Prop 8 and the vast, vast, majority of ***920** the gay community would condemn this type of thing." See, Exhs. 4-2, 4-3, 4-4, 4-5, 4-6, 4-34, 4-44.
- **Bash Back.** Plaintiffs' evidence also repeatedly documents the actions taken by radical gay activist group "Bash Back." That organization allegedly interrupted services at a Michigan church and, among other things, arranged for two women to kiss in front of the pastor. The incident was investigated and the offenders later agreed in federal court to entry of a permanent injunction preventing them from invading churches anywhere in the country. Violators of that injunction could be held in contempt of court and be subject to a $10,000 fine. In addition, a Washington Bash Back chapter also purportedly glued door locks and spray-painted messages on a Mormon church. Finally, the same group appears to have targeted a conference in Washington via an anonymous online

post. Exhs. 3-5, 3-6, 4-7, 4-13, 4-16, 4-17, 4-34, 4-42, 4-43, 4-53, 4-54, 4-82.

- **Disruption of a prayer walk.** In addition, Plaintiffs include several reports of a prayer walk by a group that met every Friday night in San Francisco's Castro District, which has a large gay community, to try to convert gay and lesbian individuals to a "straight lifestyle." During a November protest, a crowd convened and began shouting lewd remarks at the marchers, pushing them and throwing hot coffee, soda and alcohol at them. One man is alleged to have hit a marcher on the head with her own Bible before pushing her to the ground and kicking her. Another marcher reported that someone tried to pull his pants down. Law enforcement intervened and escorted the marchers back to their van. Exhs. 3-1, 4-7, 4-8, 4-9, 4-34.
- **Physical assaults.** A sixty-nine year old woman at a November 2008 Proposition 8 rally in Palm Springs, California was pushed and spit on. Law enforcement convinced her to press charges against the attackers. Likewise, a supporter of Proposition 8 was waiting to distribute yard signs outside of a Modesto church when someone absconded with approximately 75 signs. The Proposition 8 supporter gave chase, was allegedly punched in the face and received 16 stitches. Detectives responded and investigated the incident. Exhs. 4-7, 4-22, 4-23, 4-24, 4-25, 4-34.

Much of Plaintiffs' remaining evidence goes to alleged boycotts and "economic reprisals." By way of example:

- The chair of the 2012 U.S. Olympic team allegedly stepped down after controversy emerged over his opposition to gay marriage. Exhs. 4-18, 4-144, 4-145, 4-146.
- Negative reviews of a Sacramento ice cream parlor were posted online after it was disclosed that the company supported Proposition 8. The parlor was later the target of protesters giving out free rainbow sherbert. Exhs. 4-27, 4-120, 4-130.
- The manager of an El Coyote restaurant, who was also the daughter of the owners, left town after her $100 contribution to Yes on 8 led protesters to target the restaurant. Protests have since faded and the manager said she has received calls and other shows of support. Exhs. 4-34, 4-58, 4-77, 4-117, 4-123, 4-124, 4-125, 4-126, 4-127, 4-129, 4-133, 4-139.
- ***921** Despite some similar shows of support in his favor, the artistic director of Sacramento's California Musical Theater resigned after opponents to Proposition 8 discovered he had donated $1000 to the Yes on 8 campaign. Exhs. 4-34, 4-58, 4-77, 4-115, 4-116, 4-117, 4-118, 4-119, 4-120, 4-121, 4-124, 4-129, 4-142, 4-154.
- The director of the Los Angeles Film Festival also resigned under alleged pressure from gay-rights groups after his $1500 contribution to "Yes on 8" was publicized. Though the festival board initially tried to block his resignation, the director eventually did tender his resigna-

tion when pressure continued. Exhs. 4-34, 4-58, 4-116, 4-117, 4-122.

- A Palo Alto dentist featured on a boycott website as a result of his $1000 contribution to the "Yes on 8" campaign claims he consequently lost two patients. Exhs. 4-67, 4-117, 4-154.
- An artist who had captured images from New York's gay pride parade was the subject of verbal retaliation and an article condemning her contribution to Proposition 8. Exhs. 4-96.
- A movie theater chain, a Ventura County health food store, a San Diego hotelier, a self-storage company, and a Utah-based car dealer were all boycotted after their or their employees' contributions to Proposition 8 were publicized. Exhs. 4-111, 4-116, 4-117, 4-123, 4-129, 4-131, 4-132, 4-133, 4-134, 4-136, 4-141.

Plaintiffs also cite to evidence purportedly documenting Proposition 8-related backlash directed at the Mormon church primarily in October and November of 2008. For example:

- Two Mormon Temples (and a Knights of Columbus printing plant) received envelopes containing a white, powdery substance. Plaintiffs presume these incidents were connected to Proposition 8, though their evidence does not indicate a connection. Regardless, the FBI investigated the incidents and determined the powder was not a biological agent or toxin. Exhs. 4-34, 4-52, 4-67, 4-75, 4-76, 4-79, 4-92.
- Several churches were also spray-painted with graffiti or otherwise vandalized. Police in at least one town investigated the vandalism as a

hate crime potentially linked to Proposition 8, though police in another town refused to characterize the vandalism as the work of opponents to Proposition 8. Exhs. 4-7, 4-47, 4-48, 4-49, 4-51, 4-52, 4-73, 4-90, 4-91.

- Other groups or individuals reported the Mormon church to California's Fair Elections Commission for failing to report contributions to the "Yes on 8" campaign. Similarly, websites were initiated encouraging people to petition to have the tax exempt status of the Mormon church revoked. Exhs. 4-14, 4-15, 4-19, 4-61, 4-62, 4-107.
- During the campaign, same-sex marriage advocates also allegedly produced a commercial depicting Mormon missionaries destroying the marriage license of a gay couple. Exhs. 3-7, 4-59, 4-63.
- Fires were set at Mormon churches in Washington, Utah and Colorado, and a man was prevented from starting a fire at a Los Angeles Temple. Some of the articles speculatively linked the acts or arson to Proposition 8, and in each of instance, authorities undertook an investigation ***922** into the crimes. Exhs. 4-79, 4-80, 4-85, 4-86, 4-87, 4-88, 4-89.
- Some protests were directed specifically at the Mormon church. Exhs. 3-8, 3-9, 4-60, 4-68, 4-73, 4-75, 4-80, 4-120.
- Comedian Margaret Cho wrote and performed a song called "Fuck You Mormons" directed at the Mormon Church and its support of Proposition 8. Exh. 3-12.

Finally, Plaintiffs catalog a variety of other miscellaneous events they believe are relevant as well. For example:

- Miss California suffered backlash after stating at the Miss USA pageant that she believed marriage should exist between a man and a woman. Exh. 4-112, 4-147, 4-148, 4-149, 4-150, 4-151.
- A law firm entertaining an agreement with Republicans to defend the federal same-sex marriage ban, withdrew from the agreement after drawing fire from gay-rights groups. Exhs. 4-18, 4-135, 4-155, 4-156, 4-157.
- A New York state senator purportedly received death threats due to his opposition to same-sex marriage. Exh. 18.
- Apple, Inc., allegedly withdrew two iPhone apps from its app Store after receiving complaints from gay-rights supporters. Exh. 18.
- Neighbors engaged in a fist-fight when one attempted to steal and replace the other's yard sign. Exh. 4-34.
- A man was attacked and bitten by a dog while trying to prevent theft of a "Yes on 8" sign. Exh. 4-34.
- Cars bearing "Yes on 8" bumper stickers were keyed. Exh. 4-35.
- A "Yes on 8" table set up in the quad at the University of California, Davis, was hit with water balloons, and students yelled "you teach hate" at those manning the table. Exh. 4-35.
- Individuals left comments, sometimes characterized as "inciting and directly threatening

violence" against supporters of Proposition 8 on a variety of blogs and websites. Exh. 4-56, 4-57.

- The parent of a Galt High School student alleges his son was harassed by a teacher for his stance supporting Proposition 8. Exh. 4-102.

B. Procedural History

In light of the above alleged acts, and because they were statutorily required to file semiannual reports on January 31, 2009, Plaintiffs initiated this action against Defendants on January 7, 2009. Plaintiffs have amended their Complaint several times, resulting in the now operative Third Amended Complaint.

On January 9, 2009, Plaintiffs filed a Motion for Preliminary Injunction, raising essentially the same arguments they raise in their current Motion, which this Court denied by formal order on January 30, 2009. At the same time, Plaintiffs also requested a Protective Order, which the Court granted. That Protective Order remains in place to date and permits the parties to redact personal information from filings not under seal. The Protective Order also grants the parties leave to file reference lists pursuant to *FRCP 5.2(g)*.

Plaintiffs did not appeal this Court's Order Denying Preliminary Injunction, nor did they seek, from either this Court or from the Ninth Circuit, a stay of that decision.

On August 25, 2011, Plaintiffs moved for summary judgment. Defendants, with two exceptions, filed a Cross-Motion and Opposition to Plaintiffs' Mo-

tion on September ***923** 15, 2011.[5] At the same time, Defendants moved to strike a large portion of Plaintiffs' evidence. Plaintiffs filed a Reply as to their own Motion and Oppositions to Defendants' Motions on September 29, 2011. Defendants filed a Reply to both their Motion for Summary Judgment ("Defendants' Reply") and their Motion to Strike on October 13, 2011.

STANDARD

The Federal Rules of Civil Procedure provide for summary judgment when "materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations ... , admissions interrogatory answers, or other materials" "show[] that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a), (c)). One of the principal purposes of Rule 56 is to dispose of factually unsupported claims or defenses. Celotex Corp. v. Catrett, 477 U.S. 317, 323-324, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986).

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[5] Defendant Jan Scully, on behalf of herself and as representative of the designated Class of District Attorneys in the State of California, submitted a position statement indicating that the Defendant Scully and the District Attorney Class "are, at best, peripheral Defendants in this case." Position Statement, 2:6-7. This class thereby states their position as follows: "[T]o the extent that the Court determines that the Motion for Summary Judgment filed by Plaintiffs is not well-taken, then Defendant Scully and the District Attorney Class oppose that motion; however, to the extent that the Court determines that any Cross-Motions filed by any other party in this case are not well-taken, Defendants herein oppose those motions." Id., 2:18-3:4.

Rule 56 also allows a court to grant summary adjudication on part of a claim or defense. See Fed. R. Civ. P. 56(a) ("A party may move for summary judgment, identifying each claim or defense-the part of each claim or defense-on which summary judgment is sought."); see also Allstate Ins. Co. v. Madan, 889 F. Supp. 374, 378-79 (C.D. Cal. 1995); France Stone Co., Inc. v. Charter Township of Monroe, 790 F. Supp. 707, 710 (E.D. Mich. 1992).

The standard that applies to a motion for summary adjudication is the same as that which applies to a motion for summary judgment. See Fed. R. Civ. P. 56(a), 56(c)); Mora v. ChemTronics, 16 F. Supp. 2d 1192, 1200 (S.D. Cal. 1998).

> A party seeking summary judgment always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of "the pleadings, depositions, answers to interrogatories, and admissions on file together with the affidavits, if any," which it believes demonstrate the absence of a genuine issue of material fact.

Celotex, *477 U.S. at 323* (quoting Rule 56(c)).

If the moving party meets its initial responsibility, the burden then shifts to the opposing party to establish that a genuine issue as to any material fact actually does exist. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 585-87, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986); First Nat'l Bank v. Cities Serv. Co., 391 U.S. 253, 288-89, 88 S. Ct. 1575, 20 L. Ed. 2d 569 (1968).

In attempting to establish the existence of this factual dispute, the opposing party must tender evi-

dence of specific facts in the form of affidavits, and/or admissible discovery material, in support of its contention that the dispute exists. Fed. R. Civ. P. 56(c)). The opposing party must demonstrate that the fact in contention is material, i.e., a fact that might affect the outcome of the suit under the governing law, and that the dispute is genuine, i.e., the evidence is such that a reasonable jury ***924** could return a verdict for the nonmoving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 251-52, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986); Owens v. Local No. 169, Assoc. of Western Pulp and Paper Workers, 971 F.2d 347, 355 (9th Cir. 1987). Stated another way, "before the evidence is left to the jury, there is a preliminary question for the judge, not whether there is literally no evidence, but whether there is any upon which a jury could properly proceed to find a verdict for the party producing it, upon whom the onus of proof is imposed." Anderson, 477 U.S. at 251 (quoting Schuylkill and Dauphin Improvement Co. v. Munson, 81 U.S. 442, 448, 20 L. Ed. 867 (1871)).

As the Supreme Court explained, "[w]hen the moving party has carried its burden under Rule 56(c)), its opponent must do more than simply show that there is some metaphysical doubt as to the material facts ... . Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no 'genuine issue for trial.'" Matsushita, 475 U.S. at 586-87.

In resolving a summary judgment motion, the evidence of the opposing party is to be believed, and all reasonable inferences that may be drawn from the facts placed before the court must be drawn in favor of the opposing party. Anderson, 477 U.S. at 255.

Nevertheless, inferences are not drawn out of the air, and it is the opposing party's obligation to produce a factual predicate from which the inference may be drawn. Richards v. Nielsen Freight Lines, 602 F. Supp. 1224, 1244-45 (E.D. Cal. 1985), aff'd, 810 F.2d 898 (9th Cir. 1987).

ANALYSIS

Plaintiffs' basic arguments in support of their Motion are as follows: 1) California's campaign contribution disclosure requirements are unconstitutional as applied to Plaintiffs because there is a reasonable probability that such exposure will lead to threats, harassment and reprisals; 2) the $100 reporting threshold is unconstitutional, both facially and as applied to Plaintiffs, because the threshold cannot survive the requisite scrutiny and because disclosure will result in the above-described threats; and 3) post-election public ballot-measure reporting and the failure to purge public disclosures post-election are unconstitutional. Defendants counter that: 1) Plaintiffs have not shown a reasonable probability that an ordinary contributor to Plaintiffs' will face threats, harassment or reprisals; 2) the State has an important interest in disclosure that outweighs the minimal burden imposed on Plaintiffs; and 3) post-election disclosure requirements and the $100 threshold survive exacting scrutiny.

These are essentially the same arguments first brought before the Court almost three years ago on Plaintiffs' Motion for Preliminary Injunction. There, the Court held that: 1) the State had a compelling informational interest in the disclosure of contributors to ballot-initiative campaigns; 2) the $100 reporting threshold was narrowly tailored to that informa-

tional interest; 3) the post-election reporting requirement was directly related to the State's informational interest and burdened no more speech than was required; and 4) Plaintiffs were unlikely to show a reasonable probability that disclosure of the identities of Proposition 8 contributors would result in threats, harassment and reprisals, and thus Plaintiffs were unlikely to show an exemption from the disclosure requirements was warranted.

Very little has changed in this case since the Court originally addressed the parties' arguments in the context of Plaintiffs' original Motion. Even with what new evidence Plaintiffs have provided at this juncture, however, they have failed to convince ***925** this Court that its prior reasoning was unsound or that any shift in the Court's position is justified now. Accordingly, for the following reasons, Defendants, not Plaintiffs, are entitled to summary judgment.

A. Whether Plaintiffs Have Shown a Reasonable Probability that Disclosure of their Contributors' Identities will Result in Threats, Harassment or Reprisals

According to Plaintiffs, disclosure of the identities of their contributors must be barred because they have demonstrated a reasonable probability that such disclosure will lead to threats, harassment or reprisals. Plaintiffs' Motion, 5:16-22 (citing Citizens United v. FEC, ___ U.S. ___ , 130 S. Ct. 876, 914, 175 L. Ed. 2d 753 (2010) (internal quotations omitted); Buckley v. Valeo, 424 U.S. 1, 74, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976)). This Court rejected this same ar-

gument in its Order Denying Preliminary Injunction explaining the rule as follows[6]:

> The test applicable to Plaintiffs' First Cause of Action was initially formulated in Buckley when the Supreme Court rejected an overbreadth challenge to all reporting requirements imposed on minor parties. 424 U.S. 1, 96 S. Ct. 612, 46 L. Ed. 2d 659. Despite its rejection of a blanket disclosure exemption for all such groups, the Court left open the possibility that similar minor parties in the future might be able to seek such immunity if they could show that there was a reasonable probability their contributors would suffer from harassment, threats, or reprisals as a result of such revelation.
>
> The Buckley Court began its discussion by noting that the "governmental interest in disclosure is diminished when the contribution in question is made to a minor party with little chance of winning an election. As minor parties usually represent definite and publicized viewpoints, there may be less need to inform the voters of the interests that specific candidates represent. Major parties encompass candidates of greater diversity. In many situations the label 'Republican' or Democrat' tells a voter little. The candidate who bears

[6] At times the Court has chosen to quote extensively from its prior Order Denying Preliminary Injunction because the issues facing the Court today are largely unchanged from those facing the Court then and because the Court's prior analysis is still highly relevant and directly applicable to the current facts before it today.

it may be supported by funds from the far right, the far left, or any place in between on the political spectrum. It is less likely that a candidate of, say, the Socialist Labor Party will represent interests that cannot be discerned from the party's ideological position." Id. at 70.

Additionally, that Court was cognizant that "the damage done by disclosure to the associational interests of the minor parties and their members and to supporters of independents could be significant. These movements are less likely to have a sound financial base and thus are more vulnerable to falloffs in contributions. In some instances fears of reprisal may deter contributions to the point where the movement cannot survive. The public interest also suffers if that result comes to pass, for there is a consequent reduction in the free circulation of ideas both within and without the political arena." Id. at 71.

Accordingly, the Buckley Court determined that, though such facts were not before it, "[t]here could well be a case ... where the threat to the exercise of First Amendment rights is so serious and the state interest furthered by disclosure so insubstantial that the Act's ***926** requirements [could not] be constitutionally applied." Id. That Court further observed "that unduly strict requirements of proof could impose a heavy burden, but it does not follow that a blanket exemption for minor parties is necessary. Minor parties must be allowed sufficient flexibility in the proof of injury to assure a fair consideration of their claim.

The evidence offered need show only a reasonable probability that the compelled disclosure of a party's contributors' names will subject them to threats, harassment, or reprisal from either Government officials or private parties. The proof may include, for example, specific evidence of past or present harassment of members due to their associational ties, or of harassment directed against the organization itself. A pattern of threats or specific manifestations of public hostility may be sufficient." Id. at 74.

[FN #7] The Buckley Court noted that the facts in NAACP v. Alabama could possibly have warranted sustaining an as-applied challenge to Alabama's compelled disclosure requirements. Id. at 71. The NAACP v. Alabama Court stated, "We think that the production order, in the respects here drawn in question, must be regarded as entailing the likelihood of a substantial restraint upon the exercise by petitioner's members of their right to freedom of association. Petitioner has made an uncontroverted showing that on past occasions revelation of the identity of its rank-and-file members has exposed these members to economic reprisal, loss of employment, threat of physical coercion, and other manifestations of public hostility. Under these circumstances, we think it apparent that compelled disclosure of petitioner's Alabama membership is likely to affect adversely the ability of petitioner and its members to pursue their collective effort to foster beliefs which they admittedly have the

> right to advocate, in that it may induce members to withdraw from the Association and dissuade others from joining it because of fear of exposure of their beliefs shown through their associations and of the consequences of this exposure." NAACP v. Alabama, 357 U.S. at 462-463.

The Supreme Court later had occasion to apply the Buckley test in Brown. The Brown Court addressed the issue of "[w]hether certain disclosure requirements of the Ohio Campaign Expense Reporting Law ... [could] be constitutionally applied to the Socialist Workers Party ["SWP"], a minor political party which historically ha[d] been the object of harassment by government officials and private parties." Brown [v. Socialist workers, '74 Campaign Committee], [459 U.S. 87, 88, 103 S. Ct. 416, 74 L. Ed. 2d 250 (1982)]. That Court emphasized several points raised in Buckley reiterating that "[t]he government's interests in compelling disclosures are 'diminished' in the case of minor parties ... [and at] the same time, the potential for impairing First Amendment interests is substantially greater." Id. at 92 (quoting Buckley, 424 U.S. at 70).

In Brown, the Court had before it "'substantial evidence of both governmental and private hostility toward and harassment of SWP members and supporters.' Appellees introduced proof of specific incidents of private and government hostility toward the SWP and its members within the four years preceding the trial. These incidents, many of which occurred in Ohio and neighboring states,

included threatening phone calls ***927** and hate mail, the burning of SWP literature, the destruction of SWP members' property, police harassment of a party candidate, and the firing of shots at an SWP office. There was also evidence that in the 12-month period before trial, 22 SWP members, including four in Ohio, were fired because of their party membership. The evidence amply support[ed] the District Court's conclusion that 'private hostility and harassment toward SWP members make it difficult for them to maintain employment.'" Brown at 98-99.

Moreover, "[t]he District Court also found a past history of government harassment of the SWP. FBI surveillance of the SWP was 'massive' and continued until at least 1976. The FBI also conducted a counterintelligence program against the SWP and the Young Socialist Alliance, the SWP's youth organization. One of the aims of the 'SWP Disruption Program' was the dissemination of information designed to impair the ability of the SWP and the YSA to function. This program included 'disclosing to the press the criminal records of SWP candidates, and sending anonymous letters to SWP members, supporters, spouses, and employers.' Until at least 1976, the FBI employed various covert techniques to obtain information about the SWP, including information concerning the source of its funds and the nature of its expenditures. The District Court specifically found that the FBI had conducted surveillance of the Ohio SWP and had interfered with its activities within the State. Government surveillance was

> not limited to the FBI. The United States Civil Service Commission also gathered information on the SWP, the YSA, and their supporters, and the FBI routinely distributed its reports to Army, Navy, and Air Force Intelligence, the United States Secret Service, and the Immigration and Naturalization Service." Id. at 99-100.
>
> Finally, "the Government possesse[d] about 8,000,000 documents relating to the SWP, YSA ... and their members ... Since 1960, the FBI ha[d] had about 300 informants who were members of the SWP and/or YSA and 1,000 non-member informants. Both the Cleveland and Cincinnati FBI field offices had one or more SWP or YSA member informants. Approximately 2 of the SWP member informants held local branch offices. Three informants even ran for elective office as SWP candidates.
>
> The 18 informants whose files were disclosed to [the Special Master] received total payments of $358,648.38 for their services and expenses." Id. at 100 n.18.
>
> The Brown Court determined that "the evidence of private and government hostility toward the SWP and its members establishe[d] a reasonable probability that disclosing the names of contributors and recipients [would] subject them to threats, harassment, and reprisals." Id. at 100.

Protectmarriage.com v. Bowen, 599 F. Supp. 2d 1197, 1212-1214 (E.D. Cal. 2009).

Based on the same above authorities, Plaintiffs now ask this Court to issue a similar decision and to

exempt those contributing to Plaintiffs' cause from the disclosure requirements of the PRA. In support of their argument, Plaintiffs point to the incidents described by the Court above. Those incidents are characterized by Plaintiffs as including death threats, physical assaults and threats of violence, vandalism and threats of destruction of property, arson and threats of arson, angry protests, lewd demonstrations, intimidating emails and phone calls, hate mail, mailed envelopes containing white suspicious powder, blacklisting, loss of employment ***928** and job opportunities, intimidation and reprisals on campus and the classroom, acts of intimidation through photography, economic reprisals and demands for hush money, and gross expressions of anti-religious bigotry. Plaintiffs' Motion, 7:14-8:2. For their part, Defendants disagree with Plaintiffs' characterization of the evidence. Before turning to the sufficiency of Plaintiffs' evidence, however, there is one core point pertaining to the Buckley test itself that necessitates initial consideration.

