

No. 12-144

IN THE
Supreme Court of the United States

DENNIS HOLLINGSWORTH, et al.,
Petitioners,

v.

KRISTIN M. PERRY, et al.,
Respondents.

*On Writ of Certiorari to the United States Court of
Appeals for the Ninth Circuit*

**AMICUS CURIAE BRIEF OF
MARRIAGE ANTI-DEFAMATION ALLIANCE
IN SUPPORT OF PETITIONERS AND
SUPPORTING REVERSAL**

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INTEREST OF *AMICUS CURIAE*¹

The Marriage Anti-Defamation Alliance is a nonprofit project of the National Organization for Marriage Education Fund, which is the 501(c)(3) arm of the National Organization for Marriage. The Marriage Anti-Defamation Alliance was started after Proposition 8 in response to the growing number of reports of people who have faced harassment and reprisals because they support marriage as one man and one woman. The Marriage Anti-Defamation Alliance recognizes that marriage is an important issue and people of good will can and do disagree about it. The Marriage Anti-Defamation Alliance believes America should be a place where passionate moral disagreements about important issues such as marriage are expressed with respect, thoughtfulness, and civility, and without fear or threats of retaliation—on both sides of the issue.

SUMMARY OF THE ARGUMENT

In America today, defending marriage as one man and one woman requires a great deal of “civic courage.” *Doe v. Reed*, 130 S. Ct. 2811, 2837 (2010) (Scalia, J., concurring). As shown by a substantial and growing body of evidence, supporting marriage as one man and one woman today often generates significant hostility and can result in harassment

¹No counsel for a party authored this brief in whole or in part. No person other than *Amicus Curiae* or its counsel made a monetary contribution to the preparation or submission of this brief. Letters from all parties consenting to the filing of the brief have been submitted to the Clerk.

and reprisals against those people and groups courageous enough to express their support publicly. Although many incidents likely have gone unreported,² available sources provide some sense of what the New York Times has called the “ugly specter of intimidation” experienced by some people who supported Proposition 8 in California, Brad Stone, *Prop 8 Donor Web Site Shows Disclosure Law Is 2-Edged Sword*, N.Y. Times, Feb. 8, 2009, at BU3, as well as harassment and reprisals experienced by others who have supported the traditional understanding of marriage outside California or in contexts other than Prop 8.

We emphasize at the outset that many proponents of same-sex marriage have condemned certain forms and instances of harassment and reprisals. *See, e.g.*, Thomas M. Messner, *The Price of Prop 8*, at 13 n.111 (2009) (“*Price of Prop 8*”) (collecting examples);³ Press Release, LGBT Organizations Release Joint Statement Regarding the Shooting at Family Research Council (FRC), GLAAD (Aug. 15, 2012).⁴ In some cases, however, proponents of redefining marriage to include same-

²See Declaration of Sarah Troupis in Support of Defendant-Intervenors’ Motion for a Protective Order at 4, *Perry v. Schwarzenegger*, 704 F. Supp. 2d 921 (N.D. Cal. 2010) (No. 3:09-cv-2292-VRW) ECF No. 187-13 (asserting that fear of “further threats and harassment” deterred some individuals from submitting declarations in litigation).

³Available at <http://www.heritage.org/research/reports/2009/10/the-price-of-prop-8>.

⁴Available at <http://www.glaad.org/blog/lgbt-organizations-release-joint-statement-regarding-shooting-family-research-council-frc>.

sex unions have responded by soft pedaling, downplaying, and generally disparaging attempts to explain that people who support marriage as one man and one woman in America today face the genuine risk of harassment and reprisals. *See infra* Section III. This Court, in contrast, has recognized that such harassment and reprisals are “cause for concern.” *Citizens United v. FEC*, 130 S. Ct. 876, 916 (2010).⁵ *See also* Reply Brief for Appellant at 28–29, *Citizens United*, 130 S. Ct. 876 (No. 08-205) (counsel to plaintiffs describing, in different case, “widespread economic reprisals” against financial supporters of Prop 8 as an “unsettling” consequence of disclosing donor information on searchable websites); *Doe v. Reed*, 823 F. Supp. 2d 1195, 1212 (W.D. Wash. 2011) (stating that “hostility” engendered by “public advocacy” of marriage as one man and one woman “should concern every citizen”).⁶

⁵Here the Court refers to examples, provided by two *amici*, of “recent events in which donors to certain causes were blacklisted, threatened, or otherwise targeted for retaliation.” *Citizens United*, 130 S. Ct. at 916. Both briefs include examples involving Prop 8 and the examples in one of those briefs “relate principally” to Prop 8. *Id.* at 980–81 (Thomas, J., concurring in part and dissenting in part).