First and foremost, the parties hotly contest whether Plaintiffs are entitled to seek refuge under the exemption provided by Buckley and its progeny because that exemption was created for, and historically has been applied only to, "minor parties" or small, persecuted groups whose very existence depended on some manner of anonymity. Despite their ongoing contention that anyone making the requisite showing of threats, harassment and reprisals is entitled to the exemption, Plaintiffs' Reply, 3:14-4:3, Plaintiffs did acknowledge at oral argument that the "minor party" element is a relevant consideration before the Court. This Court previously addressed

the same issue in its Order Denying Preliminary Injunction finding that:

> Both Buckley and Brown addressed the need to balance the government's diminished interest in the disclosure of contributors to minor parties against the burden imposed on those small groups by requiring such disclosure. In light of clearly established precedent, this Court is unable to say that the State's interest here is similarly diminished or that the Plaintiffs' potential burden is even remotely comparable.
>
> Unlike the facts in Brown, the proponents of Proposition 8 succeeded in persuading over seven million voters to support their cause. They were successful in their endeavor to pass the ballot initiative and raised millions of dollars in the process. This set of circumstances is a far cry from the sixty-member SWP party, repeatedly unsuccessful at the polls, and incapable of raising sufficient funds. Indeed, it became abundantly clear during oral argument that Plaintiffs could not in good conscience analogize their current circumstances to those of either the SWP or the Alabama NAACP circa 1950.
>
> Additionally, the Court has already extensively evaluated the nature of the State's interest[7] and, in light of the marked differences between this and every other case in which an exemption has

[7] In its Order Denying Preliminary Injunction, the Court began by analyzing the applicable standard of review and the State's interest in compelled disclosure. These issues are discussed in the current context below.

been allowed, simply cannot by any stretch of the imagination say that the Government's interest "is so insubstantial that the Act's requirements cannot be constitutionally applied" to Plaintiffs. To the contrary, as applied to the massive movement waged by Plaintiffs, the State's interest in disclosure is at full force.

Similarly, the greater burden alleged to be imposed on Plaintiffs also necessarily derives from their minority status. The Second Circuit stated in Federal Election Commission v. Hall- Tyner Election Campaign Committee that "[a]cknowledging the importance of fostering the existence of minority political parties, we must also recognize that such groups rarely have a firm financial foundation. If apprehension is bred in the minds of contributors to fringe organizations by fear that their support of an unpopular ideology will be revealed, they may cease to provide financial assistance. The resulting decrease in contributions ***929** may threaten the minority party's very existence. Society suffers from such a consequence because the free flow of ideas, the lifeblood of the body politic, is necessarily reduced. Accordingly, a nation dedicated to free thought and free expression cannot ignore the grave results of facially innocuous election requirements." 678 F.2d 416, 420 (2d Cir. 1982).

Moreover, "[t]he power of a government to repress dissent is substantial and can be exercised in a myriad of subtle ways. Privacy is an essential element of the right of association and the ability to express dissent effectively ... [F]orced revelations

would likely lead to 'vexatious inquiries' which consequently could instill in the public an unremitting fear of becoming linked with the unpopular or unorthodox." Id.

Notably absent from this case is any evidence that those burdens hypothesized by the Supreme Court would befall the current Plaintiffs. There is no evidence that their financial backing is so tenuous as to render them susceptible to a relatively minor and entirely speculative fall-off in contributions.

There is surely no evidence that the seven million individuals who voted in favor of Proposition 8 can be considered a "fringe organization" or that their beliefs would be considered unpopular or unorthodox. Finally, there is no evidence that any of Plaintiffs' contributors intend to retreat from the marketplace of ideas such that available discourse will be materially diminished.

Finally, it would appear that, while minor status is a necessary element of a successful as-applied claim, even minor status alone could not independently sustain Plaintiffs' current cause of action. Brown and its progeny each involved groups seeking to further ideas historically and pervasively rejected and vilified by both this country's government and its citizens. In dicta, the Ninth Circuit addressed this pattern when it rejected a plea for exemption waged by a contributor to a minor party that "was not promoting a reviled cause or candidate." Goland v. U.S., 903 F.2d 1247, 1260 (9th Cir. 1990).

The facts in the current case could not be more distinguishable from those in which successful challenges have been brought. Here, Plaintiffs orchestrated a massive movement to amend the California Constitution. Proponents of the initiative were successful in their endeavor, raising nearly $30 million, securing 52.3% of the vote and convincing over seven million voters to support Proposition 8. Plaintiffs did not seek to promote a "reviled cause," and instead sought to legislate a concept steeped in tradition and history. Accordingly, in light of Plaintiffs' success at the polls and the State's ... informational interest, the Court cannot say that the Government's interest in this case is so insubstantial or the burden on Plaintiffs so great as to warrant an exemption from disclosure.

Plaintiffs nonetheless would have the Court find these comparisons irrelevant. Plaintiffs contend that the Buckley Court's reference to "minor" parties is applicable only in the context of its rejection of the request before it for a blanket exemption. See Motion for Preliminary Injunction, 13:19-24. According to Plaintiffs, the Supreme Court determined in Buckley that if a group could prove there was a reasonable probability that disclosure would lead to harassment, threats, and reprisals, an exemption was required. However, Plaintiffs' interpretation renders superfluous the Buckley Court's analysis of the relative governmental interest and individual burdens in the context of minor parties.

***930** Neither did the Brown Court so broadly interpret Buckley when it repeated, "The First Amendment prohibits a state from compelling disclosures by a minor party that will subject those persons identified to the reasonable probability of threats, harassment or reprisals." Brown, 459 U.S. at 101-102 (emphasis added).

Since Buckley, as-applied challenges have been successfully raised only by minor parties, specifically those parties, as discussed, having small constituencies and promoting historically unpopular and almost universally-rejected ideas. As stated, in Brown, the SWP consisted of only sixty members in Ohio. Id. at 88. The parties' "aim was the abolition of capitalism and the establishment of a workers' government to achieve socialism." The party was historically unsuccessful at the polls though its members regularly ran for public office. Id. Additionally, campaign contributions and expenditures ... averaged approximately $15,000 annually." Id. at 89.

Similarly, in Hall-Tyner, a committee supporting the Communist Party successfully sought exemption from state disclosure laws. 678 F.2d 416. Later, in McArthur v. Smith, members of the SWP, described as a "small and unpopular political party," again successfully challenged state disclosure requirements. 716 F. Supp. 592, 593 (S.D. Fla. 1989). There is simply no plausible analogy to be had in this case.

Finally, this Court is confident that the Supreme Court's decisions in Buckley and Brown, both of

> which narrowly articulated the instant exception to disclosure laws, were not made without great consideration. Prior courts surely were aware that members of major parties might potentially, on some future occasion, become the target of threats or harassment at the hands of extremist members of an opposing group. Despite that possibility, the Supreme Court created an exception not for the majority, but for those groups in which the government has a diminished interest.

Protectmarriage.com, 599 F. Supp. 2d at 1214-1216. Nothing before the Court today renders its above analysis inapplicable. To the contrary, the Court stands by its prior conclusion from almost three years ago and finds that Plaintiffs' inability to make a principled analogy to the parties in the above cases is fatal to their current claim.

Plaintiffs' reliance on dicta in Doe v. Reed, ___ U.S. ___, 130 S. Ct. 2811, 177 L. Ed. 2d 493 (2010) ("Reed"), for the proposition that the Supreme Court has already determined Plaintiffs are privy to the exemption does nothing to change this Court's opinion. Reed concerned a challenge, by groups and individuals similar to Plaintiffs, to Washington's compelled disclosure requirement insofar as those requirements pertained to referendum signatories. According to Plaintiffs, "the [Reed] Court never so much as hinted that the exposure exemption would not be available to the group. To the contrary, a clear majority of the Court agreed that an exemption was indeed available to the group (although the Justices differed widely as to the threshold showing of threats, harassment, or reprisals that would be required to grant

an exemption)." Plaintiffs' Reply, 4:5-9. Plaintiffs overstate their case.

The issue before the Reed Court was "not whether disclosure of [a] particular petition would violate the First Amendment, but whether disclosure of referendum petitions in general would do so." 130 S. Ct. at 2815. Accordingly, Reed "[left] it to the lower courts to consider in the first instance the signors' more focused claim concerning disclosure of the ***931** information on [that] particular petition." Id.

Plaintiffs thus appear to argue that, by remanding for the lower courts to consider Plaintiffs' as-applied challenge based on any potential threats, harassment or reprisals contributors might suffer upon disclosure, the Supreme Court somehow sanctioned application of the Buckley exemption to major parties. However, Justice Alito was the only Justice that even alluded to the possibility that the Washington plaintiffs might succeed in their as-applied challenge, and his sweeping assertions as to the strength of Plaintiffs' case are premature given the posture of the case before that Court.[8] See id. at 2823-2827. Accordingly, nothing in Doe v. Reed, at least at this juncture, overrides the clear statements made in past Supreme Court cases indicating that disclosure exemptions were primarily intended to combat harms suffered by small, persecuted groups.

Even if Plaintiffs could overcome the above hurdle, however, their evidence is still insufficient to

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[8] Notably, on remand, the Washington District Court rejected those plaintiffs' arguments that they were entitled to the same type of exemption sought here. See Doe v. Reed, 2011 WL 4943952 (W.D. Wash. October 17, 2011).

warrant an exemption. Indeed, in its Order Denying Preliminary Injunction, this Court found Plaintiffs unlikely to succeed on the merits of their claim for the reasons reiterated below, and nothing Plaintiffs have currently presented has convinced this Court departure from its former logic is now warranted on summary judgment. In its prior Order, this Court stated:

> Unlike prior cases, in which plaintiffs alleged to have suffered mistreatment over extended periods of time, the alleged harassment directed at Proposition 8 supporters occurred over the course of a few months during the heat of an election battle surrounding a hotly contested ballot initiative. Only random acts of violence directed at a very small segment of the supporters of the initiative are alleged.
>
> Moreover, while Plaintiffs are quite correct that under Buckley evidence of harassment "from either Government officials or private parties" could suffice to establish the requisite proof of reprisals, the facts of subsequent cases evidence not only the existence of some governmental hostility, but quite pervasive governmental hostility at that. Buckley, 424 U.S. at 74 (emphasis
>
> added); see also McArthur, 716 F. Supp. at 594 ("[H]arassment, reprisals or threats from private persons are sufficient to allow [the] court to enforce the plaintiff's first amendment rights by cloaking the contributors and recipients' names in secrecy.").

Indeed, the Brown Court was confronted with countless acts of government harassment and retribution against members of the SWP, which are detailed above. Furthermore, in Hall-Tyner, the Second Circuit stated, "[t]he evidence relied on by the district judge included the extensive body of state and federal legislation subjecting Communist Party members to civil disability and criminal liability, reports and affidavits documenting the history of governmental surveillance and harassment of Communist Party members, as well as affidavits indicating the desire of contributors to the Committee to remain anonymous." 678 F.2d at 419.

Plaintiffs do not, indeed cannot, allege that the movement to recognize marriage in California as existing only between a man and a woman is vulnerable to the same threats as were socialist and communist groups, or, for that matter, the NAACP. Proposition 8 supporters ***932** promoted a concept entirely devoid of governmental hostility. Plaintiffs' belief in the traditional concept of marriage, to disagreement, have not historically invited animosity. The Court is at a loss to find any principled analogy between two such greatly diverging sets of circumstances.

Finally, Plaintiffs' exemption argument appears to be premised, in large part, on the concept that individuals should be free from even legal consequences of their speech. That is simply not the nature of their right.

Just as contributors to Proposition 8 are free to speak in favor of the initiative, so are opponents free to express their disagreement through proper legal means.

While the Court is cognizant of the deplorable nature of many of acts alleged by Plaintiffs, the Court also must reiterate that the legality or morality of any specific acts is not before it. Thus, as much as the Court strongly condemns the behavior of those who resort to violence, and/or other illegal behavior, the Court need not, indeed cannot, evaluate the proper legal consequences of those actions today.

By the same token, nothing in the Court's decision immunizes or excuses those who have engaged in illegal acts from the consequences of their conduct. Those responsible for threatening the lives of supporters of Proposition 8 are subject to criminal liability. See Troupis Decl, Exh. C (noting that the Fresno chief of police stated the department was "close to making an arrest" in the case of the death threats delivered to the mayor and a local pastor.) Those choosing to vandalize the property of individuals or the public are likewise liable. Those mailing white powder to organizations are subject to federal prosecution. In each case, there are appropriate legal channels through which to rectify and deter the reoccurrence of such reprehensible behavior.

As much as those channels are available today, it is unlikely that groups previously successful in seeking exemptions were privy to the same oppor-

> tunities. Again, Plaintiffs have shown no societal or governmental hostility to their cause. Contrary to groups such as the SWP, Plaintiffs can seek adequate relief from law enforcement and the legal system. Such was not the case for those thought to be supporting the SWP or communist groups, those subject to actual criminal liability based on their beliefs and their associations.

Protectmarriage.com, 599 F. Supp. 2d at 1217-1218.

Despite Plaintiffs attempt now to put forth additional evidence of threats, harassment and reprisals, the Court's findings remain the same. More specifically, despite the additional declarations and exhibits that are now before the Court, Plaintiffs still run into problems of proportionality and magnitude.

First, while Plaintiffs characterize their evidence as voluminous and comprised of "virtually countless reports of threats, harassment, and reprisals," Plaintiffs' Motion, 4:14-15, they have pointed to relatively few incidents allegedly suffered by persons located across the entire country who had somehow manifested their support for traditional marriage. In addition, while the evidence before this Court indicates that at least 7 million voters showed up at the California polls alone to support the passage of Proposition 8, this number, though large, still deceptively underestimates the number of supporters for Plaintiffs' cause. Indeed, this figure does not capture all individuals supporting Proposition 8 on a national scale, nor does it capture those individuals who may have no connection to California's campaign, but

***933** have supported the same cause in other regions. Plaintiffs' evidence of harassment, nonetheless extends much farther than California's borders and includes incidents that arose in other states and that were directed at the much broader social issue of gay marriage in general.

Accordingly, even assuming Plaintiffs could, under some set of circumstances, prove an entitlement to an exemption, they would need evidence of thousands of acts of reprisals, threats or harassment, spanning much more than the short period of time covering California's ballot-initiative process to prove contributors to such a massive group are entitled to anonymity of the type justified years ago for the individuals in Brown and NAACP.

The declarations of 58 individuals signed in the months just following the election, along with Plaintiffs' anecdotal evidence from the same time period as documented in Exhibits 3 and 4, is simply insufficient on the facts of this case to convince this Court an ordinary contributor to Proposition 8 would have faced any backlash worthy of quashing the names of all contributors.[9] See, e.g., Doe v. Reed, 130 S. Ct. at 2829 (taking the position exemptions may be permit-

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[9] Plaintiffs even acknowledge in their papers that only a minority of individuals on the other side of the campaign resorted to the complained of tactics that are cause for concern. Plaintiffs' Motion, 1:10-12 ("Some groups and individuals certainly a minority, have resorted to advancing their cause, not by debating the merits of the issue, but by discouraging participation in the democratic process through acts calculated to intimidate.") (emphasis added).

ted "in the rare circumstance in which disclosure poses a reasonable probability of serious and widespread harassment") (Sotomayor, J., concurring - joined by Stevens and Ginsburg).

Moreover, as the Court previously observed, notably absent from the record here are any instances in which Plaintiffs have suffered any sort of governmental backlash. While, based on the language derived from Buckley, governmental harassment is not necessarily a required showing, it is a factor for this Court to consider. Indeed, some governmental animosity has been present in all other cases in which an exemption has been permitted.

Perhaps recognizing this, Plaintiffs argue "[t]here can be no question that in many areas in California, and around the country, views against same-sex marriage ... are extremely unpopular" and "[e]ven our courts of law have characterized those who fight against such laws as advocates of hate and bigotry who act 'without reason.'" Plaintiffs' Motion, 12:15-18. Nonetheless, any attempt by Plaintiffs to show governmental animosity here is half-hearted at best. As described above, parties entitled to an as-applied exemption (namely the NAACP and the SWP) in the past had suffered from systematic governmental discrimination, persecution and abuse. Those plaintiffs were not only directly victimized by the government, they consequently lacked adequate recourse to pursue means short of non-disclosure to protect against private violence. In this case, Plaintiffs cannot assert that there is some sort of governmental hostility to their cause, nor can they in good conscience argue that law enforcement was or would be non-

responsive to any illegal acts directed at Plaintiffs contributors.[10] ***934**

To the contrary, Plaintiffs' own evidence indicates law enforcement was not only responsive, but diligent in undertaking investigations into some of the more heinous acts alleged here.

This factor is critical in light of the comments made by several concurring Justices in Doe v. Reed, indicating the ability of law enforcement to deal with threats, harassment and reprisals would weigh heavily against a need for an exemption. See, e.g., Doe, 130 S. Ct. at 2829 (exemption may be warranted "in the rare circumstance in which disclosure poses a reasonable probability of serious and widespread harassment that the State is unwilling or unable to control") (Sotomayor, J., concurring, joined by Stevens and Ginsburg); id. at 2831 ("From time to time throughout history, persecuted groups have been able to criticize oppressive practices and laws either anonymously or not at all ... In my view, this is unlikely to occur in cases involving the PRA. Any burden on speech that petitioners posit is speculative as well as indirect. For an as-applied challenge to a law such as the PRA to succeed, there would have to be a

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[10] Plaintiffs do argue that their contributors were victimized despite existing laws criminalizing the underlying conduct. Essentially, Plaintiffs argue those laws did nothing to deter criminal behavior. However, Plaintiffs have not alleged that any law enforcement response was insufficient, that law enforcement has somehow turned a blind eye to any criminal conduct, or that criminal sanctions will not be imposed if appropriate. That is a critical distinction between the instant case and past cases such as Brown and NAACP.

significant threat of harassment directed at those who sign the petition that cannot be mitigated by law enforcement measures.") (Stevens and Breyer, JJ., concurring); id. at 2837 ("There are laws against threats and intimidation; and harsh criticism, short of unlawful action, is a price our people have traditionally been willing to pay for self-governance.") (Scalia, J., concurring).

In addition, the vast majority of the incidents cited by Plaintiffs are arguably, as characterized by Defendants, typical of any controversial campaign. For example, picketing, protesting, boycotting, distributing flyers, destroying yard signs and voicing dissent do not necessarily rise to the level of "harassment" or "reprisals," especially in comparison to acts directed at groups in the past. Moreover, a good portion of these actions are themselves forms of speech protected by the United States Constitution. Indeed this Court previously held that:

> [T]he Court simply cannot ignore the fact that numerous of the acts about which Plaintiffs complain are mechanisms relied upon, both historically and lawfully, to voice dissent. The decision and ability to patronize a particular establishment or business is an inherent right of the American people, and the public has historically remained free to choose where to, or not to, allocate its economic resources. As such, individuals have repeatedly resorted to boycotts as a form of civil protest intended to convey a powerful message without resort to non-violent means. The Supreme Court has acknowledged these rights on many an occasion:

> In Thornhill v. Alabama, 310 U.S. 88, 60 S. Ct. 736, 84 L. Ed. 1093 (1940), the Court held that peaceful picketing was entitled to constitutional protection, even though, in that case, the purpose of the picketing "was concededly to advise customers and prospective customers of the relationship existing between the employer and its employees and thereby to induce such customers not to patronize the employer." Id. at 99. Cf. Chauffeurs v. Newell, 356 U.S. 341, 78 S. Ct. 779, 2 L. Ed. 2d 809. In Edwards v. South Carolina, 372 U.S. 229, 83 S. Ct. 680, 9 L. Ed. 2d 697, we held that a peaceful march and demonstration was protected by the rights of free speech, free assembly, and freedom to petition for a redress of grievances.
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> NAACP v. Claiborne Hardware Co., 458 U.S. 886, 909, 102 S. Ct. 3409, 73 L. Ed. 2d 1215 (1982). Notably, "[s]peech does not lose its protected character ... simply because it may embarrass others or ***935** coerce them into action." Id. at 910.

Protectmarriage.com, 599 F. Supp. 2d at 1218.

As to Plaintiffs' allegations of "economic reprisals" in the form of voluntary or forced resignations, as opposed to cases in which a relatively high percentage of small groups seeking an exemption were actually fired from their places of employment, Plaintiffs here have documented no terminations. See, e.g., SWP.

Rather, Plaintiffs point only to instances of several individuals who allegedly resigned amidst controversy over their contributions to or support of Proposition 8, but even those individuals had their own supporters and nonetheless made the affirmative and individual decision to resign.

More troubling here are the few instances of violence or criminal activity that do not fall within the realm of protected speech. The Court does not take lightly the use of the mail to terrorize people with counterfeit biological agents or to threaten the lives of individuals taking a stand for their particular beliefs, nor does the Court condone the use of force or the escalation of peaceful protests to violence to make one's position known.[11] However, Plaintiffs have produced insufficient evidence that the more incendiary events on which they rely were connected to Proposition 8 or to gay marriage at all. Rather, a number of these incidents were directed at the Mormon church, which, though a backer of California's proposition, may also have been a target for any of a number of other reasons. In addition, as stated above, law enforcement appears to have responded swiftly and adequately in each of the instances Plaintiffs allege, rendering this case distinguishable from all cases in the past where exemptions have been granted.

And, perhaps more importantly, the Supreme Court has never indicated that even a few acts of vio-

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[11] To the contrary, those resorting to these sorts of tactics do more to undermine their cause than to further any civilized and productive discourse.

lence, when directed at a target as massive as the groups supporting Plaintiffs, would suffice to shield those groups from the scrutinizing light of the political process.

This Court also observes that, even assuming there is no "strict" requirement that Plaintiffs prove a chilling effect on anticipated speech, any such effect is notably absent here. Plaintiffs appear to have had no problem collecting contributions and those contributions continued to increase even during the most heated portions of the Proposition 8 campaign. Cassady Decl., ¶¶ 24-25. A few John Doe declarants mentioned they may be wary of donating in the future, but those relatively few individual statements are unpersuasive to the Court given Plaintiffs' enormous multi-state backing. Plaintiffs have therefore simply not shown any real chill, nor have they shown, as feared by Buckley, that Plaintiffs' movement was at all susceptible to a fall-off in contributions or that, absent an exemption, the movement might not survive. Buckley, 424 U.S. at 71.

Finally, this case is unique because Plaintiffs' contributors' names were actually disclosed years ago and yet Plaintiffs have produced almost no evidence of any ramifications suffered in the almost three years post-disclosure. While the evidence contained in Plaintiffs' Exhibits 3 and 4 contain a few instances of vandalism that have occurred more recently than during the height of the Proposition 8 campaign and its aftermath, none of those articles draw any real connection between the incidents alleged and the victims' support of traditional marriage. See, e.g., Plaintiffs' Exhs. 4-89, 4-90, 4-91, 4-93. Even Plain-

tiffs' ***936** counsel at oral argument in 2011 admitted he was only aware of one instance of harassment that had occurred postelection. Accordingly, from a practical perspective, it makes no sense to buy in to the argument that disclosure may result in repercussions when there is simply no real evidence in the record that such repercussions actually did occur in the past three years. Plaintiffs' evidence is, quite simply, stale. See Doe v. Reed, 2011 U.S. Dist. LEXIS 119814, 2011 WL 4943952 at *10 n.3.

Accordingly, while Plaintiffs can point to a relatively few unsavory acts committed by extremists or criminals, these acts are so small in number, and in some instances their connection to Plaintiffs' supporters so attenuated, that they do not show a reasonable probability Plaintiffs' contributors will suffer the same fate. Given the grand scale of Plaintiffs' campaign and the massive (and national) support they garnered for their cause, Plaintiffs' limited evidence is simply insufficient to support a finding that disclosure of contributors' names will lead to threats, harassment or reprisals.[12] Plaintiffs' Motion for Summary Judgment as to this claim is DENIED and Defendants' Motion for Summary Judgment is GRANTED.

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[12] It bears mention that if the Court were to find an exemption warranted here, it is likely a similar exemption would prove warranted in any election concerning a controversial ballot measure. As a result, those issues in which the public shows the greatest interest would be subject to the least transparency.

B. Whether California's $100 Reporting Threshold is Unconstitutional[13]

1. Standard of review.

In their papers, Plaintiffs argue that the disclosure provisions in this case are subject to strict scrutiny such that those requirements must be narrowly tailored to a compelling state interest. Defendants adamantly contend that only "exacting scrutiny" is required. While the issue of the appropriate standard of review has previously been muddled, the Supreme Court recently clarified that exacting scrutiny applies here. See *Reed, 130 S. Ct. at 2818* ("We have a series of precedents considering *First Amendment* challenges to disclosure requirements in the electoral context. These precedents have reviewed such challenges under what has been termed 'exacting scrutiny.'") (internal quotations omitted); see also *Human Life of Washington Inc. v. Brumsickle, 624 F.3d 990, 1003-1005 (9th Cir. 2010)*. Despite their disagreement with the underlying authorities, Plaintiffs thus conceded at oral argument in 2011 that this Court is bound to apply that less stringent standard of review. Accordingly, this Court must now determine whether California's specific disclosure requirements "are substantially related to a sufficiently important governmental interest." Id. at 1005.