⁶Evidence regarding harassment against people who support marriage as one man and one woman, including evidence regarding harassment against people who supported Prop 8 in California, was presented to this Court in *Doe v. Reed*, 130 S. Ct. 2811 (2010). The Court ruled that, as a general matter, disclosure of referendum petitions does not violate the First Amendment to the U.S. Constitution, but left open the possibility of a First Amendment challenge to disclosure of a particular referendum petition. *See id.* at 2815. Accordingly, evidence of the particular harassment presented was not

There is some truth to the argument, often made by proponents of redefining marriage to include same-sex unions, that attitudes toward redefining marriage in America have changed significantly in recent years. Today, the cause of redefining marriage to include same-sex unions receives support from the highest political office, *see President Obama Supports Same-Sex Marriage*, The White House (May 10, 2012),⁷ while private citizens who support traditional marriage through democratic processes face the risk of harassment and

relevant to the Court's decision. The Court's decision in *Reed* affirmed the decision of the court of appeals, *Doe v. Reed*, 586 F.3d 671 (9th Cir. 2009), which had reversed the decision of the district court, *Doe v. Reed*, 661 F. Supp. 2d 1194 (W.D. Wash. 2009). Similar evidence of harassment was presented to the district court on remand for consideration of the as-applied challenge, *Doe v. Reed*, 823 F. Supp. 2d 1195 (W.D. Wash. 2011), *appeal dismissed as moot*, 697 F.3d 1235, 1237 (9th Cir. 2012), as well as to a district court in a case involving similar issues arising under public disclosure laws of California, *see Protectmarriage.com v. Bowen*, 830 F. Supp. 2d 914 (E.D. Cal. 2011) (summary judgment ruling); *Protectmarriage.com v. Bowen*, 599 F. Supp. 2d 1197 (E.D. Cal. 2009) (preliminary injunction ruling). Neither district court concluded that the harassment presented rose to the level required for the rare case where extraordinary judicial intervention with legislatively enacted public disclosure policies would be required to protect First Amendment interests. Both courts, however, expressed concern about harassment. *See Doe*, 823 F. Supp. 2d at 1212 (stating that "hostility" engendered by "public advocacy" of traditional marriage "should concern every citizen"); *Bowen*, 599 F. Supp. 2d at 1219 ("[T]he Court regards with contempt numerous of the acts about which Plaintiffs complain . . .").

⁷Available at <http://www.whitehouse.gov/blog/2012/05/10/obama-supports-same-sex-marriage>.

reprisals. Today, the cause of redefining marriage to include same-sex unions receives significant financial support from billionaires and business leaders, *see, e.g.*, Clare O'Connor, *Jeff Bezos Joins Growing List Of Billionaires Backing Same-Sex Marriage*, *Forbes* (July 27, 2012, 12:34 PM),⁸ while ordinary people risk professional jeopardy and social vilification if they publicly support marriage as one man and one woman. Today, many major corporations proudly support same-sex marriage and related causes, *see, e.g.*, *Corporate Sponsors*, The Human Rights Campaign,⁹ while even the United States Congress struggles to find a major law firm willing to help defend the federal marriage law in court, *see* Letter from Paul D. Clement to Robert D. Hays (Apr. 25, 2011).¹⁰

Proponents of redefining marriage to include same-sex unions have come to enjoy significant political and cultural power in this country. *See, e.g.*, Br. on the Merits for Respondent the Bipartisan Legal Advisory Group of the U.S. House of Representatives 51–54, *United States v. Windsor*, No. 12-307 (U.S. Jan. 22, 2013). If they do not enjoy as much power as they would like, one likely reason is the growing public awareness of the harassment and reprisals directed against people and groups that continue to stand for marriage as one man and

⁸*Available at* <http://www.forbes.com/sites/clareoconnor/2012/07/27/jeff-bezos-joins-growing-list-of-billionaires-backing-same-sex-marriage/>.