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[13] Plaintiffs challenge the State's reporting threshold both facially and as-applied. Since Plaintiffs' as-applied challenge is based on the same arguments already disposed of by the Court above, only Plaintiffs' facial challenge will be addressed here.

2. The State's informational interest.

Plaintiffs assert here that the State has no interest sufficiently compelling or substantial to justify compelled disclosure. While Plaintiffs assert that a number of cases have "suggested" that the State's "informational interest may be sufficient to justify compelled ballot-measure disclosure," Plaintiffs further contend any such finding is based on a misreading of Buckley. Plaintiffs' Motion, 20:22-21:1. More specifically, Plaintiffs argue this informational interest is only implicated in candidate elections and is of minimal import ***937** when it comes to ballot-initiative campaigns. Id., 21:6-12. Plaintiffs believe voters can derive all necessary information pertaining to ballot measures from the text of an initiative itself. Id., 21:13-14.

Defendants counter that Plaintiffs' assertion that the State lacks a compelling informational interest in requiring disclosure "flies in the face of every relevant decision from the United States Supreme Court and the Ninth Circuit Court of Appeals over the last four decades." Defendants' Motion, 26:22-24. Defendants point to authority this Court cited in its Order Denying Preliminary Injunction for the proposition that "[c]ourts have repeatedly held that California's informational interests in requiring disclosure by ballot measure committees" is sufficiently important. Id., 26:25-26.

Indeed, in its Order Denying Preliminary Injunction, this Court found the State's informational interest not only substantial, but compelling:

According to Buckley, California's interests in its current compelled disclosure regime potentially fall into three categories. 424 U.S. at 66. "First, disclosure provides the electorate with information as to where political campaign money comes from and how it is spent by the candidate in order to aid the voters in evaluating those who seek federal office ... Second, disclosure requirements deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity ... Third, ... recordkeeping, reporting, and disclosure requirements are an essential means of gathering the data necessary to detect violations of the contribution limitations." Id. at 66-68.

However, unlike the election before the Buckley Court, which concerned candidates, the instant case bears on a recent ballot initiative measure. Since Buckley, the Ninth Circuit has determined that "[o]nly the informational interest applies in the ballot-measure context." See Getman I, 328 F.3d at 1105 n.23. Nevertheless, the Supreme Court has repeatedly emphasized the importance of disclosure as it relates to the passage of initiatives. See CPLC v. Getman, No. 00-1698, slip op. at 15:9-11 (E.D. Cal. February 25, 2005) ("Getman II").

Such import derives, in no small part, from the fact that "[e]very other year, California voters decide the fate of complex policy proposals of supreme public significance ... California voters have passed propositions increasing the sentences for 'third strike' criminal offenders, rendering il-

legal aliens ineligible for public services, banning affirmative action, mandating that public education be conducted in English, and imposing contribution limits for political campaigns." Getman I, 328 F.3d at 1105. In 1974, California voters even passed the initiative necessary to establish the PRA and its disclosure requirements. See Cal. Gov't code § 81000.

"California's high stakes form of direct democracy is not cheap. Interest groups pour millions of dollars into campaigns to pass or defeat ballot measures. Nearly $200 million was spent to influence voter decisions on the 12 propositions on the 1998 ballot. Of that total, $92 million was spent on one gaming initiative. The total amount spent by proponents and opponents of ballot measures has even outpaced spending by California's legislative candidates." Getman I, 328 F.3d at 1105.

Despite the fact that powerful issues are presented to the California voters and that the economic support for state initiatives is staggering, Plaintiffs argue that the public's "general want of knowledge" is insufficient to sustain the burden disclosure imposes on contributors' ***938** First Amendment liberties. Motion, 28:11-13. However, the Government's interest before the Court cannot be diminished by characterization as a general want of knowledge. The influx of money referenced above "produces a cacaphony of political communications through which California voters must pick out meaningful and accurate messages. Given the complexity of the issues and the unwillingness of much of the electorate to independently

study the propriety of individual ballot measures, ... being able to evaluate who is doing the talking is of great importance." Getman I, 328 F.3d at 1105.

"Voters rely on information regarding the identity of the speaker to sort through this 'cacophony,' particularly where the effect of the ballot measure is not readily apparent. While the ballot pamphlet sent to voters by the state contains the text and a summary of ballot measure initiatives, many voters do not have the time or ability to study the full text and make an informed decision. Since voters might not understand in detail the policy content of a particular measure, they often base their decisions to vote for or against it on cognitive cues such as the names of individuals supporting or opposing a measure, as listed in the ballot pamphlet, or the identity of those who make contributions or expenditures for or against the measure, which is often disclosed by the media or in campaign advertising. Such cues play a larger role in the ballot measure context, where traditional cues, such as party affiliation and voting record, are absent." Getman II, No. 00-1698 at 17:12-28.

Moreover, this Court cannot ignore the fact that, "[v]oters act as legislators in the ballot-measure context, and interest groups and individuals advocating a measure's defeat or passage act as lobbyists; both groups aim at pressuring the public to pass or defeat legislation ... . Californians, as lawmakers, have an interest in knowing who is lobbying for their vote, just as members of Congress may require lobbyists to disclose who is pay-

ing for the lobbyists' services and how much." Getman I, 328 F.3d at 1106. It follows that "[i]f our Congress 'cannot be expected to explore the myriad pressures to which they are regularly subjected,' then certainly neither can the general public. People have jobs, families, and other distractions.

While we would hope that California voters will independently consider the policy ramifications of their vote, and not render a decision based upon a thirty-second sound bite they hear the day before the election, we are not that idealistic nor that naive. By requiring disclosure of the source and amount of funds spent for express ballot-measure advocacy, California -at a minimum- provides its voters with a useful shorthand for evaluating the speaker behind the sound bite." Id.

That shorthand is arguably even more necessary to the evaluation of ballot initiatives than it is in the scrutiny of candidates for political office. "'Even more than candidate elections, initiative campaigns have become a money game, where average citizens are subjected to advertising blitzes of distortion and half-truths and are left to figure out for themselves which interest groups pose the greatest threats to their self-interest.' Knowing which interested parties back or oppose a ballot measure is critical, especially when one considers that ballot-measure language is typically confusing, and the long-term policy ramifications of the ballot measure are often unknown. At least by knowing who supports or opposes a given initiative, voters will have a pretty good idea of

who ***939** stands to benefit from the legislation." Getman I, 328 F.3d at 1105-1106.

More to the point, "[d]isclosure ... prevents the wolf from masquerading in sheep's clothing. Proposition 199, which was on the March 1996 Primary Election ballot, provides such an example. That initiative was entitled the 'Mobile Home Fairness and Rental Assistance Act,' but the proposed law was hardly the result of a grassroots effort by mobile home park residents wanting 'fairness' or 'rental assistance.' Two mobile home park owners principally backed the measure. After the real interests behind the measure were exposed, various newspaper editorials decried the initiative's 'subtly misleading name' and explained that the initiative's real purpose was to eliminate local rent control for mobile home parks. The measure was soundly defeated, though proponents outspent opponents $3.2 million to $884,000." Getman I, 328 F.3d at 1106 n.24 (emphasis in original).

The Ninth Circuit made similar statements in CPLC v. Randolph, 507 F.3d 1172. In that case the appellate court stated, "[I]n the context of disclosure requirements, the government's interest in providing the electorate with information related to election and ballot issues is well established." Id. 1179 n.8.

As here, that plaintiff conceded the state's interest was compelling, but the court nevertheless engaged in an extensive discussion of why that

the government's informational interest is not only compelling, but of the highest order.

[FN #5] That court stated:

> Despite the fact that CPLC conceded that California has a compelling informational interest, California also presented persuasive evidence demonstrating the importance of providing the electorate with pertinent information. Researcher David Binder conducted a telephone survey from June 23-26, 2001. "The goals of this project were to determine objectively, using established methods of scientific public opinion research, what sources of information regarding candidates and ballot measures are important to California voters." According to Binder's findings, "[m]ore than seven of ten California voters (71%) state that it is important to know the identity of the source and amount of campaign contributions to the ballot measure by both supporters and opponents, including unions, businesses or other interest groups." "Fifty seven percent (57%) of California voters state that endorsements by interest groups, politicians or celebrities are important in helping them make up their mind [sic] on how to vote on ballot measures." "A majority of California voters (57%) state they would be less likely to vote for a proposition to build senior citizen housing if the proposition was supported by a well-known and respected senior activist who was discovered to have been paid by developers to promote the proposition. Only one-third (34%)

stated that this information would not make any difference in their vote."

Professor Bruce Cain, a Professor of Political Science at the University of California, Berkeley, and Director of the Institute of Governmental Studies, added that "there are several compelling reasons for such a requirement. Foremost among them is the fact that the names groups give themselves for disclosure purposes can be, and frequently are, ambiguous or misleading."

Sandy Harrison, a former journalist for radio stations and newspapers and since 1995, a press secretary and communications director for the president ***940** pro tem of the state Senate, the state Department of Finance, and the state Controller, emphasizes this point in her affidavit:

> A prime example of this was Proposition 188 on the November1994 ballot, an effort to overturn California's recently enacted workplace smoking ban. Supporters falsely portrayed the measure as a grassroots effort by small businesses. By reviewing the campaign finance report, I was able to report to readers that it was not the work of small businesses, but actually giant tobacco companies ... . If the campaign finance report had not been public, I could not have substantiated or conveyed this important information to the readers, and they may never have learned the truth about who was really behind this proposition.

> According to Stephen K. Hopcraft, the President and co-owner of "a full-service public relations firm specializing in grass roots and public education campaigns[,]" "the information gleaned from ... disclosure reports is absolutely critical to assist news media and voters in ballot measure campaign ... . With all the hyperbole in campaigning, the financial backing of each side gives voters a yardstick to measure the truth of the assertions." Indeed, CPLC admitted that "[b]ecause political operators in many states are able to avoid campaign finance disclosure requirements, citizens are likely to be uninformed and unaware of the tens of millions of dollars that are spent on ballot measure campaigns by veiled political actors ... "
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> Randolph, 507 F.3d at 1179 n.8 (emphasis in original)

Thus, "because groups supporting and opposing ballot measures frequently give themselves ambiguous or misleading names, reliance on the group, without disclosure of its source of funds, can be a trap for unwary voters. For example, a tobacco manufacturing group that opposes regulations on smoking might call itself 'Citizens for Consumer Protection.' This name might mislead voters into thinking that Citizens for Consumer Protection is a consumer advocacy group when, in fact, it protects the commercial interest of the tobacco industry. If the organization's donor information is disclosed and opposing groups and the press publicize the information, voters have a better chance of discerning the organization's true interest." Getman II, No. 00-1698 at 18:1-12.

[FN #6] See also McConnell v. Fed. Election Comm'n, 540 U.S. 93, 128, 124 S. Ct. 619, 157 L. Ed. 2d 491 (2003) ("Because FECA's disclosure requirements did not apply to so-called issue ads, sponsors of such ads often used misleading names to conceal their identity. 'Citizens for Better Medicare,' for instance, was not a grassroots organization of citizens, as its name might suggest, but was instead a platform for an association of drug manufacturers. And 'Republicans for Clean Air,' which ran ads in the 2000 Republican Presidential primary, was actually an organization consisting of just two individuals-brothers who together spent $25 million on ads supporting their favored candidate."); id. at 128 n.23 ("Other examples of mysterious groups included 'Voters for Campaign Truth,' 'Aretino Industries,' 'Montanans for Common Sense Mining Laws,' 'American Seniors, Inc.' 'American Family Voices,' and the 'Coalition to Make our Voices Heard.'") (internal citations omitted).

"Interest groups also seek to conceal their political involvement by availing ***941** themselves of complicated arrangements consisting of non-profit corporations, unregulated entities and unincorporated entities. Without disclosure requirements, citizens are likely to be uninformed and unaware that tens of millions of dollars are spent on ballot measure campaigns by such veiled political actors." Id. at 18:14-20. Of particular relevance in this case is the number of

out-of-state individuals and corporations contributing to the passage of a California referendum. Surely California voters are entitled to information as to whether it is even citizens of their own republic who are supporting or opposing a California ballot measure.

Moreover, "[w]hen asked, voters have indicated that information regarding the source and amount of campaign contributions to ballot measures plays an important role in their decision-making. Voters rate such information as more valuable than newspaper endorsements, campaign mailings, TV and radio advertisements, and endorsements by interest groups, politicians or celebrities." Id. at 18:21-19:2.

"In light of the number and complexity of ballot measures confronted by California voters, the staggering sums expending to influence their passage or defeat, the very real potential for deception through the information of advocacy groups with appealing but misleading names, and voters' heavy reliance on funding source information when deciding to support or oppose ballot measures, ...

California has a compelling informational interest in providing the electorate with information regarding contributors and expenditures made to pass or defeat ballot measure initiatives." Id. at 19:3-12.

The disclosure requirements provide some of the only truly objective information on which the electorate can rely to make an informed deci-

> sion, and the state surely has the utmost justification for requiring the disclosure of information likely to ensure that its electorate is informed and able to effectively evaluate ballot measures. If ever disclosure was important, indeed vital, to fuel the public discourse, it is in the case of ballot measures.
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> Thus, even if, as Plaintiffs argue, individual voters will not be "clamoring" to know the name and other pertinent information of every contributor of over $100 to every initiative, the cumulative effect of disclosure ensures that the electorate will have access to information regarding the driving forces backing and opposing each bill. Accordingly, the Government's interest is not only compelling, but critical to the proper functioning of the State's system of direct democracy.

Protectmarriage.com, 599 F. Supp. 2d at 1207-1211.

In the face of the above analysis, Plaintiffs have not in their current Motion convinced the Court the State's interest here is anything other than sufficient. In fact, since the Court issued its above Order, the Ninth Circuit has affirmed that the State's informational interest is "important":

> Providing information to the electorate is vital to the efficient functioning of the marketplace of ideas, and thus to advancing the democratic objectives underlying the First Amendment ... Thus, by revealing information about the contributors to and participants in public discourse and debate, disclosure laws help ensure that voters

> have the facts they need to evaluate the various messages competing for their attention.
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> This vital provision of information repeatedly has been recognized as a sufficiently ***942** important, if not compelling governmental interest.

Human Life, 624 F.3d 990, 1005-1006; see also Canyon Ferry Road Baptist Church v. Unsworth, 556 F.3d 1021, 1033 (9th Cir. 2009) ("[I]t is well established that, in the ordinary case, a state informational interest is sufficient to justify the mandatory reporting of expenditures and contributions in the context of ballot initiatives."). That court also reiterated that "these considerations 'apply just as forcefully, if not more so, for voter-decided ballot measures.'" Human Life, 624 F.3d at 1006 (quoting Getman I, 328 F.3d at 1105). Moreover, the court noted that "[a]ccess to reliable information becomes even more important as more speakers, more speech-and thus more spending-enter the marketplace, which is precisely what has occurred in recent years." Human Life, 624 F.3d at 1007. The Human Life court therefore concluded that "[c]ampaign finance disclosure requirements thus advance the important and well-recognized governmental interest of providing the voting public with the information with which to assess the various messages vying for their attention in the marketplace of ideas." Id. at 1008.[14]

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[14] Plaintiffs contend the Human Life court's "informational interest" discussion is dicta and is not relevant here, in part because that court was asked to evaluate only political committee definitions, not disclosure requirements. Plaintiffs' Motion, 21n.19. Plaintiffs do not articulate, however, how the court's inquiry into the state's interest there was any less

In addition, the Supreme Court in Citizens United, also recently spoke favorably of disclosure provisions. 130 S. Ct. at 914 ("In Buckley, the Court explained that disclosure could be justified based on a governmental interest in providing the electorate with information about the sources of election-related spending.") (internal citations and quotation omitted); id. at 915 ("The disclaimers required ... provide the electorate with information, and insure that the voters are fully informed about the person or group who is speaking.") (internal quotations and citations omitted). Plaintiffs, nonetheless argue that Citizens United should be ignored because that case involved candidate campaigns as opposed to ballot measure initiatives. Plaintiffs' Motion, 22 n.20. In light of the Ninth Circuit's prior recognition, however, that a State's informational interest can be even more powerful in the ballot measure elections than in candidate races, the Supreme Court's discussion in Citizens United cannot be ignored.

Plaintiffs nonetheless ask this Court to ignore the great weight of the above authorities and to rely instead on the Tenth Circuit decision in Sampson v. Buescher, 625 F.3d 1247 (10th Cir. 2010), a case in which that circuit reached a different conclusion than the above courts with respect to a ballot measure campaign. According to Plaintiffs, the Tenth Circuit was correct in finding that "the justifications for requiring disclosures in a candidate election may not apply, or may not apply with as much force, to a bal-

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relevant to the issue before it, or how the analysis would differ here.

lot initiative." Plaintiffs' Motion, 22:19-22 (quoting Sampson, 625 F.3d at 1249). Plaintiffs thus ask this Court to adopt the Tenth Circuit's reasoning that "[t]he [Supreme] Court has never upheld a disclosure provision for ballot-issue campaigns that has been presented to it for review," and that "the statements by the Supreme Court supporting disclosures in ballot-issue campaigns were dicta." Id., 22:22-26 (quoting Sampson, 625 F.3d at 1258).

When comparing ballot initiatives to candidate campaigns, the Sampson court reasoned:

> At issue on this appeal is a different type of campaign committee, not one ***943** seeking to elect or defeat a candidate, but one seeking to prevail on a ballot initiative. A citizen voting on a ballot initiative is not concerned with the merit, including the corruptibility, of a person running for office, but with the merit of a proposed law or expenditure, such as a bond issue. As a result, the justifications for requiring disclosures in a candidate election may not apply, or may not apply with as much force to a ballot initiative. Disclosure may facilitate ad hominem arguments-for whatever they are worth-on the merits of the ballot initiative; but there is no need for concern that contributors can change a law enacted through a ballot initiative as they can influence a person elected to office.

625 F.3d at 1249.[15] That court later elaborated:

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[15] Notably, the court's latter point appears to go to the State's inapplicable "Corruption Interest" rather than to its "Informational Interest."

When analyzing the governmental interest in disclosure requirements, it is essential to keep in mind that our concern is with ballot issues, not candidates. The legitimate reasons for regulating candidate campaigns apply only partially (or perhaps not at all) to ballot-issue campaigns.

...

We must therefore analyze the public interest in knowing who is spending and receiving money to support or oppose a ballot issue. It is not obvious that there is such a public interest. Candidate elections are, by definition, ad hominem affairs.

The voter must evaluate a human being, deciding what the candidate's personal beliefs are and what influences are likely to be brought to bear when he or she must decide on the advisability of future governmental action. The identities of those with strong financial ties to the candidate are important data in that evaluation. In contrast, when a ballot issue is before the voter, the choice is whether to approve or disapprove of discrete governmental action, such as annexing territory, floating a bond, or amending a statute. No human being is being evaluated. When many complain about the deterioration of public discourse-in particular, the inability or unwillingness of citizens to listen to proposals made by particular people or by members of particular groups-one could wonder about the utility of ad hominem arguments in evaluating

> ballot issues. Nondisclosure could require the debate to actually be about the merits of the proposition on the ballot.

Id. at 1255-1257.

The Sampson court ultimately rejected Supreme Court precedent indicating to the contrary by arguing that the high court's message regarding the value of financial disclosure in the ballot-measure context is "mixed." Id. at 1257. According to the Tenth Circuit, while the Supreme Court has previously spoken favorably of disclosure requirements pertaining to ballot initiatives, that Court has never rejected a challenge to such disclosures. Id. Accordingly, the Tenth Circuit believes those favorable discussions should be ignored as dicta. Id. at 1258. That appellate court thus concluded that "while assuming that there is a legitimate public interest in financial disclosure from campaign organizations, we also recognize that this interest is significantly attenuated when the organization is concerned with only a single ballot issue and when the contributions and expenditures are slight." Id. at 1259.

The Tenth Circuit's analysis regarding a state's informational interest in ballot initiative campaigns is unpersuasive. First, that court rejected the reasoning in several ***944** critical Supreme Court cases by categorizing those discussions as dicta. In addition, the Sampson decision is contrary to Ninth Circuit precedent that relies on the same Supreme Court authorities rejected by the Tenth Circuit to find that the State's interest in ballot initiatives is important, and even compelling. In light of the contrary Su-

preme Court and Ninth Circuit authority already presented to this Court, this Court declines Plaintiffs' invitation to rely on Sampson.

Moreover, even if this Court was persuaded by the Tenth Circuit's analysis, that case is distinguishable from the instant case on its facts. More specifically, in Sampson the Tenth Circuit was confronted with a challenge to a state requirement that a small group raising less than $800 register as a campaign committee in an election of just a few hundred voters. Id. at 1249, 1251-52. The Sampson court reasoned that an average citizen could not be expected to master campaign finance laws and to determine which ones apply in a given election. Id. at 1259-60. Accordingly, even small groups, such as the plaintiffs in that case, would have been required to hire counsel to do so. Id. at 1260. Obtaining legal counsel to support such a small campaign was itself a substantial burden, which was then compounded by the time plaintiffs themselves were required to expend on the subject. Id. Moreover, the public interest in disclosure is minimal when the value of the financial information is so small. Id. ("We agree with the Ninth Circuit that '[a]s a matter of common sense, the value of this financial information to the voters declines drastically as the value of the expenditure or contribution sinks to a negligible level.'") (citing Canyon Ferry Road, 556 F.3d at 1033). Accordingly, Sampson held that, on the facts before it, the burden on plaintiffs in compelled disclosure of their financial information, outweighed any benefit to the State. The Court did include the following important caveat in its decision:

> We do not attempt to draw a bright line below which a ballot-issue committee cannot be required to report contributions and expenditures. The case before us is quite unlike ones involving the expenditure of tens of millions of dollars on ballot issues presenting "complex policy proposals." Cal. Pro-Life Council, Inc. v. Getman, 328 F.3d 1088, 1105 (9th Cir. 2003). We say only that Plaintiffs contributions and expenditures are well below the line.

Id. at 1261. Given the limited application of the Tenth Circuit decision, its non-binding nature, and its rejection of Supreme Court precedent, Sampson is not controlling, and, in this Court's opinion, the better line of reasoning is that generated out of this Circuit. Accordingly, this Court now finds the State's informational interest well-established and substantial.

3. Relationship between the $100 reporting threshold and the State's interest.

Plaintiffs next contend that, even assuming the State's informational interest is important, the State's disclosure requirements are not appropriately tailored to that interest. Plaintiffs' Motion, 28:4-6.

According to Plaintiffs, "common sense dictates-and the Ninth Circuit has found-that the 'value of this financial information to the voters declines drastically as the value of the expenditure or contribution sinks to a negligible level.'" Id., 28:8-10 (quoting Canyon Ferry Road, 556 F.3d at 1033)). Plaintiffs also argue the failure to account for inflation undermines any connection between the disclosure requirements

and the State's interest. Id., 29:14. Contrary to Plaintiffs' assertions, Defendants contend the $100 threshold is constitutional unless it is "wholly without rationality." Defendants' Motion, 34:25-28. ***945** Defendants further argue that the threshold is the result of "considered legislative judgment," id., 36:6, and that the threshold need not be indexed for inflation, id., 36:23.

This Court addressed the parties' arguments in its Order Denying Preliminary Injunction, as follows:

> Plaintiffs argue that the Government's interest in the compelled disclosure of those who contributed amounts as low as $100 to support Proposition 8 is negligible. Specifically, Plaintiffs express disbelief that "the public is clamoring for the knowledge of the name, address, occupation, and employer of every person who contributed one hundred dollars or more to a ballot measure." Id., 21-23. According to Plaintiffs, the State's threshold is therefore set too low and must fail for lack of adjustment for inflation. This Court disagrees and holds that the legislative line drawn is narrowly tailored to the State's compelling informational interest, that the threshold need not be indexed for inflation, and that a contrary holding would call into question scores of statutes in which the legislature or the people have sought to draw similar lines.
>
> In Buckley, as here, the appellants argued "that the monetary thresholds in the record-keeping and reporting provisions lack[ed] a substantial nexus with the claimed governmental interests,

for the amounts involved [were] too low even to attract the attention of the candidate, much less have a corrupting influence." Buckley, 424 U.S. at 82. There, the Act "required political committees to keep detailed records of both contributions and expenditures." Id. at 63. As in the instant case, "[e]ach committee ... [was] required to file quarterly reports. The reports [were] to contain detailed financial information, including the full name, mailing address, occupation, and principal place of business of each person who had contributed over $100 in a calendar year, as well as the amount and date of those contributions." Id. (internal citations omitted). On facts remarkably similar to those before this court, the Supreme Court held that "the $100 threshold was ... within the 'reasonable latitude' given the legislature 'as to where to draw the line.'" Id. at 83.

The Court elaborated on its decision stating, "The $10 and $100 thresholds are indeed low. Contributors of relatively small amounts are likely to be especially sensitive to recording or disclosure of their political preferences. These strict requirements may well discourage participation by some citizens in the political process, a result that Congress hardly could have intended. Indeed, there is little in the legislative history to indicate that Congress focused carefully on the appropriate level at which to require recording and disclosure. Rather it seems merely to have adopted the thresholds existing in similar disclosure laws since 1910. But we cannot require Congress to establish that it has chosen the highest reasonable

threshold. The line is necessarily a judgmental decision, best left in the context of this complex legislation to congressional discretion. We cannot say on this bare record that the limits are wholly without rationality." Id.

> [FN #9] The parties dispute the level of scrutiny actually applied in Buckley. However labeled, the Buckley Court clearly determined that the $100 threshold passed constitutional muster and this Court is bound by that decision.

The Eastern District later stated that "as a general matter, the court will not second guess a legislative determination as to where the line for contribution ***946** limits should be drawn." CPLC v. Scully, 989 F. Supp. 1282, 1293 (E.D. Cal. 1998). The same holds true on the facts before this Court.

First, this Court finds the disclosure thresholds set in other states to be instructive. California's current $100 threshold falls well within spectrum of those mandated by its sister states, which range from no threshold requirement to $300. In fact, only six states in the United States have higher threshold requirements.

> [FN #10 Omitted.]

The Supreme Court has previously made similar comparisons. Randall v. Sorrell, 548 U.S. 230, 126 S. Ct. 2479, 165 L. Ed. 2d 482 (2006). That Court stated, "As compared with the contribution limits upheld by the Court in the past, and with those in force in other States, [the Act's] limits are suffi-

ciently low as to generate suspicion that they are not closely drawn." Id. at 249. That Court went on to point out that"[t]hese limits are well below the limits this Court upheld in Buckley. Indeed, in terms of real dollars (i.e., adjusting for inflation), the Act's $200 per election limit on individual contributions to a campaign for governor is slightly more than one-twentieth of the limit on contributions to campaigns for federal office before the Court in Buckley. Adjusted to reflect its value in 1976, Vermont's contribution limit on campaigns for statewide office (including governor) amounts to $113.91 per 2-year election cycle, or roughly $57 per election, as compared to the $1,000 per election limit on individual contributions at issue in Buckley." Id. at 250.

However, the Randall Court also determined that the lower contributions limits constituted only a danger sign that the "contribution limits may fall outside tolerable First Amendment limits." Id. at 253. Since the actual dollar amount of the statutory threshold was not dispositive, the Court also looked at the Act's substantial restrictions on the ability of candidates to raise the funds necessary to run a competitive election, the ability of political parties to help their candidates get elected, and the ability of individual citizens to volunteer their time to campaigns. Id.

Accordingly, even if this Court were inclined to make the determination, which it is not, that California's $100 disclosure threshold was too low, such a determination alone would be insufficient to warrant award of a preliminary injunction.

Nevertheless, in keeping with the Randall Court's foray into the hypothecated effects of inflation, Plaintiffs assert that California's disclosure regime is constitutionally suspect based, in part, on its failure to account for such economic conditions.

According to Plaintiffs, the $100 disclosure threshold approved of in Buckley would equate to approximately $38.79 today. Motion, 24:6-8. Therefore, Plaintiffs contend that Buckley establishes the benchmark below which disclosure thresholds should not be permitted to fall.

Such a conclusion runs contrary to both logic and the law. "In Buckley, [the Court] specifically rejected the contention that $1,000, or any other amount, was a constitutional minimum below which legislatures could not regulate ... [The Court] referred instead to the outer limits of contribution regulation by asking whether there was any showing that the limits were so low as to impede the ability of candidates to 'amas[s] the resources necessary for effective advocacy,' 424 U.S., at 21. [The court] asked, in other words, whether the contribution limitation was so radical ***947** in effect as to render political association ineffective, drive the sound of a candidate's voice below the level of notice, and render contributions pointless. Such being the test, the issue in later cases cannot be truncated to a narrow question about the power of the dollar, but must go to the power to mount a campaign with all the dollars likely to be forthcoming ... [T]he dictates of the First Amendment are not mere functions of the Consumer Price Index. 161 F.3d at 525 (dissent-

ing opinion)." Nixon v. Shrink Mo. Gov't PAC, 528 U.S. 377, 397, 120 S. Ct. 897, 145 L. Ed. 2d 886 (2000). Neither can the constitutional principles at issue in the current case be construed solely in terms of the rate of inflation, and the Court finds that the disclosure threshold negligibly affects, if it affects at all, Plaintiffs' ability to amass resources or to advocate their cause.

The Court also finds it relevant that numerous existing statutes contain reference to dollar values beyond which certain rights or benefits may be taken away or become unavailable. For example, California Penal Code § 487 states that when "money, labor, or real or personal property taken is of a value exceeding four hundred dollars ($400)" such a taking constitutes grand theft. Cal. Pen. Code § 487(a). Additionally, grand theft is also found "[w]hen domestic fowls, avocados, olives, citrus or deciduous fruits, other fruits, vegetables, nuts, artichokes, or other farm crops are taken of a value exceeding one hundred dollars ($100)." Id., § 487(b)(1)(A). These dollar values were set by the legislature in 1982. See 1982 Cal. Stat. 1693. Were the Court to accept Plaintiffs' current argument, it would call into question this and every other statutory provision in which the legislature thought to classify by dollar amount without tying that amount to some articulated rate of inflation.

The Court is unwilling to render a decision that would create such a striking precedent.

Finally, in Buckley, the Supreme Court stated that "disclosure requirements, as a general matter, directly serve substantial governmental interests. In determining whether these interests are sufficient to justify the requirements we must look to the extent of the burden that they place on individual rights." Buckley, 424 U.S. at 68. To reiterate, "[i]t is undoubtedly true that public disclosure of contributions to candidates and political parties will deter some individuals who otherwise might contribute. In some instances, disclosure may even expose contributors to harassment or retaliation. These are not insignificant burdens on individual rights, and they must be weighed carefully against the interests which Congress has sought to promote by this legislation. In this process we note and agree ... that disclosure requirements certainly in most applications appear to be the least restrictive means of curbing the evils of campaign ignorance and corruption." Id.

Thus, disclosure requirements, by their very nature, are the least restrictive means through which to educate the electorate. The requirements do not limit the amount of contributions or expenditures by the entity or the contributor. They do not limit the entity's ability to raise funds, nor do they impose burdensome structural requirements on Plaintiffs. See Alaska Right to Life Committee v. Miles, 441 F.3d 773, 791 (9th Cir. 2006). Moreover, Plaintiffs point to no threshold that would be more narrowly tailored to serve the State's interest. The Court simply cannot say that the cumulative effect of the disclosure ***948** of the

contributors of $100 is not narrowly tailored to the Government's compelling informational interest.[16]

> [FN #11] As an example, the public could very well be swayed by the fact that numerous donations to Plaintiffs, and likely to others, came from out of state.
>
> It appears very probable to this Court that the California electorate would be interested in knowing if a California initiative was funded by the citizens it is intended to affect or by out-of-state interest groups and individuals. In order to properly capture the number of non-California donors, it is quite logical to require a lower, rather than a higher, reporting threshold.

Accordingly, the Court finds that California's disclosure threshold is properly drawn. California's decision to compel disclosure of those who contribute in excess of $100 to groups such as Plaintiffs is narrowly tailored to the State's compelling informational interest and Plaintiffs' likelihood of success on the merits is minimal.

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[16] As an example, the public could very well be swayed by the fact that numerous donations to Plaintiffs, and likely to others, came from out of state. It appears very probable to this Court that the California electorate would be interested in knowing if a California initiative was funded by the citizens it is intended to affect or by out-of-state interest groups and individuals. In order to properly capture the number of non-California donors, it is quite logical to require a lower, rather than a higher, reporting threshold.

Protectmarriage.com, 599 F. Supp. 2d at 1220-1224. The Court's prior analysis still stands.

Plaintiffs nonetheless contend now that the $100 reporting threshold does nothing to combat the State's informational interest, which it attempts to define more narrowly as an interest in combating "voter ignorance." Plaintiffs' Motion, 24:12-14. Plaintiffs primarily believe that disclosure of large special interest groups will promote any such interest and that the identity of small donors, such as those contributing less than $100, is irrelevant. Id., 26:1-9. Plaintiffs also argue there are other legislative actions that can be taken to combat voter ignorance (e.g., making measures simpler and clearer for voters). Id., 25:1-12. Plaintiffs thus conclude that the only justification for disclosure requirements that could actually alleviate voter ignorance is the need to prevent the "wolf from masquerading in sheep's clothing." Id., 27:6-18 (quoting Getman I, 328 F.3d at 1106 n.24). Plaintiffs then go on to argue that this final justification cannot be met when the amount of contributions to be disclosed "sinks to a negligible level." Id., 28:4-10 (quoting Canyon Ferry Road, 556 F.3d at 1033). First and foremost, Plaintiffs' citation to Canyon Ferry Road does little to further their argument.

In Canyon Ferry Road, plaintiff Canyon Ferry Road Baptist Church challenged Montana's campaign finance laws, including its disclosure requirements. 556 F.3d at 1023. In that case, the Church's Pastor became interested in supporting a Montana initiative amending the state constitution, as here, to define marriage as between a man and a woman. Id. at 1024. With the hope of having the initiative placed

on the ballot, a member of the church printed out a petition and used the Church's copy machine and her own paper to print less than fifty copies of the document. Id. With the Pastor's approval, the member placed approximately twenty copies of the petition in the Church's foyer. Id. At roughly the same time, the Pastor also arranged for a simulcast entitled "Battle for Marriage," which did not expressly support or oppose any Montana initiative or candidate, to be shown at the Church. Id. The Church did not charge ***949** for attendance and utilized unpaid public service radio announcements to advertise the event. Id. The Church also printed flyers, which did not mention the state initiative, publicizing the broadcast. Id. After the simulcast, the Pastor did speak in support of the Montana initiative. Id. at 1024-25. The Pastor then circulated the petition and indicated that petitions were available in the lobby. Id. at 1025.

The Montana initiative was successfully passed, after which groups opposing the ballot measure filed suit against the Church alleging it had created an "incidental political committee" and had failed to file the requisite disclosure forms. Id. The Church countered that it could not "constitutionally be subjected to the disclosure and reporting requirements applicable to 'incidental political committees' under Montana law on the sole basis of its activities of de minimis economic effect in connection with the 'Battle for Marriage' event and related petition-signing efforts in support of CI-96." Id. at 1028. It further argued that the Montana state law was unconstitutionally vague as applied to the Church. Id. The Ninth Circuit agreed, holding that "as applied to (1) the placement of the petition in its foyer and (2) [the

Pastor's] exhortation to sign the petition in support of [the initiative] during a regularly scheduled Sunday service, the ... interpretation of 'in-kind expenditures' is unconstitutionally vague." Id. That court also agreed "that the designation of the Church as an 'incidental committee' because of its one-time, in kind 'expenditures' of de minimis economic effect violates the Church's First Amendment free speech rights." Id.

More specifically, the Church argued that Montana's disclosure requirements were unconstitutional as applied to it. Id. at 1030-1031. While acknowledging that the State had a sufficiently important informational interest in disclosure, the court noted that the information needed "is the identity of persons financially supporting or opposing a candidate or ballot proposition." Id. at 1032 (emphasis in original).

That court observed that "[t]he disclosure requirements are not designed to advise the public generally what groups may be in favor of, or opposed to, a particular candidate or ballot issue; they are designed to inform the public what groups have demonstrated an interest in the passage or defeat of a candidate or ballot issue by their contributions or expenditures directed to that result." Id. at 1032-33.

Looking to Buckley, the Ninth Circuit then asked "whether Montana's 'zero dollar' threshold for disclosure is 'wholly without rationality.'" Id. at 1033. The court concluded that it could not "say that the informational value derived by the citizenry is the same across expenditures of all sizes." Id. Moreover, "[a]s a matter of common sense, the value of this financial information to the voters declines drastically as the

value of the expenditure or contribution sinks to a negligible level. As the monetary value of an expenditure in support of a ballot issue approaches zero, financial sponsorship fades into support and then into mere sympathy." Id. (emphasis in original). The court also noted that the burden of reporting remains unchanged despite the minimal nature of any expenditures. Id. at 1034. Accordingly, the Ninth Circuit concluded that "if the Supreme Court's 'rationality' test for threshold disclosure levels has any force at all, there must be a level below which mandatory disclosure of campaign expenditures by 'incidental committees' runs afoul of the First Amendment." Id. On the facts before it, the Canyon Ferry Road court therefore held that:

> Applying the disclosure provisions to the Church's de minimis in-kind expenditures lies beyond [the point where compelled ***950** disclosure runs afoul of the First Amendment]. Expending a few moments of a pastor's time, or a marginal additional space in the Church for petitions, is so lacking in economic substance that we have already held that requiring their reporting creates fatal problems of unconstitutional vagueness. Similarly, the value of public knowledge that the Church permitted a single likeminded person to use its copy machine on a single occasion to make a few dozen copies on her own paper-as the Church did in this case-does not justify the burden imposed by Montana's disclosure requirements.

Id. The court specifically limited its holding, however, to the above formulation and declined to express any views regarding the constitutionality of the state's

disclosure requirements pertaining to either candidate elections or to monetary contributions of any size. Id. Accordingly, while Plaintiffs attempt to carve out and rely on language that is persuasive to their position, that language is simply not on point. In addition, that case is factually distinguishable since it dealt with in-kind contributions that were entirely negligible, not monetary contributions in excess of a threshold rationally set by the state legislature. Moreover, while the in-kind contributions in that case were of no real consequence there, the totality of small contributions in this case were very consequential because a review of those contributions in the aggregate demonstrated, for example, just how much money supporting Proposition 8 was coming in to California from out of state. This Court finds it highly relevant to a California voter's decision making process whether a ballot measure amending California's Constitution is being supported by fellow Californians or by citizens of neighboring states. Accordingly, Canyon Ferry Road, has no real bearing on this case.

A First Circuit decision from just a few months ago is much more on point. In National Organization for Marriage v. McKee, that court addressed a challenge to Maine's campaign disclosure provisions requiring "anyone spending more than an aggregate of $100 for communications expressly advocating the election or defeat of a candidate to report the expenditure to the Commission." 649 F.3d 34, 59 (1st Cir. 2011). As here, the plaintiff in that case argued the state lacked a sufficiently important interest justified by its $100 reporting threshold. Id. at 60. Also as here, that plaintiff relied on Randall v. Sorrell, 548

U.S. 230, 126 S. Ct. 2479, 165 L. Ed. 2d 482, to argue that disclosure thresholds must fail unless indexed to inflation." Id. at 60-61. The McKee court rejected both of plaintiff's arguments stating:

> [I]n Buckley, the Court acknowledged that Congress, in setting FECA's $100 reporting threshold, appeared to have simply adopted the threshold used in similar disclosure laws since 1910 - i.e., over the course of more than sixty years, without any adjustment for inflation. 424 U.S. at 83. We thus reject NOM's argument that the $100 threshold is unconstitutional simply because it is static. Moreover, we cannot conclude that Maine's choice of a $100 threshold ... is wholly without rationality.

Id. at 61. The First Circuit's reasoning is consistent with Buckley, with this Court's Order Denying Preliminary Injunction and with the current facts. Plaintiff has not provided any case law or new factual data indicating that the legislative decision in this case was "wholly without rationality" or that either the McKee court or this Court were incorrect in upholding $100 disclosure requirements.

Accordingly, Plaintiffs' Motion for Summary Judgment as to this claim is DENIED and ***95** Defendants' Motion for Summary Judgment is GRANTED.

C. Whether Post-Election Reporting of Contributors or a Failure to Purge Reports Post-Election is Unconstitutional

Finally, Plaintiffs argue that California's only possible interest, its informational interest, is insufficient to justify post-election compelled disclosure or

the State's failure to purge reports post-election. [17] Plaintiffs' Motion, 33:7-8. According to Plaintiffs, "the problem of voter ignorance is, by definition, a pre-election concern." Id., 33: 11-13. Plaintiffs also contend any post-election State interest could be served solely through non-public, as opposed to public, disclosure. Id., 35:8-12.

Defendants disagree, arguing that the State's informational interest does not end with an election. Defendants' Motion, 32:6-8. Citing to this Court's Order Denying Preliminary Injunction, Defendants contend the informational interest continues because, inter alia, legislation is not "carved in stone", disclosure aids future campaigns, scholars rely on disclosure information to understand the influences of campaign contributions, post-election disclosure prevents ballot measure committees from evading disclosure by accepting contributions in the final days of an election, and complete and accurate reporting requires a sufficient amount of time such that final reporting cannot be finalized on or before an election. Defendants reject Plaintiffs' assertion that non-public disclosure would serve the State's needs, arguing that non-public disclosure only would deny voters, future campaigns and scholars useful information. Id., 34:14-15.

Plaintiffs raised this same argument in their Motion for Preliminary Injunction. The Court disposed of that argument in its relevant Order as follows:

> Plaintiffs' Third Cause of Action seeks a holding that the PRA disclosure requirements are unconstitutional to the extent they require post-election reporting of contributors to ballot initiatives. Despite the fact that the Court has found no case

law supporting the proposition, Plaintiffs contend that such reporting cannot be related to the State's informational interest because the votes have already been cast, nullifying the electorate's need for disclosure. While Plaintiffs acknowledge that the State maintains an interest in the election of candidates after an election has come and gone, they contend that the State's interest in contributors to ballot initiatives "disappears" essentially when the deciding vote is cast at the polls.

This Court disagrees. No legislation is carved in stone, incapable of repeal, nor do ballot initiatives, once passed, become a legacy that future generations must endure in silence. Indeed, it is the initiative process itself that directly allows individuals to affirm or correct prior decisions. To assume that passage of an election draws a line in the sand past which no issues remain open to public debate is simply not congruent with the form of democracy the people of California have determined to employ. Thus, it is possible that the post-election light shed on those contributors who donated during the final weeks of the campaign, and who continue to donate today, might reveal information the electorate requires ***952** in order to evaluate the appropriateness of its decision.

Indeed, it is unclear how "'uninhibited, robust, and wide-open' speech can occur when organizations hide themselves from scrutiny of the voting public ... Plaintiffs' argument for striking down [the] disclosure provisions does not reinforce the precious First Amendment values that Plaintiffs

argue are trampled ... , but ignores the competing First Amendment interests individual citizens seeking to make informed choices in the political marketplace." McConnell, *540 U.S. at 197*, affirming in part and reversing in part McConnell v. Federal Election Com'n, 251 F. Supp. 2d 176, 237 (D.D.C. 2003).

Thus, the Court simply cannot say that the occurrence of an election moots the electorate's need for relevant information. Here, the battle over Proposition 8 continues to be waged, both in the state courts and state legislature. The Government's informational interest cannot be met without requiring the disclosure of all pertinent contribution information such that "uninhibited, robust, and wide-open" speech can continue to be had.

Moreover, Defendants proffer a particularly practical justification for setting a post-election reporting date, namely that it would be impossible for committees to provide final financial information until their operations have wound down. Under Plaintiffs' argument, in order to obtain disclosure, committees would have to file the names of their contributors on election day. Any later filing deadline cannot, according to Plaintiffs, relate to the State's interest. Nothing short of discontinuing committee operations pre-election would render it possible for a committee to file complete reports at the height of the electoral process. Thus, the State established a future date on which full disclosure of all campaign finances is due.

> The Court finds analogy to the payment of federal taxes instructive. Income is earned and due to the IRS as of the end of each calendar year. Nevertheless, the IRS requires filing and payment in April, one would assume to allow, at least in part, for wrapping up the prior year's business and for compiling the necessary documentation to render filing proper. It is the unlikely individual that would be prepared to file on the final day of the calendar year.
>
> Finally, as discussed in the prior section, relying on the Buckley Court's directive to examine the burden on Plaintiffs, this Court finds that the burden imposed by requiring post-election reporting is minimal.
>
> Thus, as in the case of its established disclosure threshold, the Government drew a line. This time the line chosen was a particular date rather than a dollar value.
>
> Nevertheless, that line does not burden any more speech than would any other chosen date. Accordingly, even under a strict scrutiny analysis, this Court finds that the post-reporting requirement is directly related to the State's informational interest and that it burdens no more speech than necessary to further that interest.

Protectmarriage.com, 599 F. Supp. 2d at 1224-1225.

Plaintiffs raise no new legal arguments and present no material facts not already addressed by this Court. Because Plaintiffs remaining arguments are based on their unsupported assertion that Califor-

nia's informational interest cannot be served by post-election reporting, Plaintiffs' arguments are rejected and their Motion for Summary Judgment is DENIED. Defendants' Motion for Summary Judgment, therefore, is GRANTED.

***953 CONCLUSION**

For the reasons set forth in this Memorandum and Order, Plaintiffs' Motion for Summary Judgment (ECF No. 245) is DENIED, Defendants' Motion for Summary Judgment (ECF No. 259) is GRANTED, and Defendants' Motion to Strike (ECF N. 271) is DENIED as moot. The Clerk of the Court is directed to close this case.

IT IS SO ORDERED.

Dated: November 4, 2011

/s/ Morrison C. England, Jr.
MORRISON C. ENGLAND, JR.
UNITED STATES DISTRICT JUDGE

[***Editing Note:*** *Page numbers from the reported opinion, 599 F.Supp. 2d 1197, are indicated* ***(*1197)****.*]

[Doc. 88, filed January 30, 2009]

United States District Court
For the Eastern District of California

Civil No. 2:09-cv-00058-MCE-DAD

PROTECTMARRIAGE.COM, et. al.,
Plaintiffs,

v.

DEBRA BOWEN, el al.,
Defendants,

***1199** MEMORANDUM AND ORDER

ProtectMarriage.com - Yes on 8, a Project of California Renewal ("ProtectMarriage.com"), National Organization for Marriage, - Yes on 8, Sponsored by National Organization for Marriage ("NOM-California"), and John Doe # 1, an individual, and as representative of the Class of Major Donors ("Major Donors") (collectively "Plaintiffs"), each committees under California election law, filed the current action challenging California's statutory requirement that

they disclose the names and other personal information of those contributors of $ 100 or more. Presently before the Court are Plaintiffs' Motions for Preliminary Injunction and Protective Order. Plaintiffs ask that this Court: 1) enjoin Defendants from enforcing the semiannual reporting requirements under California Government Code § 84200; 2) enjoin Defendants from commencing criminal or civil actions for failing to comply with those reporting requirements; and 3) enjoin Defendants from both publishing reports or making available prior reports or campaign statements filed by Plaintiffs pursuant to California's Political Reform Act of 1974, Cal. Gov. Code § 81000 et seq. ("PRA"). Hearing on the matter was held on January 29, 2009, with representatives for all parties present. For the following reasons, Plaintiffs' Motion for Preliminary Injunction is denied and the Protective Order already in place is extended.