⁹*Available at* www.hrc.org/the-hrc-story/corporate-partners.

¹⁰*Available at* <http://online.wsj.com/public/resources/documents/042511clementresign.pdf>.

one woman. See, e.g., George Will, *Liberal Intimidation on Referendum 71*, Kitsap Sun (Oct. 31, 2009) (citing reprisals including some against people who support traditional marriage and stating that “[i]t is time to speak up”).¹¹ As Plaintiffs’-Appellees’ own expert witness has testified in this case, “if a group is trying to use an appeal to an internalized norm of fairness or equity, the moment it engages in violence, much of that appeal dissipates,” Trial Tr. at 1718:16–19, *Perry v. Schwarzenegger*, 704 F. Supp. 2d 921 (N.D. Cal. 2010) (No. 3:09-cv-2292-VRW) (attorney quoting deposition testimony of witness), and the same could be said about certain forms of nonviolent harassment as well.

Despite the chilling effect of political reprisals and other acts of hostility, many people in this country continue to demonstrate great civic courage in endeavoring to preserve marriage as a vital social institution that promotes the public interest in strengthening the unique relationship between mothers, fathers, and children. This perseverance, often in the face of great hostility, testifies to their good will and honest belief that society benefits from strengthening marriage rather than redefining it in a way that would divorce it from its roots in human biology and the needs of children. Those views are worthy of reflection and the people who hold them are worthy of respect.

¹¹Available at <http://www.kitsapsun.com/news/2009/oct/31/george-will-liberal-intimidation-on-referendum/#ixzz2I03PTqRx>.

For this reason, and for the reasons set forth by the Petitioners, *see generally* Br. of Petitioners, *Hollingsworth v. Perry*, No. 12-144 (U.S. Jan. 22, 2013), the Court should reject any argument made in this case that support for marriage as one man and one woman is irrational, bigoted, or worse, *see, e.g.*, David Boies, *Gay Marriage and the Constitution*, Wall St. J. (July 20, 2009) (describing Prop 8 as “the residue of centuries of figurative and literal gay-bashing”).¹² Declaring marriage as one man and one woman to be an irrational and bigoted viewpoint *per se* would encourage even greater hostility than already exists against those who seek to preserve marriage as a fundamentally pro-child social institution that benefits all society. *Cf. Board of Trustees of University of Alabama v. Garrett*, 538 U.S. 356, 375 (2001) (Kennedy, J., concurring) (“the law can be a teacher”); *Goodridge v. Dep’t of Pub. Health*, 798 N.E. 2d 941, 963 (Mass. 2003) (applying principle that government policy can “confer[] an official stamp of approval” on social attitudes and ideas). The time for a more reasoned, open-minded, and civil debate is now.

ARGUMENT

I. Harassment Against People and Groups that Supported Prop 8.

Much documentation of harassment against people and groups that support marriage as one man

¹²*Available at* <http://online.wsj.com/article/SB124804515860263587.html>.

and one woman involves Proposition 8, the ballot measure that amended the California constitution to define marriage as one man and one woman, and the law under challenge in this case. *See, e.g., Hollingsworth v. Perry*, 130 S. Ct. 705, 713 (2010) (per curiam) (explaining that incidents of past harassment “substantiated” concerns harbored by witnesses unwilling to testify if trial televised and citing compilation of “71 news articles detailing incidents of harassment related to people who supported Proposition 8”); *Citizens United*, 130 S. Ct. at 916 (2010) (citing briefs submitted by amici providing examples of harassment including against Proposition 8 supporters and stating that the “examples cited by amici are cause for concern”); *Doe v. Reed*, 130 S. Ct. 2811, 2823 (2010) (Alito, J., concurring) (citing “widespread harassment and intimidation suffered by supporters of California’s Proposition 8”); *Citizens United*, 130 S. Ct. at 980–81 (Thomas, J., concurring in part and dissenting in part) (discussing “intimidation tactics” used against Proposition 8 supporters).¹³