BACKGROUND

On November 4, 2008, the citizens of California adopted a ballot measure, Proposition 8, that changed the California Constitution such that marriage would only thereafter exist "between a man and a woman." Plaintiffs are primarily formed ballot committees under the PRA and were established specifically to support the passage of Proposition 8.

The PRA requires committees such as Plaintiffs to report detailed information regarding their contributors. Specifically, Plaintiffs are required to file semiannual reports including the name, street address, occupation, name of employer, or if self-employed, the name of the business, the date and amount received during the period covered by the

statement and the cumulative amount of contributions. Cal. Gov. Code §§ 84200, 84211(f). This information is then available, inter alia, on the website of the Secretary of State. Additionally, opponents of Proposition 8 have reproduced such information on a variety of their own websites and have also included other publicly-available personal information such as telephone numbers. At least one such website provides contributor information via an interactive map detailing the contributors' address, occupation, and contribution amount. See Declaration of Sarah E. Troupis (Second) ("Second Troupis Decl."), 2:6-9.[1]

Plaintiffs allege that, as a consequence of their support of Proposition 8, their contributors have been subject to threats, reprisals, and harassment. Plaintiffs submitted numerous articles elaborating various death threats, physical violence, and threats of violence directed against Proposition 8 supporters, as well as acts of vandalism, protests, and boycotts. See Declaration of Sarah E. Troupis ("First Troupis Decl.").

Specifically, Plaintiffs provided evidence that Fresno Mayor Alan Autry and Pastor Jim Franklin, of Fresno's Cornerstone Church, both supporters of Proposition 8, received a death threat. Id., Exh. C. That threat stated in part:

> Hey Bubba,
>
> You really acted like a real idiot at the Yes of [sic] Prop 8 rally this past weekend. Consider

[1] The Court is aware that Defendants have raised numerous challenges to Plaintiffs' evidence. Defendants' objections are noted and, in light of the Court's disposition of this case, are overruled as moot.

> yourself lucky. If I had a gun I would have gunned you down along with each and every other supporter. It's a blessing that you won't be our Mayor for much longer.
>
> ...
>
> Anybody who has a YES ON PROP 8 sign or banner in fron [sic] of their house or bumper sticker on the car in Fresno is in danger of being shot or firebombed. Fresno is not safe for anyone who supports Prop 8. I've also got a little surprise for Pasor [sic] Franklin and his congregation of lowlife's [sic] in the coming future. Keep letting him preach hate and he'll be sorry. He will be meeting his maker sooner than expected. Take this as a warning or anyway you want, but believe it. If you thought 9/11 was bad, you haven't seen anything yet. [Expletive] Fresno and the homophobic idiots who live there. Mark my words.

Id., Exh. E. Pastor Franklin's home, church and church office were also "egged." Id.

Additionally, Plaintiffs provided several articles stating that, in November, a small group of evangelical Christians, known to frequent San Francisco's Castro District on a weekly basis to pray, sing hymns, and attempt to convert homosexuals to a "straight lifestyle," were the subject of backlash from opponents of Proposition8. Id., Exh. F, G. One of the articles further reported that opponents of the measure interrupted church services in Michigan and that two Mormon temples and one Knights of Columbus headquarters received envelopes containing white powder. Id., Exhs. F, I.

In early November, fifteen people were arrested while attending a protest against Proposition 8 in Long Beach. Id., Exh. K. Despite police statements that the event was a "great success considering the number of people who attended," at the end of the event approximately 100 individuals blocked traffic, refused to leave and then allegedly attempted to incite a riot. Id. Plaintiffs documented additional protests and boycotts as well. Id., Exhs., L-N.

Furthermore, several individuals have allegedly been forced to resign from their jobs amidst criticism over their monetary support of the ballot measure. See id., ***1201** Exh. N (artistic director for the California Musical Theatre donated $ 1,000 to the "Yes on 8" campaign and subsequently resigned), AD (manager of El Coyote restaurant took a voluntary leave of absence after reports of her $ 100 donation to support Proposition 8 led to boycotts and protestors at the establishment owned by her mother), AH (director of Los Angeles Film Festival resigned in the wake of criticism over the $ 1500 he contributed to Proposition 8).

There have also been scattered reports of the theft of "Yes on 8" signs, vandalism of both residential and commercial buildings, and vandalism of church property, including one instance in which opponents of Proposition 8 apparently arranged "Yes on 8" signs in the form of a swastika on church grounds. Id., Exhs. H, Q, S-Z.

Finally, Plaintiffs filed anonymous declarations from several individuals who allege to have suffered personal repercussions because of their support of Proposition 8:

Declaration of John Doe # 1

John Doe # 1 donated funds to ProtectMarriage.com, placed a yard sign in front of his home, and made phone calls supporting Proposition 8 on behalf of a church group. He was required to list the name of his business when he contributed to ProtectMarriage.com, and, consequently, in October, someone papered the cars in his parking lot with flyers referencing his support for Proposition 8 and the amount of his contribution. His business has since been targeted by numerous boycotts, several orchestrated through Facebook. At one point, someone paid for a sponsored link on Google so that a search for John Doe # 1's store resulted in a website referencing his support for Proposition 8 and urging a boycott.

Additionally, several negative reviews of his business were posted on Yelp.com referencing his donation to Plaintiff. Other websites have posted similar reviews.

John Doe # 1's business has twice been picketed and, in November, opponents of Proposition 8 allegedly orchestrated a march intended to culminate in further picketing of John Doe # 1's business.

According to John Doe # 1, the protesters have become quite aggressive and he has received numerous letters and hundreds of emails condemning his support of the Proposition. Approximately 30-40 people have frequented his business to express their displeasure with his support of the ballot initiative. John Doe # 1 eventually became concerned that opponents of Proposition 8 would tamper with his products so he installed

sixteen additional security cameras. John Doe # 1 contends that he will not contribute in the future and does not believe his business should suffer repercussions because of his personal donation.

Declaration of John Doe # 2

John Doe # 2 made two donations to ProtectMarriage.com and posted a "Yes on 8" bumper-sticker on his car. Subsequently, in November, someone distributed a flyer, in the town of his residence, labeling him a bigot. Additionally, the flyer listed his religious affiliation and the dollar amount of his contributions. According to John Doe # 2, no one but his family was aware of his financial contribution, so he believes the information must have derived from public disclosure by the State. John Doe # 2 also claims that he will be unlikely to contribute to similar causes in the future.

Declaration of John Doe # 3

John Doe # 3 is a pastor at a Lutheran Church. Prior to the passage of Proposition 8, he informed his congregation ***1202** that the Bible supports marriage between one man and one woman. He further stated that the congregation should vote accordingly.

Also prior to the passage of Proposition 8, an individual placed a "Yes on 8" sign on church property. In November, someone used the sign and a heavy object to break a large window in the church building.

Declaration of John Doe # 4

John Doe # 4, an attorney who is the sole shareholder in his firm, donated funds to NOM-California.

In support of Proposition 8, John Doe # 4 wrote articles supporting Proposition 8 and conducted lectures to local groups in support of the initiative.

He also held a fundraiser at his home to support the ProtectMarriage.com - Yes on8 campaign. A group of protesters conducted a demonstration at the entrance to his community and attempted to hand flyers to guests as they passed through the gate to the neighborhood.

Over the course of November 13-16, John Doe # 4 received approximately 15-20 harassing emails. One email stated, "hello propogators & litigators burn in hell." Exh. B. Another stated, "Congratulations. For your support of prop 8, you have won our tampon of the year award. Please contact us if you would like to pick up your prize." Id. At least one message referenced the amount of John Doe # 4's contributions and the amount of an additional short-term loan John Doe # 4 had provided to ProtectMarriage.com.

Finally, John Doe # 4's name, business and the amount he donated were posted on the website www.californiansagainsthate.org.

Declaration of John Doe # 5

John Doe # 5 contributed funds to ProtectMarriage.com. In November, John Doe # 5 received an email suggesting that his company's image would be damaged as a result of his sup-

port of Proposition 8. John Doe # 5 now feels threatened and uneasy knowing that his company could be targeted.

Declaration of John Doe # 6

John Doe # 6 donated funds to ProtectMarriage.com. He did not engage in any other public support of the initiative. His name and the amount of his donation was listed on www.californiansagainsthate.com. At the end of November, he received a postcard allegedly insulting him for supporting the ballot measure.

The postcard was typed and stated in part, "We just hope you are proud of your participation in this Great Crusade. Just think of how you have contributed to the economy with the money you donated! It doesn't matter that there are thousands of worthwhile charities that could have used those funds to feed starving people, clothe the homeless, and find cures for cancer and other life-threatening diseases. You must be so proud!"

Declaration of John Doe # 7

John Doe # 7 is the senior pastor of a church and donated funds to ProtectMarriage.com. His family members displayed bumper stickers on their cars and displayed yard signs in front of their house. John Doe # 7's church served as a distribution center for the petitions initially circulated in support of the Proposition. The church also distributed yard signs and bumper stickers. Additionally, members of the church telephoned approximately 275 people on behalf of ProtectMarriage.com.

John Doe # 7 received one phone call at the church stating that if he was against gay marriage, he should equally be against divorce. Twice, the "Yes on 8" bumper stickers were ripped off of his ***1203** wife's car at her place of employment. One of these times, an anti-Proposition 8 note was left on the windshield. The typed note stated, "Why would you want to deprive others of fundamental human rights? What if a close friend, family member or co-worker was gay and wanted to get married? Wouldn't you want to support the love they have for their partner and want them to have the same rights as you and others? Please re-think your position. There are so many more important issues in this world that need our attention rather than gay marriage. We need to learn tolerance, acceptance and love of each other. PLEASE VOTE NO ON PROP. 8." Exh. A. Thereafter, he placed bumper stickers inside of the car windows with tape so that they could not be removed.

John Doe # 8

John Doe # 8 contributed funds to ProtectMarriage.com, displayed a bumper sticker on his car, and placed a yard sign in his front yard. John Doe # 8 also attended numerous rallies, three press conferences, and spoke at a number of churches in Los Angeles, Orange County, and San Diego in support of Proposition 8. Additionally, he participated in panel discussions involving same-sex marriage. Finally, John Doe # 8 attended an election night gathering at which he was photographed. That photograph was pub-

lished in at least one periodical and possibly in numerous others.

John Doe # 8's yard sign was twice stolen and destroyed. After his photograph was published, he began receiving harassing letters, e-mails and at least one phone call at his workplace. One such message stated, "Jesus doesn't love you! He will punish you in hell for voting to deny a minority the same equal rights the rest of us have.

You're as bad as the racist white people who used to enjoy banning black people the same rights as them. The rest of the world is disgusted by your actions. Best start rethinking your position NOW!" Exh. B. He has also received harassing messages on his MySpace and Facebook accounts.

As a result, John Doe # 8 will be reluctant to contribute to similar causes in the future.

John Doe # 9

John Doe # 9 attended an election night gathering for supporters of Proposition 8. A photograph taken of him that night was published in at least one periodical and may have appeared in numerous others.

Since publication of this picture, John Doe # 9 began receiving harassing messages on his MySpace and Facebook accounts. Many of these contained profanity and one threatened him with assault.

In November, John Doe # 9 arrived home to a harassing message on his answering machine. A man, in a mocking tone, stated that the people

in the picture with him were "Nazis" and against human rights. Additionally, he stated, "I certainly hope that someday somebody takes away something from you and then you'll realize what a [expletive] [expletive] you are."

John Doe # 9 also received several harassing emails and phone calls at work. Some of the messages stated that the individuals knew where he worked and that they were going to attempt to have him fired. Additionally, other departments and employees received an email stating that he came "from a long line of bigots and racists."

In November, in response to the above incidents, John Doe # 9 filed a police report, began coordinating with security to ensure his safety at work, and changed his home phone number.

***1204** As a result, John Doe # 9 would think carefully about the possible consequences of donating to or publicly supporting a similar cause in the future.

Plaintiffs initiated this action because they are statutorily required to again file semiannual reports on January 31, 2009.[2] Plaintiffs contend that their contributors and the Major Donors will suffer irreparable harm in the form of threats, harassment and reprisals if Plaintiffs are required to adhere to the PRA's mandates.

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[2] Since the thirty-first falls on a Saturday, and since Plaintiffs can file electronically, they are not technically required to file until Monday, February 2, 2009. Cal. Code Regs. tit. 2, § 18116; Cal. Gov. Code § 84600 et seq.

Accordingly, Plaintiffs seek injunctive relief arguing first that they are "entitled to an as-applied blanket exemption from California's compelled disclosure provisions because Plaintiffs have demonstrated a reasonable probability that compelled disclosure will result in threats, harassment, and reprisals because of their support for Proposition 8." Plaintiffs' Memorandum in Support of Motion for Temporary Restraining Order ("Motion"), 5:21-24. Additionally, Plaintiffs contend that "California's threshold for compelled disclosure of contributors is not narrowly tailored to serve a compelling government interest in violation of the First Amendment to the United States Constitution." Id., 6:1-3. Namely, Plaintiffs challenge the $ 100 threshold after which individual contributors must be disclosed. Finally, according to Plaintiffs, "any ballot measure regulation that requires compelled disclosure regarding ballot measure activity after the election has occurred in unconstitutional because it cannot logically be related to a compelling state interest." Id., 6:12-14.

STANDARD

A preliminary injunction is an extraordinary remedy, and Plaintiffs have the burden of proving the propriety of such a remedy by clear and convincing evidence. See Granny Goose Foods, Inc. v. Teamsters, 415 U.S. 423, 442, 94 S. Ct. 1113, 39 L. Ed. 2d 435 (1974). In order to warrant issuance of such relief, Plaintiffs must demonstrate either: 1) a combination of probable success on the merits and a likelihood of irreparable injury; or 2) that serious questions are raised and the balance of hardships tips sharply in favor of granting the requested injunction. Stuhlbarg Int'l Sales Co., Inc. v. John D. Brush &

Co., Inc., 240 F.3d 832, 839-40 (9th Cir. 2001); Winter v. Natural Resources Defense Council, 129 S. Ct. 365, 375, 172 L. Ed. 2d 249 (2008). (likelihood rather than possibility of success on the merits required for issuance of preliminary injunctive relief).

These two alternatives represent two points on a sliding scale, pursuant to which the required degree of irreparable harm increases or decreases in inverse correlation to the probability of success on the merits. Roe v. Anderson, 134 F.3d 1400, 1402 (9th Cir. 1998); United States v. Nutri-cology, Inc., 982 F.2d 394, 396 (9th Cir. 1992). Under either formulation of the test for granting injunctive relief, however, Plaintiffs must demonstrate a significant threat of irreparable injury. Oakland Tribune, Inc. v. Chronicle Publ. Co., 762 F.2d 1374 (9th Cir. 1985).

ANALYSIS

I. PRELIMINARY INJUNCTION

A. Likelihood of Success on the Merits

The debate over the merits of Proposition 8 has proved divisive, both locally and ***1205** nationally. The issue of whether homosexuals have the same right to marry as do their heterosexual counterparts has garnered both passionate support and opposition, gripping the attention of communities across the country.

However, this case is not about gay marriage. This case is not about whether that right to marry exists and from where that right might derive, nor is it about the content of a California referendum already appropriately before the California Supreme Court.

This case is about the First Amendment.

Before this Court is the narrow issue of whether California's compelled disclosure law violates the guarantees afforded the citizens of the United States under the First Amendment. Thus, the Court must consider the State's power to regulate its own electoral process, and the tension between that governmental power and the free, uninhibited, and robust discourse necessary to the American way of life. It must evaluate a challenge to the PRA, itself a law enacted directly by the people and in place for over thirty years, a law that has never before been attacked on the specific grounds currently before this Court.

Specifically, at issue is whether compelled disclosure of the names of Plaintiffs' contributors will result in a threat of harm so substantial as to warrant an exemption from California's disclosure requirements, an exemption historically reserved for small groups promoting ideas almost unanimously rejected. At issue are the harms alleged to await Plaintiffs because those who disagree with Plaintiffs' beliefs have engaged in repugnant and despicable acts that, rather than justify in their own right the protections afforded by the shield of First Amendment, are being wielded as a sword to improperly attack Plaintiffs' contributors.

Consequently, the issues before this Court are decidedly narrow: 1) Whether Plaintiffs are entitled to an as-applied blanket exemption from California's compelled disclosure requirements because there is a reasonable probability that disclosure will result in threats, harassment, and reprisals to their contributors; 2) whether California's $ 100 compelled disclosure threshold is unconstitutionally low because such

a low figure is not appropriately related to a proper government interest; and 3) whether California's post-election reporting requirement is unconstitutional for the same reason. Accordingly, the only question this Court can and will answer is whether a preliminary injunction is necessary to rectify the alleged infringement of Plaintiffs' First Amendment rights. Any other discussion, despite its potential relevance to the marketplace of ideas, is simply not before the Court.

The First Amendment to the United States Constitution states, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."[3] U.S. Const. amend. I.

It cannot be denied that "[e]ffective advocacy of both public and private points of view, particularly controversial ones, is ... enhanced by group association." National Association for the Advancement of Colored People v. Alabama, 357 U.S. 449, 460, 78 S. Ct. 1163, 2 L. Ed. 2d 1488 (1958) ***1206** ("NAACP v. Alabama"). State-mandated compelled disclosure of contributors to committees such as Plaintiffs indisputably impinges on those vital freedoms of belief and assembly. See Buckley v. Valeo, 424 U.S. 1, 64, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976).

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[3] The First Amendment is applicable to the states through the Fourteenth Amendment. Stromberg v. People of the State of California, 283 U.S. 359, 368, 51 S. Ct. 532, 75 L. Ed. 1117 (1931).

Thus, the Supreme Court has stated that "significant encroachments on First Amendment rights of the sort that compelled disclosure imposes cannot be justified by a mere showing of some legitimate government interest ... [T]he subordinating interests of the State must survive exacting scrutiny ... [T]here must be a 'relevant correlation' or 'substantial relation' between the governmental interest and the information required to be disclosed.

This type of scrutiny is necessary even if any deterrent effect on the exercise of First Amendment rights arises, not through direct government action, but indirectly as an unintended but inevitable result of the government's conduct in requiring disclosure." Buckley at 64-65 (internal citations omitted).[4]

Plaintiffs therefore contend that Buckley and its progeny require the Court to apply strict scrutiny in evaluating California's current compelled disclosure regime. However, such a conclusion is not as easily reached as Plaintiffs imply.

Supreme Court precedent regarding the appropriate standard of review is not a model of clarity. The Court has repeatedly relied on Buckley's ambiguous "exacting scrutiny" test to evaluate campaign

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[4] The compelled disclosure discussion undertaken in Buckley, a case involving federal regulation of candidate elections, applies equally in the ballot measure context. See CPLC v. Getman 328 F.3d 1088, 1104 (9th Cir. 2003), quoting McIntyre v. Ohio Elections Com'n, 514 U.S. 334, 347, 115 S. Ct. 1511, 131 L. Ed. 2d 426 (1995) "[T]here can be no doubt that states may regulate express ballot-measure advocacy through disclosure laws. Such speech is political in nature and '[t]the principles enunciated in Buckley extend equally to issue-based elections ...'") ("Getman I").

finance regulations. See Davis v. Federal Election Commission, 128 S. Ct. 2759, 2765, 171 L. Ed. 2d 737 (2008).

The Ninth Circuit, on the other hand, has expressly applied strict scrutiny in a case similar to the one before this Court, stating, "Although the First Amendment tolerates some regulation of express ballot-measure advocacy, it does not necessarily follow that the PRA regulations are constitutional.

For California to regulate individuals or organizations ... who engage in activities other than political advocacy, California must have a compelling interest, and the regulation imposed must be narrowly tailored to advance the relevant interest." Getman I, 328 F.3d at 1101.

Nevertheless, in a related footnote, the Getman I court also recognized:

> [T]he Supreme Court has been less than clear as to the proper level of judicial scrutiny we must apply in deciding the constitutionality of disclosure regulations such as those in the PRA. The Buckley Court claimed to apply "exacting scrutiny" in analyzing the FECA disclosure and reporting requirements, 424 U.S. at 64, but then noted that its review was whether a "'substantial relation' existed between the governmental interest and the information required to be disclosed." Id. In C&C Plywood, a case filed two years after Buckley, we observed that disclosure regulations for express ballot-measure advocacy may be enacted "without a showing of a compelling state interest." 583 F.2d 421, 425 (9th Cir. 1978). We ob-

viously assumed there that ***1207** strict judicial review of disclosure statutes was inappropriate.

Notwithstanding Buckley and C & C Plywood, we subject California's disclosure requirements to strict scrutiny. In doing so, we follow the Court's post-Buckley decision of [Federal Election Com'n v. Massachusetts Citizens for Life, Inc.], 479 U.S. 238, 107 S. Ct. 616, 93 L. Ed. 2d 539 (1986). There the Court subjected disclosure and reporting provisions of FECA to strict scrutiny because those provisions applied to "organizations whose major purpose is not campaign advocacy, but who occasionally make independent expenditures on behalf of candidates." 479 U.S. at 252-53. The Court recognized that reporting and disclosure requirements are more burdensome for multipurpose organizations (such as CPLC) than for political action committees whose sole purpose is political advocacy. See id. at 255-56. Given that the MCFL Court considered FECA's disclosure requirements to be a severe burden on political speech for multipurpose organizations, we must analyze the California statute under strict scrutiny. Post- Buckley, the Court has repeatedly held that any regulation severely burdening political speech must be narrowly tailored to advance a compelling state interest.

Getman at 1101 n.16 (final citations omitted).

The Ninth Circuit has not since clarified matters. See Alaska Right to Life Comm. v. Miles, 441 F.3d 773, 787-788 (9th Cir. 2006); American Civil Liberties Union of Nev. v. Heller, 378 F.3d 979, 992-993 (9th Cir. 2004).

Thus, the appropriate standard of review is an open question, and it will remain so until another day. Today, because Plaintiffs' likelihood of success on the merits is minimal even under the most stringent review, the Court will assume without deciding that strict scrutiny applies. Accordingly, the Government "bears the burden of proving that the [statutory] provisions are (1) narrowly tailored, to serve (2) a compelling state interest." CPLC v. Randolph, 507 F.3d 1172, 1178 (9th Cir. 2007).

Plaintiffs' concede, as they must, that California has a compelling justification for requiring disclosure of Plaintiffs' contributors. Plaintiffs' concession, however, gives short shrift to both the nature and magnitude of the State's actual interest.

According to Buckley, California's interests in its current compelled disclosure regime potentially fall into three categories. 424 U.S. at 66. "First, disclosure provides the electorate with information as to where political campaign money comes from and how it is spent by the candidate in order to aid the voters in evaluating those who seek federal office ... Second, disclosure requirements deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity ... Third, ... recordkeeping, reporting, and disclosure requirements are an essential means of gathering the data necessary to detect violations of the contribution limitations." Id. at 66-68.

However, unlike the election before the Buckley Court, which concerned candidates, the instant case bears on a recent ballot-initiative measure. Since Buckley, the Ninth Circuit has determined that "[o]nly the informational interest applies in the bal-

lot-measure context." See Getman I, 328 F.3d at 1105 n.23. Nevertheless, the Supreme Court has repeatedly emphasized the importance of disclosure as it relates to the passage of initiatives. See CPLC v. Getman, No. 00-1698, slip op. at ***1208** 15:9-11 (E.D. Cal. February 25, 2005) ("Getman II").

Such import derives, in no small part, from the fact that "[e]very other year, California voters decide the fate of complex policy proposals of supreme public significance ... California voters have passed propositions increasing the sentences for 'third strike' criminal offenders, rendering illegal aliens ineligible for public services, banning affirmative action, mandating that public education be conducted in English, and imposing contribution limits for political campaigns." Getman I, 328 F.3d at 1105. In 1974, California voters even passed the initiative necessary to establish the PRA and its disclosure requirements. See Cal. Gov't code § 81000.

"California's high stakes form of direct democracy is not cheap. Interest groups pour millions of dollars into campaigns to pass or defeat ballot measures. Nearly $ 200 million was spent to influence voter decisions on the 12 propositions on the 1998 ballot. Of that total, $ 92 million was spent on one gaming initiative.

The total amount spent by proponents and opponents of ballot measures has even outpaced spending by California's legislative candidates." Getman I, 328 F.3d at 1105.

Despite the fact that powerful issues are presented to the California voters and that the economic support for state initiatives is staggering, Plaintiffs argue that the public's "general want of knowledge"

is insufficient to sustain the burden disclosure imposes on contributors' First Amendment liberties. Motion, 28:11-13. However, the Government's interest before the Court cannot be diminished by characterization as a general want of knowledge. The influx of money referenced above "produces a cacaphony of political communications through which California voters must pick out meaningful and accurate messages. Given the complexity of the issues and the unwillingness of much of the electorate to independently study the propriety of individual ballot measures, ... being able to evaluate who is doing the talking is of great importance." Getman I, 328 F.3d at 1105.

"Voters rely on information regarding the identity of the speaker to sort through this 'cacophony,' particularly where the effect of the ballot measure is not readily apparent. While the ballot pamphlet sent to voters by the state contains the text and a summary of ballot measure initiatives, many voters do not have the time or ability to study the full text and make an informed decision.

Since voters might not understand in detail the policy content of a particular measure, they often base their decisions to vote for or against it on cognitive cues such as the names of individuals supporting or opposing a measure, as listed in the ballot pamphlet, or the identity of those who make contributions or expenditures for or against the measure, which is often disclosed by the media or in campaign advertising. Such cues play a larger role in the ballot measure context, where traditional cues, such as party affiliation and voting record, are absent." Getman II, No. 00-1698 at 17:12-28.

Moreover, this Court cannot ignore the fact that, "[v]oters act as legislators in the ballot-measure context, and interest groups and individuals advocating a measure's defeat or passage act as lobbyists; both groups aim at pressuring the public to pass or defeat legislation ... . Californians, as lawmakers, have an interest in knowing who is lobbying for their vote, just as members of Congress may require lobbyists to disclose who is paying for the lobbyists' services and how much." Getman I, 328 F.3d at 1106. It follows that "[i]f our Congress 'cannot be expected to explore the myriad pressures to which they are regularly subjected,' then certainly ***1209** neither can the general public. People have jobs, families, and other distractions. While we would hope that California voters will independently consider the policy ramifications of their vote, and not render a decision based upon a thirty-second sound bite they hear the day before the election, we are not that idealistic nor that naive.

By requiring disclosure of the source and amount of funds spent for express ballot-measure advocacy, California -at a minimum-provides its voters with a useful shorthand for evaluating the speaker behind the sound bite." Id.

That shorthand is arguably even more necessary to the evaluation of ballot initiatives than it is in the scrutiny of candidates for political office. "'Even more than candidate elections, initiative campaigns have become a money game, where average citizens are subjected to advertising blitzes of distortion and half-truths and are left to figure out for themselves which interest groups pose the greatest threats to their self-interest.' Knowing which interested parties back or oppose a ballot measure is critical, especially when

one considers that ballot-measure language is typically confusing, and the long-term policy ramifications of the ballot measure are often unknown. At least by knowing who supports or opposes a given initiative, voters will have a pretty good idea of who stands to benefit from the legislation." Getman I, 328 F.3d at 1105-1106.

More to the point, "[d]isclosure ... prevents the wolf from masquerading in sheep's clothing. Proposition 199, which was on the March 1996 Primary Election ballot, provides such an example. That initiative was entitled the 'Mobile Home Fairness and Rental Assistance Act,' but the proposed law was hardly the result of a grassroots effort by mobile home park residents wanting 'fairness' or 'rental assistance.' Two mobile home park owners principally backed the measure.

After the real interests behind the measure were exposed, various newspaper editorials decried the initiative's 'subtly misleading name' and explained that the initiative's real purpose was to eliminate local rent control for mobile home parks. The measure was soundly defeated, though proponents outspent opponents $ 3.2 million to $ 884,000." Getman I, 328 F.3d at 1106 n.24 (emphasis in original).

The Ninth Circuit made similar statements in CPLC v. Randolph, 507 F.3d 1172. In that case the appellate court stated, "[I]n the context of disclosure requirements, the government's interest in providing the electorate with information related to election and ballot issues is well-established." Id. 1179 n.8. As here, that plaintiff conceded the state's interest was compelling, but the court nevertheless engaged in an extensive discussion of why that the government's

informational interest is not only compelling, but of the highest order.[5]

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[5] That court stated:

> Despite the fact that CPLC conceded that California has a compelling informational interest, California also presented persuasive evidence demonstrating the importance of providing the electorate with pertinent information. Researcher David Binder conducted a telephone survey from June 23-26, 2001. "The goals of this project were to determine objectively, using established methods of scientific public opinion research, what sources of information regarding candidates and ballot measures are important to California voters." According to Binder's findings, "[m]ore than seven of ten California voters (71%) state that it is important to know the identity of the source and amount of campaign contributions to the ballot measure by both supporters and opponents, including unions, businesses or other interest groups." "Fifty seven percent (57%) of California voters state that endorsements by interest groups, politicians or celebrities are important in helping them make up their mind [sic] on how to vote on ballot measures." "A majority of California voters (57%) state they would be less likely to vote for a proposition to build senior citizen housing if the proposition was supported by a well-known and respected senior activist who was discovered to have been paid by developers to promote the proposition. Only one-third (34%) stated that this information would not make any difference in their vote."
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> Professor Bruce Cain, a Professor of Political Science at the University of California, Berkeley, and Director of the Institute of Governmental Studies, added that "there are several compelling reasons for such a requirement. Foremost among them is the fact that the names groups give themselves for disclosure purposes can be, and frequently are, ambiguous or misleading."
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> Sandy Harrison, a former journalist for radio stations and newspapers and since 1995, a press secretary and communications director for the president pro tem of the state

*1210 Thus, "because groups supporting and opposing ballot measures frequently give themselves ambiguous or misleading names, reliance on the group, without disclosure of its source of funds, can be a trap for unwary voters. For example, a tobacco manufacturing group that opposes regulations on smoking might call itself 'Citizens for Consumer Pro-

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Senate, the state Department of Finance, and the state Controller, emphasizes this point in her affidavit:

> A prime example of this was Proposition 188 on the November 1994 ballot, an effort to overturn California's recently enacted workplace smoking ban. Supporters falsely portrayed the measure as a grassroots effort by small businesses. By reviewing the campaign finance report, I was able to report to readers that it was not the work of small businesses, but actually giant tobacco companies ... . If the campaign finance report had not been public, I could not have substantiated or conveyed this important information to the readers, and they may never have learned the truth about who was really behind this proposition.

According to Stephen K. Hopcraft, the President and co-owner of "a full-service public relations firm specializing in grass roots and public education campaigns[,]" "the information gleaned from ... disclosure reports is absolutely critical to assist news media and voters in sorting through the claims and counter-claims in a ballot measure campaign ... . With all the hyperbole in campaigning, the financial backing of each side gives voters a yardstick to measure the truth of the assertions." Indeed, CPLC admitted that "[b]ecause political operators in many states are able to avoid campaign finance disclosure requirements, citizens are likely to be uninformed and unaware of the tens of millions of dollars that are spent on ballot measure campaigns by veiled political actors ..."

Randolph, 507 F.3d at 1179 n.8 (emphasis in original).

tection.' This name might mislead voters into thinking that Citizens for Consumer Protection is a consumer advocacy group when, in fact, it protects the commercial interest of the tobacco industry. If the organization's donor information is disclosed and opposing groups and the press publicize the information, voters have a better chance of discerning the organization's true interest." Getman II, No. 00-1698 at 18:1-12.[6]

"Interest groups also seek to conceal their political involvement by availing themselves of complicated arrangements ***1211** consisting of nonprofit corporations, unregulated entities and unincorporated entities. Without disclosure requirements, citizens are likely to be uninformed and unaware that tens of millions of dollars are spent on ballot measure campaigns by such veiled political actors." Id. at 18:14-20. Of particular relevance in this case is the number of out-of-state individuals and corporations contributing

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[6] See also McConnell v. Fed. Election Comm'n, 540 U.S. 93, 128, 124 S. Ct. 619, 157 L. Ed. 2d 491 (2003) ("Because FECA's disclosure requirements did not apply to so-called issue ads, sponsors of such ads often used misleading names to conceal their identity. 'Citizens for Better Medicare,' for instance, was not a grassroots organization of citizens, as its name might suggest, but was instead a platform for an association of drug manufacturers. And 'Republicans for Clean Air,' which ran ads in the 2000 Republican Presidential primary, was actually an organization consisting of just two individuals-brothers who together spent $ 25 million on ads supporting their favored candidate."); Id. at 128 n.23 ("Other examples of mysterious groups included 'Voters for Campaign Truth,' 'Aretino Industries,' 'Montanans for Common Sense Mining Laws,' 'American Seniors, Inc.' 'American Family Voices,' and the 'Coalition to Make our Voices Heard.'") (internal citations omitted).

to the passage of a California referendum. Surely California voters are entitled to information as to whether it is even citizens of their own republic who are supporting or opposing a California ballot measure.

Moreover, "[w]hen asked, voters have indicated that information regarding the source and amount of campaign contributions to ballot measures plays an important role in their decision-making. Voters rate such information as more valuable than newspaper endorsements, campaign mailings, TV and radio advertisements, and endorsements by interest groups, politicians or celebrities." Id. at 18:21-19:2.

"In light of the number and complexity of ballot measures confronted by California voters, the staggering sums expending to influence their passage or defeat, the very real potential for deception through the information of advocacy groups with appealing but misleading names, and voters' heavy reliance on funding source information when deciding to support or oppose ballot measures, ... California has a compelling informational interest in providing the electorate with information regarding contributors and expenditures made to pass or defeat ballot measure initiatives." Id. at 19:3-12.

The disclosure requirements provide some of the only truly objective information on which the electorate can rely to make an informed decision, and the state surely has the utmost justification for requiring the disclosure of information likely to ensure that its electorate is informed and able to effectively evaluate ballot measures. If ever disclosure was important, indeed vital, to fuel the public discourse, it is in the case of ballot measures.

Thus, even if, as Plaintiffs argue, individual voters will not be "clamoring" to know the name and other pertinent information of every contributor of over $ 100 to every initiative, the cumulative effect of disclosure ensures that the electorate will have access to information regarding the driving forces backing and opposing each bill. Accordingly, the Government's interest is not only compelling, but critical to the proper functioning of the State's system of direct democracy.

Finally, "[i]n determining whether legislation is narrowly tailored, [the Court] consider[s] whether the restriction '(1) promotes a substantial government interest that would be achieved less effectively absent the regulation, and (2) [does] not burden substantially more speech than is necessary to further the government's legitimate interests.'" Randolph, 507 F.3d at 1183, quoting Kuba v. 1-A Agric. Ass'n, 387 F.3d 850, 861 (9th Cir. 2001). To be narrowly tailored, a statute need not be the least restrictive means of furthering the government's interest, but the restriction may not burden substantially more speech than necessary." Id. at 1186, quoting Menotti v. City of Seattle, 409 F.3d 1113, 1130-1131 (9th Cir. 2005).

According to Plaintiffs, neither the $ 100 contribution threshold that triggers California's statutory disclosure requirements nor the post-election reporting requirements are narrowly tailored to a compelling state interest. Each of those arguments will be addressed in turn, but the Court first turns to Plaintiffs' as-applied challenge.

***1212 B. Plaintiffs' As-Applied Challenge to the Disclosure Statute: Whether There is a Reasonable Probability that Compelled Disclosure Will Result in Threats, Harassment, and Reprisals to Contributors to a Minor Party**

Plaintiffs' first argument, which raises an as-applied challenge to the application of California's disclosure laws, does not involve the above strict scrutiny analysis, but instead turns on a test first articulated in Buckley and later applied in Brown v. Socialist Workers '74 Campaign Comm. (Ohio), 459 U.S. 87, 103 S. Ct. 416, 74 L. Ed. 2d 250 (1982), and its progeny. Nevertheless, the above departure into the nature of the State's interest is relevant to the Court's resolution of Plaintiffs' instant claim.

The test applicable to Plaintiffs' First Cause of Action was initially formulated in Buckley when the Supreme Court rejected an overbreadth challenge to all reporting requirements imposed on minor parties. 424 U.S. 1, 96 S. Ct. 612, 46 L. Ed. 2d 659. Despite its rejection of a blanket disclosure exemption for all such groups, the Court left open the possibility that similar minor parties in the future might be able to seek such immunity if they could show that there was a reasonable probability their contributors would suffer from harassment, threats, or reprisals as a result of such revelation.

The Buckley Court began its discussion by noting that the "governmental interest in disclosure is diminished when the contribution in question is made to a minor party with little chance of winning an election. As minor parties usually represent definite and publicized viewpoints, there may be less need to

inform the voters of the interests that specific candidates represent. Major parties encompass candidates of greater diversity. In many situations the label 'Republican' or 'Democrat' tells a voter little. The candidate who bears it may be supported by funds from the far right, the far left, or any place in between on the political spectrum. It is less likely that a candidate of, say, the Socialist Labor Party will represent interests that cannot be discerned from the party's ideological position." Id. at 70.

Additionally, that Court was cognizant that "the damage done by disclosure to the associational interests of the minor parties and their members and to supporters of independents could be significant. These movements are less likely to have a sound financial base and thus are more vulnerable to falloffs in contributions. In some instances fears of reprisal may deter contributions to the point where the movement cannot survive. The public interest also suffers if that result comes to pass, for there is a consequent reduction in the free circulation of ideas both within and without the political arena." Id. at 71.

Accordingly, the Buckley Court determined that, though such facts were not before it, "[t]here could well be a case ... where the threat to the exercise of First Amendment rights is so serious and the state interest furthered by disclosure so insubstantial that the Act's requirements [could not] be constitutionally applied." Id. That Court further observed "that unduly strict requirements of proof could impose a heavy burden, but it does not follow that a blanket exemption for minor parties is necessary. Minor parties must be allowed sufficient flexibility in the proof of injury to assure a fair consideration of their claim.

The evidence offered need show only a reasonable probability that the compelled disclosure of a party's contributors' names will subject them to threats, harassment, or reprisal from either Government officials or private parties. The ***1213** proof may include, for example, specific evidence of past or present harassment of members due to their associational ties, or of harassment directed against the organization itself.

A pattern of threats or specific manifestations of public hostility may be sufficient." Id. at 74.[7]

The Supreme Court later had occasion to apply the Buckley test in Brown. The Brown Court addressed the issue of "[w]hether certain disclosure requirements of the Ohio Campaign Expense Report-

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[7] The Buckley Court noted that the facts in NAACP v. Alabama could possibly have warranted sustaining an as-applied challenge to Alabama's compelled disclosure requirements. Id. at 71. The NAACP v. Alabama Court stated, "We think that the production order, in the respects here drawn in question, must be regarded as entailing the likelihood of a substantial restraint upon the exercise by petitioner's members of their right to freedom of association. Petitioner has made an uncontroverted showing that on past occasions revelation of the identity of its rank-and-file members has exposed these members to economic reprisal, loss of employment, threat of physical coercion, and other manifestations of public hostility. Under these circumstances, we think it apparent that compelled disclosure of petitioner's Alabama membership is likely to affect adversely the ability of petitioner and its members to pursue their collective effort to foster beliefs which they admittedly have the right to advocate, in that it may induce members to withdraw from the Association and dissuade others from joining it because of fear of exposure of their beliefs shown through their associations and of the consequences of this exposure." NAACP v. Alabama, 357 U.S. at 462-463.

ing Law ... [could] be constitutionally applied to the Socialist Workers Party ["SWP"], a minor political party which historically ha[d] been the object of harassment by government officials and private parties." Brown, 459 U.S. at 88. That Court emphasized several points raised in Buckley reiterating that "[t]he government's interests in compelling disclosures are 'diminished' in the case of minor parties ... [and at] the same time, the potential for impairing First Amendment interests is substantially greater." Id. at 92, quoting Buckley, 424 U.S. at 70.

In Brown, the Court had before it "'substantial evidence of both governmental and private hostility toward and harassment of SWP members and supporters.' Appellees introduced proof of specific incidents of private and government hostility toward the SWP and its members within the four years preceding the trial. These incidents, many of which occurred in Ohio and neighboring states, included threatening phone calls and hate mail, the burning of SWP literature, the destruction of SWP members' property, police harassment of a party candidate, and the firing of shots at an SWP office. There was also evidence that in the 12-month period before trial, 22 SWP members, including four in Ohio, were fired because of their party membership. The evidence amply support[ed] the District Court's conclusion that 'private hostility and harassment toward SWP members make it difficult for them to maintain employment.'" Brown at 98-99.

Moreover, "[t]he District Court also found a past history of government harassment of the SWP. FBI surveillance of the SWP was 'massive' and continued until at least 1976. The FBI also conducted a coun-

terintelligence program against the SWP and the Young Socialist Alliance, the SWP's youth organization. One of the aims of the 'SWP Disruption Program' was the dissemination of information designed to impair the ability of the SWP and the YSA to function. This program included 'disclosing to the press the criminal records of SWP candidates, and sending anonymous letters to SWP members, supporters, spouses, and employers.' Until at ***1214** least 1976, the FBI employed various covert techniques to obtain information about the SWP, including information concerning the source of its funds and the nature of its expenditures.

The District Court specifically found that the FBI had conducted surveillance of the Ohio SWP and had interfered with its activities within the State. Government surveillance was not limited to the FBI. The United States Civil Service Commission also gathered information on the SWP, the YSA, and their supporters, and the FBI routinely distributed its reports to Army, Navy, and Air Force Intelligence, the United States Secret Service, and the Immigration and Naturalization Service." Id. at 99-100.

Finally, "the Government possesse[d] about 8,000,000 documents relating to the SWP, YSA ... and their members ... Since 1960, the FBI ha[d] had about 300 informants who were members of the SWP and/or YSA and 1,000 non-member informants. Both the Cleveland and Cincinnati FBI field offices had one or more SWP or YSA member informants. Approximately 2 of the SWP member informants held local branch offices. Three informants even ran for elective office as SWP candidates. The 18 informants whose files were disclosed to [the Special Master]

received total payments of $ 358,648.38 for their services and expenses." Id. at 100 n.18.

The Brown court determined that "the evidence of private and government hostility toward the SWP and its members establishe[d] a reasonable probability that disclosing the names of contributors and recipients [would] subject them to threats, harassment, and reprisals." Id. at 100.

Accordingly, this Court must now evaluate whether Brown can properly be applied to groups that were successful at the polls, that have evidenced a very minimal effect on their ability to sustain their movement, and that are unable to produce evidence of pervasive animosity even remotely reaching the level of that present in Brown.

C. Balancing the Government's Interest with the Burden Imposed on Minor Parties

Both Buckley and Brown addressed the need to balance the government's diminished interest in the disclosure of contributors to minor parties against the burden imposed on those small groups by requiring such disclosure. In light of clearly established precedent, this Court is unable to say that the State's interest here is similarly diminished or that the Plaintiffs' potential burden is even remotely comparable.

Unlike the facts in Brown, the proponents of Proposition 8 succeeded in persuading over seven million voters to support their cause. They were successful in their endeavor to pass the ballot initiative and raised millions of dollars in the process. This set of circumstances is a far cry from the sixty-member

SWP party, repeatedly unsuccessful at the polls, and incapable of raising sufficient funds. Indeed, it became abundantly clear during oral argument that Plaintiffs could not in good conscience analogize their current circumstances to those of either the SWP or the Alabama NAACP *circa* 1950.

Additionally, the Court has already extensively evaluated the nature of the State's interest and, in light of the marked differences between this and every other case in which an exemption has been allowed, simply cannot by any stretch of the imagination say that the Government's interest "is so insubstantial that the Act's requirements cannot be constitutionally applied" to Plaintiffs. To the contrary, as applied to the massive movement waged ***1215** by Plaintiffs, the State's interest in disclosure is at full force.

Similarly, the greater burden alleged to be imposed on Plaintiffs also necessarily derives from their minority status. The Second Circuit stated in Federal Election Commission v. Hall-Tyner Election Campaign Committee that "[a]cknowledging the importance of fostering the existence of minority political parties, we must also recognize that such groups rarely have a firm financial foundation. If apprehension is bred in the minds of contributors to fringe organizations by fear that their support of an unpopular ideology will be revealed, they may cease to provide financial assistance. The resulting decrease in contributions may threaten the minority party's very existence. Society suffers from such a consequence because the free flow of ideas, the lifeblood of the body politic, is necessarily reduced. Accordingly, a nation dedicated to free thought and free expression

cannot ignore the grave results of facially innocuous election requirements." 678 F.2d 416, 420 (2d Cir. 1982).

Moreover, "[t]he power of a government to repress dissent is substantial and can be exercised in a myriad of subtle ways. Privacy is an essential element of the right of association and the ability to express dissent effectively ... [F]orced revelations would likely lead to 'vexatious inquiries' which consequently could instill in the public an unremitting fear of becoming linked with the unpopular or unorthodox." Id.

Notably absent from this case is any evidence that those burdens hypothesized by the Supreme Court would befall the current Plaintiffs. There is no evidence that their financial backing is so tenuous as to render them susceptible to a relatively minor and entirely speculative fall-off in contributions. There is surely no evidence that the seven million individuals who voted in favor of Proposition 8 can be considered a "fringe organization" or that their beliefs would be considered unpopular or unorthodox. Finally, there is no evidence that any of Plaintiffs' contributors intend to retreat from the marketplace of ideas such that available discourse will be materially diminished.

Finally, it would appear that, while minor status is a necessary element of a successful as-applied claim, even minor status alone could not independently sustain Plaintiffs' current cause of action. Brown and its progeny each involved groups seeking to further ideas historically and pervasively rejected and vilified by both this country's government and its citizens.

In dicta, the Ninth Circuit addressed this pattern when it rejected a plea for exemption waged by a con-

tributor to a minor party that "was not promoting a reviled cause or candidate." Goland v. U.S., 903 F.2d 1247, 1260 (9th Cir. 1990).

The facts in the current case could not be more distinguishable from those in which successful challenges have been brought. Here, Plaintiffs orchestrated a massive movement to amend the California Constitution. Proponents of the initiative were successful in their endeavor, raising nearly $ 30 million, securing 52.3% of the vote and convincing over seven million voters to support Proposition 8. Declaration of Lynda Cassady in Support of Defendants' Opposition to Motion for Preliminary Injunction, P 7, Exh. A. Plaintiffs did not seek to promote a "reviled cause," and instead sought to legislate a concept steeped in tradition and history. Accordingly, in light of Plaintiffs' success at the polls and the State's above-discussed informational interest, the Court cannot say that the Government's interest in this case is so insubstantial or the burden on Plaintiffs so great as to warrant an exemption from disclosure.

***1216** Plaintiffs nonetheless would have the Court find these comparisons irrelevant. Plaintiffs contend that the Buckley Court's reference to "minor" parties is applicable only in the context of its rejection of the request before it for a blanket exemption. See Motion, 13:19-24. According to Plaintiffs, the Supreme Court determined in Buckley that if a group could prove there was a reasonable probability that disclosure would lead to harassment, threats, and reprisals, an exemption was required. However, Plaintiffs' interpretation renders superfluous the Buckley Court's analysis of the relative governmental interest and individual burdens in the context of

minor parties. Neither did the Brown Court so broadly interpret Buckley when it repeated, "The First Amendment prohibits a state from compelling disclosures by a minor party that will subject those persons identified to the reasonable probability of threats, harassment or reprisals." Brown, 459 U.S. at 101-102 (emphasis added).

Since Buckley, as-applied challenges have been successfully raised only by minor parties, specifically those parties, as discussed, having small constituencies and promoting historically unpopular and almost universally-rejected ideas. As stated, in Brown, the SWP consisted of only sixty members in Ohio. Id. at 88. The parties' "aim was the abolition of capitalism and the establishment of a workers' government to achieve socialism." The party was historically unsuccessful at the polls though its members regularly ran for public office. Id. Additionally, campaign contributions and expenditures ... averaged approximately $ 15,000 annually." Id. at 89.