¹³Other documentation includes On Application for Immediate Stay of the District Court’s Order Permitting Public Broadcast of Trial Proceedings at 15, *Hollingsworth*, 130 S. Ct. 705 (stating that “the record reflects repeated harassment of Prop 8 supporters” and providing citations to record); Brief of *Amicus Curiae* Institute for Marriage and Public Policy in Support of Defendant-Intervenors, *Perry v. Schwarzenegger*, 704 F. Supp. 2d 921 (N.D. Cal. 2010) (entire brief devoted to documenting harassment against people and groups that supported Proposition 8); Petitioners’ Brief at 2–7, 10–11, *Doe v. Reed*, 130 S. Ct. 2811 (No. 09-559); Reply Brief for Appellant at 28–29, *Citizens United*, 130 S. Ct. 876 (No. 08-205); Brief of the Institute for Justice as *Amicus Curiae* in Support of Petitioners

Harassment against people and groups that supported Proposition 8 included acts of vandalism. Some people who supported Prop 8 reported vandalism to their homes and other property, *see, e.g., Price of Prop 8, supra*, at 3–4 & nn.8, 12, 15, 17–18, as well as to cars and other vehicles, *see id.* at 3 & nn.9–12, 15–16.

Houses of worship also were vandalized. *See id.* at 4 & nn.21–26. For example, “swastikas and other graffiti” were reportedly scrawled on the walls of the Most Holy Redeemer Catholic Church in San Francisco, a parish “widely known” as being “gay-friendly.” Meredith May, *Vandals Desecrate Pro-Gay Catholic Church*, S.F. Chron., Jan. 6, 2009, at B-3;¹⁴

at 17–18, *Doe v. Reed*, 130 S. Ct. 2811 (No. 09-559); Brief of Amicus Curiae Alliance Defense Fund in Support of Appellant at 17–22, *Citizens United*, 130 S. Ct. 876 (No. 08-205); Brief of The Cato Institute et al. as *Amici Curiae* in Support of Petitioners at 14–16, *Independence Institute v. Buescher*, 130 S. Ct. 625 (2009) (No. 09-265); Cleta Mitchell, *Donor Disclosure: Undermining the First Amendment*, 96 Minn. L. Rev. 1755, 1760–61 (2012) (stating that “evidence of the harassment campaign against donors to Proposition 8” was “extensive” and “widespread”); Lynn D. Wardle, *The Judicial Imposition of Same-Sex Marriage: The Boundaries of Judicial Legitimacy and Legitimate Redefinition of Marriage*, 50 Washburn L.J. 79, 105 (2010) (stating that people in California who supported Proposition 8 were “subject to wide-spread political reprisal, stalking, assault, intimidation, employment discrimination, economic and other forms of retaliation” and “organizations, including churches, that had supported the measure were attacked, vandalized, and targeted for revenge”).

¹⁴Available at <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2009/01/06/BA5B1540PH.DTL>. *See also Prop 8 Protestors Vandalize Church*, KGO-TV (Jan. 4, 2009), <http://abclocal.go>

see *Vandals Arrange Prop. 8 Signs into Swastika*, KCAL-9 (Nov. 7, 2008) (reporting that pro-Prop-8 signs were twisted into a swastika at Our Lady of Perpetual Help Catholic Church in Riverside).¹⁵ In the days after Prop 8 passed, many Mormon church buildings were also vandalized. See Jennifer Garza, *Feds Investigate Vandalism at Mormon Sites*, Sacramento Bee, Nov. 14, 2008.

Some Prop 8 supporters experienced other kinds of harassment or hostility. See, e.g., *Price of Prop 8*, *supra*, at 5–7 & nn.34–41, 47–52. Some supporters holding signs or distributing materials, for example, were reportedly “victims of physical assaults such as being spat upon and having hot coffee thrown on them by passengers in passing automobiles.” Decl. of Ronald Prentice in Support of Defendant-Intervenors’ Motion for a Protective Order at 4, *Perry v. Schwarzenegger*, 704 F. Supp. 2d 921 (N.D. Cal. 2010) (No. 3:09-cv-2292-VRW). “[S]everal donors” to Prop 8 allegedly “had . . . their employees harassed, and . . . received hundreds of threatening emails and phone calls.” Decl. of Frank Schubert in Support of Defendant-Intervenors’ Motion for a Protective Order at 6, *Perry v. Schwarzenegger*, 704 F. Supp. 2d 921 (N.D. Cal. 2010) (No. 3:09-cv-02292-VRW).

.com/kg0/story?section=news/local/san_francisco&id=6584961.

¹⁵Available at <http://cbs2.com/local/Proposition.8.Vandalism.2.859176.html>. See also Chelsea Phua, *Mormon Church in Orangevale Vandalized in Wake of Prop. 8 Vote*, Sacramento Bee, Nov. 9, 2008.

Other kinds of harassment involved greater effort. One individual, for example, allegedly became the subject of a flyer distributed in his town that included his name and photo, labeled him a “Bigot,” and stated the amount of his donation to Prop 8 and his association with a particular Catholic parish. *See* Decl. of John Doe #2 in Support of Plaintiffs’ Motion for Preliminary Injunction at 2, Ex. A, *Protectmarriage.com v. Bowen*, No. 2:09-cv-0058-MCE-DAD (E.D. Cal. Jan. 15, 2009). In another case, two women reportedly painted the words “Bigots live here” on the window of an SUV and parked the vehicle in front of a household that had supported Prop 8. *See* Matthai Kuruvila, *Mormons Face Flak for Backing Prop. 8*, S.F. Chron., Oct. 27, 2008, at B-1.

Mormons were openly, particularly, and, in some cases, systematically singled out for supporting Prop 8.¹⁶ The extensive and often unapologetic anti-

¹⁶*See, e.g.,* *Activists Target Mormons for Gay-Marriage Ban’s Success in California*, Fox News (Dec. 1, 2008), http://www.foxnews.com/printer_friendly_story/0,3566,459544,00.html. The San Francisco Chronicle reported in 2008 that “[o]ne Web site run by a Prop. 8 opponent, Mormonsfor8.com, identifies the name and hometown of every Mormon donor.” Matthai Kuruvila, *Mormons Face Flak for Backing Prop. 8*, S.F. Chron., Oct. 27, 2008, at B-1, *available at* <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2008/10/27/BAP113OIRD.DTL>. This news article also reported that, “[o]n the Daily Kos, the nation’s most popular liberal blog, there is a campaign to use that information to look into the lives of Mormons who financially support Prop. 8.” *Id.* In a piece published after the Prop 8 vote, one leading gay-rights activist in West Hollywood was reported to have said, “The main finger

Mormon bigotry surrounding Prop 8 was typified by the infamous “Home Invasion” television ad, which “depict[ed] two [male] Mormon missionaries invading the home of a lesbian couple, ransacking their belongings, and tearing up their marriage license.” *Price of Prop 8, supra*, at 8. “Hi, we’re from the Church of Jesus Christ of Latter-day Saints,” says one of the Mormon missionaries. “We’re here to take away your rights,” says the other missionary. The ad concludes with the message, “Say NO to a Church taking over your government. Vote NO on Proposition 8,” and is still available for viewing on