Similarly, in Hall-Tyner, a committee supporting the Communist Party successfully sought exemption from state disclosure laws. 678 F.2d 416. Later, in McArthur v. Smith, members of the SWP, described as a "small and unpopular political party," again successfully challenged state disclosure requirements. 716 F. Supp. 592, 593 (S.D. Fla. 1989). There is simply no plausible analogy to be had in this case.

Finally, this Court is confident that the Supreme Court's decisions in Buckley and Brown, both of which narrowly articulated the instant exception to disclosure laws, were not made without great consideration. Prior courts surely were aware that members of major parties might potentially, on some fu-

ture occasion, become the target of threats or harassment at the hands of extremist members of an opposing group. Despite that possibility, the Supreme Court created an exception not for the majority, but for those groups in which the government has a diminished interest.

This Court finds that the "minor party" requirement articulated in Buckley is very much relevant and intact. Accordingly, Plaintiffs' as-applied challenge to California's disclosure laws has only a very minimal chance of success in light of Plaintiffs' non-minor status and lack of evidence that they have suffered animosity rising to the level hypothesized in Buckley and existing in Brown.

D. Reasonable Probability of Threats, Harassment, and Reprisals

Even if Plaintiffs were able to successfully navigate the precedents discussed above, Plaintiffs' claim would have little chance of success in light of the relatively minimal occurrences of threats, harassment, and reprisals. Plaintiffs allege that their supporters have been the victim of vandalism, protests that at times turned violent, and the threat of injury, up to and including one death threat.

This Court is ***1217** cognizant of the relaxed nature of proof required by the Supreme Court under such circumstances. Nevertheless, the Court cannot say that the threats and harassment here rise to the level previously found to justify the exemption sought.

Unlike prior cases, in which plaintiffs alleged to have suffered mistreatment over extended periods of time, the alleged harassment directed at Proposition

8 supporters occurred over the course of a few months during the heat of an election battle surrounding a hotly contested ballot initiative. Only random acts of violence directed at a very small segment of the supporters of the initiative are alleged.

Moreover, while Plaintiffs are quite correct that under Buckley evidence of harassment "from either Government officials or private parties" could suffice to establish the requisite proof of reprisals, the facts of subsequent cases evidence not only the existence of some governmental hostility, but quite pervasive governmental hostility at that. Buckley, 424 U.S. at 74 (emphasis added); see also McArthur, 716 F. Supp. at 594 ("[H]arassment, reprisals or threats from private persons are sufficient to allow [the] court to enforce the plaintiff's first amendment rights by cloaking the contributors and recipients' names in secrecy.").

Indeed, the Brown Court was confronted with countless acts of government harassment and retribution against members of the SWP, which are detailed above. Furthermore, in Hall-Tyner, the Second Circuit stated, "[t]he evidence relied on by the district judge included the extensive body of state and federal legislation subjecting Communist Party members to civil disability and criminal liability, reports and affidavits documenting the history of governmental surveillance and harassment of Communist Party members, as well as affidavits indicating the desire of contributors to the Committee to remain anonymous." 678 F.2d at 419.

Plaintiffs do not, indeed cannot, allege that the movement to recognize marriage in California as existing only between a man and a woman is vulnera-

ble to the same threats as were socialist and communist groups, or, for that matter, the NAACP. Proposition 8 supporters promoted a concept entirely devoid of governmental hostility. Plaintiffs' belief in the traditional concept of marriage, to disagreement, have not historically invited animosity. The Court is at a loss to find any principled analogy between two such greatly diverging sets of circumstances.

Finally, Plaintiffs' exemption argument appears to be premised, in large part, on the concept that individuals should be free from even legal consequences of their speech. That is simply not the nature of their right. Just as contributors to Proposition 8 are free to speak in favor of the initiative, so are opponents free to express their disagreement through proper legal means.

While the Court is cognizant of the deplorable nature of many of acts alleged by Plaintiffs, the Court also must reiterate that the legality or morality of any specific acts is not before it. Thus, as much as the Court strongly condemns the behavior of those who resort to violence, and/or other illegal behavior, the Court need not, indeed cannot, evaluate the proper legal consequences of those actions today.

By the same token, nothing in the Court's decision immunizes or excuses those who have engaged in illegal acts from the consequences of their conduct. Those responsible for threatening the lives of supporters of Proposition 8 are subject to criminal liability. See Troupis Decl, Exh. C (noting that the Fresno chief of police stated the department was "close to ***1218** making an arrest" in the case of the death threats delivered to the mayor and a local pastor.) Those choosing to vandalize the property of individu-

als or the public are likewise liable. Those mailing white powder to organizations are subject to federal prosecution. In each case, there are appropriate legal channels through which to rectify and deter the reoccurrence of such reprehensible behavior.

As much as those channels are available today, it is unlikely that groups previously successful in seeking exemptions were privy to the same opportunities. Again, Plaintiffs have shown no societal or governmental hostility to their cause. Contrary to groups such as the SWP, Plaintiffs can seek adequate relief from law enforcement and the legal system.

Such was not the case for those thought to be supporting the SWP or communist groups, those subject to actual criminal liability based on their beliefs and their associations.

Moreover, the Court simply cannot ignore the fact that numerous of the acts about which Plaintiffs' complain are mechanisms relied upon, both historically and lawfully, to voice dissent. The decision and ability to patronize a particular establishment or business is an inherent right of the American people, and the public has historically remained free to choose where to, or not to, allocate its economic resources. As such, individuals have repeatedly resorted to boycotts as a form of civil protest intended to convey a powerful message without resort to nonviolent means. The Supreme Court has acknowledged these rights on many an occasion:

> In Thornhill v. Alabama, 310 U.S. 88, 60 S. Ct. 736, 84 L. Ed. 1093 (1940), the Court held that peaceful picketing was entitled to constitutional protection, even though, in that case, the purpose of the picketing "was concededly to advise cus-

> tomers and prospective customers of the relationship existing between the employer and its employees and thereby to induce such customers not to patronize the employer." Id. at 99. Cf. Chauffeurs v. Newell, 356 U.S. 341, 78 S. Ct. 779, 2 L. Ed. 2d 809. In Edwards v. South Carolina, 372 U.S. 229, 83 S. Ct. 680, 9 L. Ed. 2d 697, we held that a peaceful march and demonstration was protected by the rights of free speech, free assembly, and freedom to petition for a redress of grievances.

NAACP v. Claiborne Hardware Co., 458 U.S. 886, 909, 102 S. Ct. 3409, 73 L. Ed. 2d 1215 (1982). Notably, "[s]peech does not lose its protected character ... simply because it may embarrass others or coerce them into action." Id. at 910.

Accordingly, this Court concurs in the assessment that "expression on public issues has always rested on the highest rung of the hierarchy of First Amendment values. Speech concerning public affairs is more than self-expression; it is the essence of self-government. There is a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open." Id. at 913 (internal citations and quotations omitted). Accordingly, this Court cannot condemn those who have legally exercised their own constitutional rights in order to display their dissatisfaction with Plaintiffs' cause.[8]

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[8] The Court also finds great irony in the fact that Plaintiffs' lament the extent of their economic suffering at the hands of the anti-Proposition 8 contingent, but Plaintiffs' own evidence indicates that supporters of Proposition 8 engaged in remarkably similar tactics. See Troupis Decl., Exh. A ("Indeed, supporters of

***1219** Plaintiffs nevertheless contend that "while a boycott may be an acceptable method for exacting social change, the Supreme Court did not list providing the electorate with the information necessary to boycott supporters of a political position as an acceptable justification for compelled disclosure." Motion, 28:17-20. Plaintiffs miss the point. California's interest in disclosure, an interest of paramount importance in the context of ballot measures, is based on its need to educate its electorate.

The fact that Plaintiffs' opponents may use publicly available information as the basis for exercising their own First Amendment rights does not in any way diminish the State's interest.

To the contrary, "[k]eeping the electorate fully informed of the sources of campaign-directed speech and the possible connections between the speaker and individual candidates, [itself] derives directly from the primary concern of the First Amendment. The vision of a free and open market place of ideas is based on the assumption that the people should be exposed to speech on all sides, so that they may freely evaluate and choose from among competing points of view. One goal of the First Amendment, then, is to ensure that the individual citizen has available all the information necessary to allow him

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Prop. 8 engaged in pressure tactics. At least one businessman who donated to 'No on 8,' Jim Abbot 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."). Apparently, the threat of economic injury was a sword wielded on both sides of this fight.

to properly evaluate speech ... . The allowance of free expression loses considerable value if expression is only partial. Therefore, disclosure requirements, which may at times inhibit the free speech that is so dearly protected by the First Amendment, are indispensable to the proper and effective exercise of First Amendment rights." Fed. Election Com'n v. Furgatch, 807 F.2d 857, 862 (1987). Indeed, Defendants pointed out during oral argument that the Government's disclosure requirements actually serve to facilitate discourse.

The Court observes that Plaintiffs, the backers of a historically non-controversial belief, seem genuinely surprised to be on the receiving end of such powerful discord.

However, such surprise does not warrant an injunction against the enforcement of the State of California's laws or this Court's censorship of information pertaining to one side of one initiative, information that, years ago, the voters of California determined should be available to the public. Indeed, the Court's acceptance of Plaintiffs' argument would effectively render California's legislative mandate obsolete. Such a decision would establish precedent for any group backing any controversial ballot initiative to come before this Court with evidence of the actions of fringe opposition groups to support their arguments for exemption from California's disclosure requirements. Such a holding would thwart the will of California's government and the will of the electorate to garner objective information necessary to evaluation their own legislation.

Thus, though the Court regards with contempt numerous of the acts about which Plaintiffs com-

plain, it cannot say that Plaintiffs allegations rise to the level of those existing in Brown and its progeny. Because Plaintiffs' ability to garner support for their cause is hardly comparable to the SWP claims or to those raised by other historically ostracized groups, groups whose very viability was threatened by forced compliance with disclosure laws, the Court cannot say the threat to Plaintiffs' First Amendment rights is so serious as to warrant an exception here.

Accordingly, Plaintiffs have failed to convince the Court that Buckley and Brown ***1220** can be applied to them in any principled manner or that there is a reasonable probability that disclosure in compliance with the California Government Code will result in threats, harassment, and reprisals. The Court finds very little possibility of success on the merits of Plaintiffs' as-applied challenge.

E. Plaintiffs' Remaining Challenges: Whether the $ 100 Disclosure Threshold and Post-Election Reporting are Constitutional

To reiterate, the Court will apply strict scrutiny in evaluating Plaintiffs' causes of action.

1. $ 100 Disclosure Threshold

Plaintiffs argue that the Government's interest in the compelled disclosure of those who contributed amounts as low as $ 100 to support Proposition 8 is negligible. Specifically, Plaintiffs' express disbelief that "the public is clamoring for the knowledge of the name, address, occupation, and employer of every person who contributed one hundred dollars or more to a ballot measure." Id., 21-23. According to Plain-

tiffs, the State's threshold is therefore set too low and must fail for lack of adjustment for inflation.

This Court disagrees and holds that the legislative line drawn is narrowly tailored to the State's compelling informational interest, that the threshold need not be indexed for inflation, and that a contrary holding would call into question scores of statutes in which the legislature or the people have sought to draw similar lines.

In Buckley, as here, the appellants argued "that the monetary thresholds in the record-keeping and reporting provisions lack[ed] a substantial nexus with the claimed governmental interests, for the amounts involved [were] too low even to attract the attention of the candidate, much less have a corrupting influence." Buckley, 424 U.S. at 82. There, the Act "required political committees to keep detailed records of both contributions and expenditures." Id. at 63. As in the instant case, "[e]ach committee ... [was] required to file quarterly reports. The reports [were] to contain detailed financial information, including the full name, mailing address, occupation, and principal place of business of each person who had contributed over $ 100 in a calendar year, as well as the amount and date of those contributions." Id. (internal citations omitted). On facts remarkably similar to those before this court, the Supreme Court held that "the $ 100 threshold was ... within the 'reasonable latitude' given the legislature 'as to where to draw the line.'" Id. at 83.

The Court elaborated on its decision stating, "The $ 10 and $ 100 thresholds are indeed low. Contributors of relatively small amounts are likely to be espe-

cially sensitive to recording or disclosure of their political preferences.

These strict requirements may well discourage participation by some citizens in the political process, a result that Congress hardly could have intended. Indeed, there is little in the legislative history to indicate that Congress focused carefully on the appropriate level at which to require recording and disclosure. Rather it seems merely to have adopted the thresholds existing in similar disclosure laws since 1910. But we cannot require Congress to establish that it has chosen the highest reasonable threshold. The line is necessarily a judgmental decision, best left in the context of this complex legislation to congressional discretion. We cannot say on this bare ***1221** record that the limits are wholly without rationality."[9] Id.

The Eastern District later stated that "as a general matter, the court will not second guess a legislative determination as to where the line for contribution limits should be drawn." *CPLC v. Scully, 989 F. Supp. 1282, 1293 (E.D. Cal. 1998)*. The same holds true on the facts before this Court.

First, this Court finds the disclosure thresholds set in other states to be instructive. California's current $ 100 threshold falls well within spectrum of those mandated by its sister states, which range from no threshold requirement to $ 300. In fact, only six

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[9] The parties dispute the level of scrutiny actually applied in Buckley. However labeled, the Buckley Court clearly determined that the $ 100 threshold passed constitutional muster, and this Court is bound by that decision.

states in the United States have higher threshold requirements.[10]

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[10] Reporting Requirements:

No Threshold Requirement

Alaska: Alaska Stat. § 15.13.040(a)

Florida: Fla. Stat. § 106.07(4)(a)(1).

Louisiana: La. Rev. Stat. Ann. § 18:1495.5(B)(4).

Maryland: Md. Code Ann., Election Law § 13-304.

Michigan: Mich. Comp. Laws. Ann. § 169.226(1)(e) (Names and addresses of all contributors are reported, but occupation, employer or principal place if business are not required unless the contribution exceeds $ 100.).

New Mexico: N.M. Stat. Ann. § 1-19-31(A) (additional employment information only required for contributors of $ 250 or more).

$ 20 Threshold

Colorado: Colo. Rev. Stat. Ann. § 1-45-108(1)(a)(I).

Wisconsin: Wis. Stat. Ann. § 11.06(1)(a) (additional employment information disclosed for those individuals that contribute in excess of $ 100).

$ 25 Threshold

Arizona: Ariz. Rev. Stat. Ann. 16-915(A)(3)(a).

New Hampshire: N.H. Rev. Stat. § 664:6(I) (additional employment information required for contributors of over $ 100).

Ohio: Ohio Rev. Code Ann. § 3517.10(B)(4)(e).

Wyoming: Wyo. Stat. Ann. § 22-25-106(a)(iv).

$ 35 Threshold

Montana: Mont. Code Ann. § 13-37-229(2).

$ 50 Threshold

Arkansas: Ark. Code Ann. § 7-6-207(b).

Connecticut: Conn. Gen. Stat. Ann. § 9-608(c)(4).

District of Columbia: D.C. Code § 1-1102.06(b)(2).

Idaho: Idaho Code Ann. § 67-6612(a)(1).

Kansas: Kan. Stat. Ann. § 25-4148(b)(2).

Maine: Me. Rev. Stat. Ann. tit. 21-A, § 1017(5).

Massachusetts: Mass. Gen. Laws Ann. ch. 55, § 18.

North Carolina: N.C. Gen. Stat. Ann. § 163-278.11(a1).

Oklahoma: Okla. Stat. tit. 74, § Ch. 62, App. 257:10-1-14(a)(3)(D)

Pennsylvania: 25 Pa. Cons. Stat. § 3246(b) (Names and addresses of those who contribute over $ 50 are reported, but occupation, name of employer or principal place of business is not required unless the contribution exceeds $ 250.).

Texas: Tex. Election Code Ann. § 254.031(a)(1).

Utah: Utah Code Ann. § 20A-11-101 (8) (provides only for a "detailed listing").

$ 100 Threshold

Alabama: Ala. Code § 17-5-8(c)(2).

California: Cal. Gov't Code § 84211(f).

Delaware: Del. Code tit. 15 § 8030(d)(2).

Georgia: Ga. Code Ann. § 21-5-34(b).

Hawaii: Haw. Rev. Stat. § 11-212(a)(2)(B).

Indiana: Ind. Code § 3-9-5-14(a)(1).

Kentucky: Ky. Rev. Stat. Ann. § 121-180(3)(a)(2).

Minnesota: Minn. Stat. Ann. § 10A.20(Subd. 3)(b).

Missouri: Mo. Ann. Stat. § 130.041(1)(3)(a), (e).

Nevada: Nev. Rev. Stat. § 294A.120(8).

New York: N.Y. Election Law § 14-102(1).

Oregon: Or. Rev. Stat. § 260.083(1)(a).

Rhode Island: R.I. Gen.Laws § 17-25-11(a)(3).

South Carolina: S.C. Code Ann. § 8-13-1308(F)(2).

South Dakota: S.D. Codified Laws § 12-27-24(14).

Tennessee: Tenn. Code Ann. § 2-10-107(a)(2)(A)(i).

Vermont: Vt. Stat. Ann. tit. 17, § 2803(a).

Virginia: Va. Code Ann. § 24.2-947.4(B)(2).

Washington: Wash. Rev. Code Ann. § 42.17.090(1)(b).

***1222** The Supreme Court has previously made similar comparisons. Randall v. Sorrell, 548 U.S. 230, 126 S. Ct. 2479, 165 L. Ed. 2d 482 (2006). That Court stated, "As compared with the contribution limits upheld by the Court in the past, and with those in force in other States, [the Act's] limits are sufficiently low as to generate suspicion that they are not closely drawn." Id. at 249. That Court went on to point out that "[t]hese limits are well below the limits this Court upheld in Buckley. Indeed, in terms of real dollars (i.e., adjusting for inflation), the Act's $ 200 per election limit on individual contributions to a campaign for governor is slightly more than one-

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$ 150 Threshold

Illinois: 10 Ill. Comp. Stat. 5/9-12(3).

$ 200 Threshold

Iowa: Iowa Code § 68A.402A(1)(b) ($ 200 disclosure threshold is applicable only to state statutory political committees. $ 50 threshold imposed on county statutory political committees and $ 25 threshold on all candidates and political committees.)

Mississippi: Miss. Code Ann. § 23-15-807(d)(ii).

North Dakota: N.D. Cent. Code § 16.1-08.1-02(2).

United States: 2 U.S.C. § 434(b)(3)(A).

$ 250 Threshold

Nebraska: Neb. Rev. Stat. § 49-1455(1)(d).

West Virginia: W. Va. Code § 3-8-5a(a)(3) (Names of all contributors are reported, but residence and mailing address, along with major business affiliation and occupation are reported for those individuals contributing in excess of $ 250.).

$ 300 Threshold

New Jersey: N.J. Stat. Ann. § 19:44A-16(f).

twentieth of the limit on contributions to campaigns for federal office before the Court in Buckley. Adjusted to reflect its value in 1976, Vermont's contribution limit on campaigns for statewide office (including governor) amounts to $ 113.91 per 2-year election cycle, or roughly $ 57 per election, as compared to the $ 1,000 per election limit on individual contributions at issue in Buckley." Id. at 250.

However, the Randall Court also determined that the lower contributions limits constituted only a danger sign that the "contribution limits may fall outside tolerable First Amendment limits." Id. at 253. Since the actual dollar amount of the statutory threshold was not dispositive, the Court also looked at the Act's substantial restrictions on the ability of candidates to raise the funds necessary to run a competitive election, the ability of political parties to help their candidates get elected, and the ability of individual citizens to volunteer their time to campaigns. Id.

Accordingly, even if this Court were inclined to make the determination, which it is not, that California's $ 100 disclosure threshold was too low, such a determination alone would be insufficient to warrant award of a preliminary injunction.

Nevertheless, in keeping with the Randall Court's foray into the hypothecated effects of inflation, Plaintiffs assert that California's disclosure regime is constitutionally suspect based, in part, on its failure to account for such economic conditions. According to Plaintiffs, the $ 100 disclosure threshold approved of in Buckley would equate to approximately $ 38.79 today. Motion, 24:6-8. Therefore, Plaintiffs contend that Buckley establishes the benchmark below which disclosure thresholds should not be permitted to fall.

Such a conclusion runs contrary to both logic and the law. "In Buckley, [the Court] specifically rejected the contention that $ 1,000, or any other amount, was a constitutional minimum below which legislatures ***1223** could not regulate ... [The Court] referred instead to the outer limits of contribution regulation by asking whether there was any showing that the limits were so low as to impede the ability of candidates to 'amas[s] the resources necessary for effective advocacy,' 424 U.S., at 21. [The court] asked, in other words, whether the contribution limitation was so radical in effect as to render political association ineffective, drive the sound of a candidate's voice below the level of notice, and render contributions pointless. Such being the test, the issue in later cases cannot be truncated to a narrow question about the power of the dollar, but must go to the power to mount a campaign with all the dollars likely to be forthcoming ... [T]he dictates of the First Amendment are not mere functions of the Consumer Price Index. 161 F.3d at 525 (dissenting opinion)." Nixon v. Shrink Mo. Gov't PAC, 528 U.S. 377, 397, 120 S. Ct. 897, 145 L. Ed. 2d 886 (2000).

Neither can the constitutional principles at issue in the current case be construed solely in terms of the rate of inflation, and the Court finds that the disclosure threshold negligibly affects, if it affects at all, Plaintiffs' ability to amass resources or to advocate their cause.

The Court also finds it relevant that numerous existing statutes contain reference to dollar values beyond which certain rights or benefits may be taken away or become unavailable. For example, California Penal Code § 487 states that when "money, labor, or

real or personal property taken is of a value exceeding four hundred dollars ($ 400)" such a taking constitutes grand theft. Cal. Pen. Code § 487(a). Additionally, grand theft is also found "[w]hen domestic fowls, avocados, olives, citrus or deciduous fruits, other fruits, vegetables, nuts, artichokes, or other farm crops are taken of a value exceeding one hundred dollars ($ 100)." Id., § 487(b)(1)(A). These dollar values were set by the legislature in 1982. See 1982 Cal. Stat. 1693. Were the Court to accept Plaintiffs' current argument, it would call into question this and every other statutory provision in which the legislature thought to classify by dollar amount without tying that amount to some articulated rate of inflation. The Court is unwilling to render a decision that would create such a striking precedent.

Finally, in Buckley, the Supreme Court stated that "disclosure requirements, as a general matter, directly serve substantial governmental interests. In determining whether these interests are sufficient to justify the requirements we must look to the extent of the burden that they place on individual rights." Buckley, 424 U.S. at 68. To reiterate, "[i]t is undoubtedly true that public disclosure of contributions to candidates and political parties will deter some individuals who otherwise might contribute. In some instances, disclosure may even expose contributors to harassment or retaliation. These are not insignificant burdens on individual rights, and they must be weighed carefully against the interests which Congress has sought to promote by this legislation. In this process we note and agree ... that disclosure requirements certainly in most applications appear

to be the least restrictive means of curbing the evils of campaign ignorance and corruption." Id.

Thus, disclosure requirements, by their very nature, are the least restrictive means through which to educate the electorate. The requirements do not limit the amount of contributions or expenditures by the entity or the contributor. They do not limit the entity's ability to raise funds, nor do they impose burdensome structural requirements on Plaintiffs. See Alaska Right to Life Committee v. Miles, 441 F.3d 773, 791 (9th Cir. 2006). ***1224** Moreover, Plaintiffs point to no threshold that would be more narrowly tailored to serve the State's interest. The Court simply cannot say that the cumulative effect of the disclosure of the contributors of $ 100 is not narrowly tailored to the Government's compelling informational interest.[11]

Accordingly, the Court finds that California's disclosure threshold is properly drawn. California's decision to compel disclosure of those who contribute in excess of $ 100 to groups such as Plaintiffs is narrowly tailored to the State's compelling informational interest and Plaintiffs' likelihood of success on the merits is minimal.

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[11] As an example, the public could very well be swayed by the fact that numerous donations to Plaintiffs, and likely to others, came from out of state. It appears very probable to this Court that the California electorate would be interested in knowing if a California initiative was funded by the citizens it is intended to affect or by out of state interest groups and individuals. In order to properly capture the number of non-California donors, it is quite logical to require a lower, rather than a higher, reporting threshold.

2. Post-Election Disclosure

Plaintiffs' Third Cause of Action seeks a holding that the PRA disclosure requirements are unconstitutional to the extent they require post-election reporting of contributors to ballot-initiatives. Despite the fact that the Court has found no case law supporting the proposition, Plaintiffs contend that such reporting cannot be related to the State's informational interest because the votes have already been cast, nullifying the electorate's need for disclosure. While Plaintiffs acknowledge that the State maintains an interest in the election of candidates after an election has come and gone, they contend that the State's interest in contributors to ballot initiatives "disappears" essentially when the deciding vote is cast at the polls.

This Court disagrees. No legislation is carved in stone, incapable of repeal, nor do ballot initiatives, once passed, become a legacy that future generations must endure in silence. Indeed, it is the initiative process itself that directly allows individuals to affirm or correct prior decisions. To assume that the passage of an election draws a line in the sand past which no issues remain open to public debate is simply not congruent with the form of democracy the people of California have determined to employ. Thus, it is possible that the post-election light shed on those contributors who donated during the final weeks of the campaign, and who continue to donate today, might reveal information the electorate requires in order to evaluate the appropriateness of its decision.

Indeed, it is unclear how "'uninhibited, robust, and wide-open' speech can occur when organizations

hide themselves from the scrutiny of the voting public ... Plaintiffs' argument for striking down [the] disclosure provisions does not reinforce the precious First Amendment values that Plaintiffs argue are trampled.., but ignores the competing First Amendment interests in individual citizens seeking to make informed choices in the political marketplace." McConnell, 540 U.S. at 198, affirming in part and reversing in part McConnell v. Federal Election Com'n, 251 F. Supp. 2d 176, 237 (D.D.C. 2003).

Thus, the Court simply cannot say that the occurrence of an election moots the electorate's need for relevant information. Here, the battle over Proposition 8 continues to be waged, both in the state courts and state legislature.

The Government's informational interest cannot be met without requiring the disclosure of all pertinent contribution information such that "uninhibited, robust, and wide-open" speech can continue to be had.

***1225** Moreover, Defendants proffer a particularly practical justification for setting a post-election reporting date, namely that it would be impossible for committees to provide final financial information until their operations have wound down. Under Plaintiffs' argument, in order to obtain disclosure, committees would have to file the names of their contributors on election day. Any later filing deadline cannot, according to Plaintiffs, relate to the State's interest. Nothing short of discontinuing committee operations pre-election would render it possible for a committee to file complete reports at the height of the electoral process. Thus, the State established a fu-

ture date on which full disclosure of all campaign finances is due.

The Court finds analogy to the payment of federal taxes instructive. Income is earned and due to the IRS as of the end of each calendar year. Nevertheless, the IRS requires filing and payment in April, one would assume to allow, at least in part, for wrapping up the prior year's business and for compiling the necessary documentation to render filing proper. It is the unlikely individual that would be prepared to file on the final day of the calendar year.

Finally, as discussed in the prior section, relying on the Buckley Court's directive to examine the burden on Plaintiffs, this Court finds that the burden imposed by requiring post-election reporting is minimal.

Thus, as in the case of its established disclosure threshold, the Government drew a line. This time the line chosen was a particular date rather than a dollar value. Nevertheless, that line does not burden any more speech than would any other chosen date. Accordingly, even under a strict scrutiny analysis, this Court finds that the post-reporting requirement is directly related to the State's informational interest and that it burdens no more speech than necessary to further that interest.

II. IRREPARABLE HARM AND THE BALANCE OF HARDSHIPS

According to the United States Supreme Court, "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." Elrod v. Burns, 427 U.S. 347, 373, 96 S. Ct. 2673, 49 L. Ed. 2d 547 (1976). "[E]ven

if the merits of the constitutional claim were not 'clearly established' at this early stage in the litigation, the fact that a case raises serious First Amendment questions compels a finding that there exists 'the potential for irreparable injury, or that at the very least the balance of hardships tips sharply in [Plaintiffs'] favor. 'Under the law of this circuit, a party seeking preliminary injunctive relief in a First Amendment context can establish irreparable injury sufficient to merit the grant of relief by demonstrating the existence of a colorable First Amendment claim.'" Sammartano v. First Judicial Dist. Ct., in and for county of Carson City, 303 F.3d 959, 973 (9th Cir. 2002), quoting Viacom Int'l, Inc. v. FCC, 828 F. Supp. 741, 744 (N.D. Cal. 1993).

"Because the test for granting a preliminary injunction is 'a continuum in which the required showing of harm varies inversely with the required showing of meritoriousness,' when the harm claimed is a serious infringement on core expressive freedoms, a plaintiff is entitled to an injunction even on a lesser showing of meritoriousness.'" Id., citing San Diego Committee Against Registration and the Draft (Card) v. Governing Bd. Of the Grossmont Union High School Dist., 790 F.2d, 1471, 1473 n.3 (9th Cir. 1986), abrogated on other grounds by Hazelwood School Dist. v. Kuhlmeier, 484 U.S. 260, 108 S. Ct. 562, 98 L. Ed. 2d 592 (1988).

***1226** Finally, "[w]hen an injunction will affect the public, the Court should also determine whether the public interest favors the moving party." Cupolo v. Bay Area Rapid Transit, 5 F. Supp. 2d 1078, 1082 (N.D. Cal. 1997). The Ninth Circuit has, at times, "subsumed this inquiry into the balancing of hard-

ships." Sammartano, 303 F.3d at 974. However, that court has also stated, "it is better seen as an element that deserves separate attention in cases where the public interest may be affected." Id. "The public interest inquiry primarily addresses impact on non-parties rather than parties." Id.

In this case, the Court finds no serious First Amendment questions are raised. As discussed above, the merits of each constitutional claim are not only not "clearly established," but almost certainly must fail. Thus, there is no risk of irreparable injury to Plaintiffs' contributors. Furthermore, the impact on non-parties, specifically the California electorate, should the Court grant Plaintiffs the relief they seek is great.

As discussed in great detail above, if disclosure is prevented, the people of California will be denied the ability to fully inform themselves of the circumstances surrounding the passage of Proposition 8. For the reasons already articulated, the balance of hardships favors the Plaintiffs and consideration of the public interest weighs against injunctive relief.

III. CONCLUSION

Because the Court finds very little chance of success on the merits of Plaintiffs' claims, because there is likewise minimal probability of the occurrence of irreparable harm to Plaintiffs or their contributors, and because the balance of interests, including the public's interest, weighs against it, Plaintiffs' Motion for Preliminary Injunction is DENIED. Indeed, any contrary holding would require the Court to legislate from the bench and to act contrary to the law. That it cannot do.

IV. PROTECTIVE ORDER

Despite this Court's denial of Plaintiffs' Motion for Preliminary Injunction, Plaintiffs request that the existing protective order remain in effect. Defendants posed no current objection, but reserved the right to object to each individual's file being sealed in the future. Accordingly, the current protective order is extended and will remain in effect until the Court orders otherwise.

CONCLUSION

Plaintiffs' Motion for Preliminary Injunction is DENIED and the Motion to Extend the Existing Protective Order is GRANTED.

IT IS SO ORDERED.

Dated: January 30, 2009

/s/ Morrison C. England, Jr.
MORRISON C. ENGLAND, JR.
UNITED STATES DISTRICT JUDGE

[Doc. 69, filed July 16, 2014]

United States Court of Appeals
For the Ninth Circuit

No. 11-17884

PROTECTMARRIAGE.COM – YES ON 8, A PROJECT OF CALIFORNIA RENEWAL; NATIONAL ORGANIZATION FOR MARRIAGE CALIFORNIA, Yes on 8, Sponsored by National Organization for Marriage; NATIONAL ORGANIZATION FOR MARRIAGE CALIFORNIA PAC; JOHN DOE #1, an individual,
Plaintiffs, Appellants,

v.

DEBRA BOWEN; ROSS JOHNSON; CALIFORNIA SECRETARY OF STATE; KAMALA HARRIS, in her official capacity as Attorney General of the State of California; EUGENE HUGUENIN, Jr.; LYNN MONTGOMERY; RONALD ROTUNDA; ANN MILLER RAVEL, in her official capacity as Chair of the Fair Political Practices Commissions; SEAN ESKOVITZ, in his official capacity as Commissioner of the Fair Political Practices Commission; DEPARTMENT OF ELECTIONS CITY AND COUNTY OF SAN FRANCISCO; DENNIS J. HERRERA, City Attorney for the City and County of San Francisco; DEAN C. LOGAN; JAN SCULLY,
Defendants, Appellees.

D.C. No. 2:09-cv-00058-MCE-DAD
Eastern District of California, Sacramento

ORDER

Before: Wallace, M. Smith, and Ikuta,
Circuit Judges.

Judge M. Smith and Judge Ikuta have voted to deny the petition for panel rehearing. Judge Wallace voted to grant the petition for the reasons stated in his dissent.

The petition for panel rehearing is DENIED.

CONSTITUTIONAL PROVISIONS

U.S. Const. amend. I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Const. amend. XIV, § 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATUTES

California Government Code § 81008 – Inspection of reports; Fee for copies

Every report and statement filed pursuant to this title is a public record open for public inspection and reproduction during regular business hours, commencing as soon as practicable, but in any event not later than the second business day following the day on which it was received. No conditions whatsoever shall be imposed upon persons desiring to inspect or reproduce reports and statements filed under this title, nor shall any information or identification be required from these persons. Copies shall be provided at a charge not to exceed ten cents ($0.10) per page. In addition, the filing officer may charge a retrieval fee not to exceed five dollars ($5) per request for copies of reports and statements which are five or more years old. A request for more than one report or statement or report and statement at the same time shall be considered a single request.

California Government Code § 84200 -- Time limitations

(a) Except as provided in paragraphs (1), (2), and (3), elected officers, candidates, and committees pursuant to subdivision (a) of Section 82013 shall file semiannual statements each year no later than July 31 for the period ending June 30, and no later than January 31 for the period ending December 31.

(1) A candidate who, during the past six months has filed a declaration pursuant to Section 84206 shall not be required to file a semiannual statement for that six-month period.

(2) Elected officers whose salaries are less than two hundred dollars ($200) a month, judges, judicial candidates, and their controlled committees shall not file semiannual statements pursuant to this subdivision for any six-month period in which they have not made or received any contributions or made any expenditures.

(3) A judge who is not listed on the ballot for reelection to, or recall from, any elective office during a calendar year shall not file semiannual statements pursuant to this subdivision for any six-month period in that year if both of the following apply:

(A) The judge has not received any contributions.

(B) The only expenditures made by the judge during the calendar year are contributions from the judge's personal funds to other candidates or committees totaling less than one thousand dollars ($1,000).

(b) All committees pursuant to subdivision (b) or (c) of Section 82013 shall file campaign statements each year no later than July 31 for the period ending June 30, and no later than January 31 for the period ending December 31, if they have made contributions or independent expenditures, including payments to a slate mailer organization, during the six-month period before the closing date of the statements.

California Government Code § 84211 – Contents of statements

Each campaign statement required by this article shall contain all of the following information:

(a) The total amount of contributions received during the period covered by the campaign statement and the total cumulative amount of contributions received.

(b) The total amount of expenditures made during the period covered by the campaign statement and the total cumulative amount of expenditures made.

(c) The total amount of contributions received during the period covered by the campaign statement from persons who have given a cumulative amount of one hundred dollars ($100) or more.

(d) The total amount of contributions received during the period covered by the campaign statement from persons who have given a cumulative amount of less than one hundred dollars ($100).

(e) The balance of cash and cash equivalents on hand at the beginning and the end of the period covered by the campaign statement.

(f) If the cumulative amount of contributions (including loans) received from a person is one hundred dollars ($100) or more and a contribution or loan has been received from that person during the period covered by the campaign statement, all of the following:

(1) His or her full name.

(2) His or her street address.

(3) His or her occupation.

(4) The name of his or her employer, or if self-employed, the name of the business.

(5) The date and amount received for each contribution received during the period covered by the campaign statement and if the contribution is a loan, the interest rate for the loan.

(6) The cumulative amount of contributions.

(g) If the cumulative amount of loans received from or made to a person is one hundred dollars ($100) or more, and a loan has been received from or made to a person during the period covered by the campaign statement, or is outstanding during the period covered by the campaign statement, all of the following:

(1) His or her full name.

(2) His or her street address.

(3) His or her occupation.

(4) The name of his or her employer, or if self-employed, the name of the business.

(5) The original date and amount of each loan.

(6) The due date and interest rate of the loan.

(7) The cumulative payment made or received to date at the end of the reporting period.

(8) The balance outstanding at the end of the reporting period.

(9) The cumulative amount of contributions.

(h) For each person, other than the filer, who is directly, indirectly, or contingently liable for repayment of a loan received or outstanding during

the period covered by the campaign statement, all of the following:

(1) His or her full name.

(2) His or her street address.

(3) His or her occupation.

(4) The name of his or her employer, or if self-employed, the name of the business.

(5) The amount of his or her maximum liability outstanding.

(i) The total amount of expenditures made during the period covered by the campaign statement to persons who have received one hundred dollars ($100) or more.

(j) The total amount of expenditures made during the period covered by the campaign statement to persons who have received less than one hundred dollars ($100).

(k) For each person to whom an expenditure of one hundred dollars ($100)or more has been made during the period covered by the campaign statement, all of the following:

(1) His or her full name.

(2) His or her street address.

(3) The amount of each expenditure.

(4) A brief description of the consideration for which each expenditure was made.

(5) In the case of an expenditure which is a contribution to a candidate, elected officer, or committee or an independent expenditure to support or oppose a candidate or measure, in addition to the information required in paragraphs (1) to (4) above, the date of the contribution or independent ex-

penditure, the cumulative amount of contributions made to a candidate, elected officer, or committee, or the cumulative amount of independent expenditures made relative to a candidate or measure; the full name of the candidate, and the office and district for which he or she seeks nomination or election, or the number or letter of the measure; and the jurisdiction in which the measure or candidate is voted upon.

(6) The information required in paragraphs (1) to (4), inclusive, for each person, if different from the payee, who has provided consideration for an expenditure of five hundred dollars ($500) or more during the period covered by the campaign statement.

For purposes of subdivisions (i), (j), and (k) only, the terms "expenditure" or "expenditures" mean any individual payment or accrued expense, unless it is clear from surrounding circumstances that a series of payments or accrued expenses are for a single service or product.

(l) In the case of a controlled committee, an official committee of a political party, or an organization formed or existing primarily for political purposes, the amount and source of any miscellaneous receipt.

(m) If a committee is listed pursuant to subdivision (f), (g), (h), (k),(l), or (q), the number assigned to the committee by the Secretary of State shall be listed, or if no number has been assigned, the full name and street address of the treasurer of the committee.

(n) In a campaign statement filed by a candidate who is a candidate in both a state primary and general election, his or her controlled committee, or a committee primarily formed to support or oppose such a candidate, the total amount of contributions received and the total amount of expenditures made for the period January 1 through June 30 and the total amount of contributions received and expenditures made for the period July 1 through December 31.

(o) The full name, residential or business address, and telephone number of the filer, or in the case of a campaign statement filed by a committee defined by subdivision (a) of Section 82013, the name, street address, and telephone number of the committee and of the committee treasurer. In the case of a committee defined by subdivision (b) or (c) of Section 82013, the name that the filer uses on campaign statements shall be the name by which the filer is identified for other legal purposes or any name by which the filer is commonly known to the public.

(p) If the campaign statement is filed by a candidate, the name, street address, and treasurer of any committee of which he or she has knowledge which has received contributions or made expenditures on behalf of his or her candidacy and whether the committee is controlled by the candidate.

(q) A contribution need not be reported nor shall it be deemed accepted if it is not cashed, negotiated, or deposited and is returned to the contributor before the closing date of the campaign statement on which the contribution would otherwise be reported.

(r) If a committee primarily formed for the qualification or support of, or opposition to, an initiative or ballot measure is required to report an expenditure to a business entity pursuant to subdivision (k) and 50 percent or more of the business entity is owned by a candidate or person controlling the committee, by an officer or employee of the committee, or by a spouse of any of these individuals, the committee's campaign statement shall also contain, in addition to the information required by subdivision (k), that person's name, the relationship of that person to the committee, and a description of that person's ownership interest or position with the business entity.

(s) If a committee primarily formed for the qualification or support of, or opposition to, an initiative or ballot measure is required to report an expenditure to a business entity pursuant to subdivision (k), and a candidate or person controlling the committee, an officer or employee of the committee, or a spouse of any of these individuals is an officer, partner, consultant, or employee of the business entity, the committee's campaign statement shall also contain, in addition to the information required by subdivision (k), that person's name, the relationship of that person to the committee, and a description of that person's ownership interest or position with the business entity.

(t) If the campaign statement is filed by a committee, as defined in subdivision (b) or (c) of Section 82013, information sufficient to identify the nature and interests of the filer, including:

(1) If the filer is an individual, the name and address of the filer's employer, if any, or his or her

principal place of business if the filer is self-employed, and a description of the business activity in which the filer or his or her employer is engaged.

(2) If the filer is a business entity, a description of the business activity in which it is engaged.

(3) If the filer is an industry, trade, or professional association, a description of the industry, trade, or profession which it represents, including a specific description of any portion or faction of the industry, trade, or profession which the association exclusively or primarily represents.

(4) If the filer is not an individual, business entity, or industry, trade, or professional association, a statement of the person's nature and purposes, including a description of any industry, trade, profession, or other group with a common economic interest which the person principally represents or from which its membership or financial support is principally derived.

California Government Code § 84602 – Implementation of legislative intent by Secretary of State

To implement the Legislature's intent, the Secretary of State, in consultation with the Commission, notwithstanding any other provision of this code, shall do all of the following:

(a) Develop online and electronic filing processes for use by persons and entities specified in Section 84605 that are required to file statements and reports with the Secretary of State's office pursuant to Chapter 4 (commencing with Section 84100)

and Chapter 6 (commencing with Section 86100). Those processes shall each enable a user to comply with all the disclosure requirements of this title and shall include, at a minimum, the following:

(1) A means or method whereby filers subject to this chapter may submit required filings free of charge. Any means or method developed pursuant to this provision shall not provide any additional or enhanced functions or services that exceed the minimum requirements necessary to fulfill the disclosure provisions of this title. At least one means or method shall be made available no later than December 31, 2002.

(2) The definition of a nonproprietary standardized record format or formats using industry standards for the transmission of the data that is required of those persons and entities specified Section 84605 and that conforms with the disclosure requirements of this title. The Secretary of State shall hold public hearings prior to development of the record format or formats as a means to ensure that affected entities have an opportunity to provide input into the development process. The format or formats shall be made public no later than July 1, 1999, to ensure sufficient time to comply with this chapter.

(b) Accept test files from software vendors and others wishing to file reports electronically, for the purpose of determining whether the file format is in compliance with the standardized record format developed pursuant to subdivision (a) and is compatible with the Secretary of State's system for receiving the data. A list of the software and service providers who have submitted acceptable test files

shall be published by the Secretary of State and made available to the public. Acceptably formatted files shall be submitted by a filer in order to meet the requirements of this chapter.

(c) Develop a system that provides for the online or electronic transfer of the data specified in this section utilizing telecommunications technology that assures the integrity of the data transmitted and that creates safeguards against efforts to tamper with or subvert the data.

(d) Make all the data filed available on the Internet in an easily understood format that provides the greatest public access. The data shall be made available free of charge and as soon as possible after receipt. All late contribution and late independent expenditure reports, as defined by Sections 84203 and 84204, respectively, shall be made available on the Internet within 24 hours of receipt. The data made available on the Internet shall not contain the street name and building number of the persons or entity representatives listed on the electronically filed forms or any bank account number required to be disclosed pursuant to this title.

(e) Develop a procedure for filers to comply with the requirement that they sign under penalty of perjury pursuant to Section 81004.

(f) Maintain all filed data online for 10 years after the date it is filed, and then archive the information in a secure format.

(g) Provide assistance to those seeking public access to the information.

(h) Implement sufficient technology to seek to prevent unauthorized alteration or manipulation of the data.

(i) Provide the Commission with necessary information to enable it to assist agencies, public officials, and others with the compliance with and administration of this title.

(j) Report to the Legislature on the implementation and development of the online and electronic filing and disclosure requirements of this chapter. The report shall include an examination of system security, private security issues, software availability, compliance costs to filers, use of the filing system and software provided by the Secretary of State, and other issues relating to this chapter, and shall recommend appropriate changes if necessary. In preparing the report, the Commission may present to the Secretary of State and the Legislature its comments regarding this chapter as it relates to the duties of the Commission and suggest appropriate changes if necessary. There shall be one report due before the system is operational as set forth in Section 84603, one report due no later than June 1, 2002, and one report due no later than January 31, 2003.

(k) Review the current filing and disclosure requirements of this chapter and report to the Legislature, no later than June 1, 2005, recommendations on revising these requirements so as to promote greater reliance on electronic and online submissions.

California Government Code § 84102 -- Contents of organizational statement

The statement of organization required by Section 84101 shall include all of the following:

(a) The name, street address, and telephone number, if any, of the committee. In the case of a sponsored committee, the name of the committee shall include the name of its sponsor. If a committee has more than one sponsor, and the sponsors are members of an industry or other identifiable group, a term identifying that industry or group shall be included in the name of the committee.

(b) In the case of a sponsored committee, the name, street address, and telephone number of each sponsor.

(c) The full name, street address, and telephone number, if any, of the treasurer and any other principal officers.

(1) A committee with more than one principal officer shall identify its principal officers as follows:

(A) A committee with three or fewer principal officers shall identify all principal officers.

(B) A committee with more than three principal officers shall identify no fewer than three principal officers.

(2) If no individual other than the treasurer is a principal officer, the treasurer shall be identified as both the treasurer and the principal officer.

(d) The full name and office sought by a candidate, and the title and ballot number, if any, of any measure, that the committee supports or opposes as its primary activity. A committee that does not

support or oppose one or more candidates or ballot measures as its primary activity shall provide a brief description of its political activities, including whether it supports or opposes candidates or measures and whether such candidates or measures have common characteristics, such as a political party preference.

(e) A statement whether the committee is independent or controlled and, if it is controlled, the name of each candidate or state measure proponent by which it is controlled, or the name of any controlled committee with which it acts jointly. If a committee is controlled by a candidate for partisan or voter-nominated office, the controlled committee shall indicate the political party, if any, for which the candidate has disclosed a preference.

(f) For a committee that is a committee by virtue of subdivision (a) or (b) of Section 82013, the name and address of the financial institution in which the committee has established an account and the account number.

(g) Other information as shall be required by the rules or regulations of the Commission consistent with the purposes and provisions of this chapter.

California Government Code § 91000 – Penalties

(a) Any person who knowingly or willfully violates any provision of this title is guilty of a misdemeanor.

(b) In addition to other penalties provided by law, a fine of up to the greater of ten thousand dollars ($10,000) or three times the amount the person failed to report properly or unlawfully contributed, expended, gave or received may be imposed upon conviction for each violation.

(c) Prosecution for violation of this title must be commenced within four years after the date on which the violation occurred.

California Government Code § 91004 – Civil liability for violating reporting requirements

Any person who intentionally or negligently violates any of the reporting requirements of this title shall be liable in a civil action brought by the civil prosecutor or by a person residing within the jurisdiction for an amount not more than the amount or value not properly reported.

California Government Code § 91005.5 – Violations for which no specific civil penalty is provided; Civil actions

Any person who violates any provision of this title, except Sections 84305, 84307, and 89001, for which no specific civil penalty is provided, shall be liable in a civil action brought by the commission or the district attorney pursuant to subdivision (b) of Section 91001, or the elected city attorney pursuant to Section 91001.5, for an amount up to five thousand dollars ($5,000) per violation.

No civil action alleging a violation of this title may be filed against a person pursuant to this section if the criminal prosecutor is maintaining a criminal action against that person pursuant to Section 91000.

The provisions of this section shall be applicable only as to violations occurring after the effective date of this section.