we are pointing is at the Mormon church.” Jim Carlton, *Gay Activists Boycott Backers of Prop 8*, Wall St. J. (Dec. 27, 2008) (quoting Vic Gerami and describing him as “a leading gay activist in West Hollywood, Calif.”), <http://sec.online.wsj.com/article/SB123033766467736451.html>. One prominent gay-rights figure reportedly said, in response to a Mormon individual who asked why his church was being targeted, “We are going to go after your church every day for the next two years unless and until Prop 8 is overturned.” Maggie Gallagher, *Above the Hate*, Real Clear Politics (Nov. 26, 2008) (internal quotations omitted), http://www.realclearpolitics.com/articles/2008/11/above_the_hate.html. Similarly, after the Prop 8 vote, a San Francisco Supervisor reportedly said, “The Mormon church has had to rely on our tolerance in the past, to be able to express their beliefs . . . This is a huge mistake for them. It looks like they’ve forgotten some lessons.” Thomas Sowell, *The Right To Win*, Townhall.com (Nov. 19, 2008), http://townhall.com/columnists/thomassowell/2008/11/19/the_right_to_win/page/full/. In short, “Mormons, in particular,” were “singled out” and “widely blamed” for the success of Prop 8. Lynn D. Wardle, *A House Divided: Same-Sex Marriage and Dangers to Civil Rights*, 4 Liberty U. L. Rev. 537, 555 (2010).

YouTube. CourageCampaign, *Home Invasion: Vote No on Prop 8*, YouTube (Oct. 31, 2008).¹⁷

Some reports concerned instances of hostility toward African-Americans. See Memorandum from Kathryn Kolbert, President, People for the American Way Foundation, to Progressive Allies and Journalists (Nov. 7, 2008).¹⁸ “According to eyewitness reports published on the Internet,” one prominent news source reported, “racial epithets have been used against African Americans at protests in California—with some even directed at blacks who are fighting to repeal Prop. 8.” Alison Stateman, *What Happens If You’re on Gay Rights’ Enemies List*, Time (Nov. 15, 2008).¹⁹

¹⁷Available at <http://www.youtube.com/watch?v=q28UwAyzUkE>.

¹⁸Available at <http://media.pfaw.org/pdf/prop-8-memo.pdf> (describing as “inexcusable” the “speed with which some white gay activists began blaming African Americans – sometimes in appallingly racist ways – for the defeat of Proposition 8”); Wayne Besen, *Truth Wins Out Condemns Racial Intolerance Within the LGBT Community Following Proposition 8 Defeat*, Truth Wins Out (Nov. 7, 2008) <http://www.truthwinsout.org/blog/truth-wins-out-condemns-racial-intolerance-within-the-lgbt-community-following-proposition-8-defeat/> (expressing “grave disappointment” with “those in the LGBT community” who engaged in “scapegoating minorities”).

¹⁹Available at <http://www.time.com/time/nation/article/0,8599,1859323,00.html>. See Thomas Sowell, *The Right To Win*, Townhall.com (Nov. 19, 2008) (reporting that “racial epithets were hurled at blacks in Los Angeles” and “[b]lacks who just happened to be driving through Westwood, near UCLA, were accosted in their cars and, in addition to being denounced, were warned, ‘You better watch your back’”), http://townhall.com/columnists/thomassowell/2008/11/19/the_ri

Some incidents that occurred soon after Prop 8 passed appeared especially threatening at the time. Just days after the Prop 8 vote, for example, Mormon temples in California and Utah, and a Knights of Columbus facility in Connecticut, reportedly received packages containing suspicious white powder. See, e.g., Tami Abdollah, *Incident Shuts Temple*, L.A. Times (Nov. 14, 2008);²⁰ Ben Winslow, *Powder Scares at 2 LDS Temples, Catholic Plant*, Deseret News (Nov. 14, 2008).²¹ Around the same time, in Colorado, someone burned a Book of Mormon on the steps of a Mormon church. *Book of Mormon Set Ablaze on Church Door Step*, KMGH (Nov. 12, 2008).²²

ght_to_win/page/full/; Rod, *N-Word Hurlled at Blacks During Westwood Prop 8 Protest*, Rod 2.0 (Nov. 7, 2008, 12:34 PM), <http://rodonline.typepad.com/rodonline/2008/11/n-word-and-raci.html> (reporting several incidents of racial backlash).

²⁰Available at <http://www.latimes.com/news/local/la-memormon14-2008nov14,0,7206616.story?track=rss>.

²¹Available at <http://deseretnews.com/article/content/mobile/1,5620,705262822,00.html?printView=true>. At least one of those incidents triggered a domestic terrorism investigation by the FBI. See Ben Winslow, *FBI to Run More Tests on Mystery Substance Mailed to LDS Church*, Deseret News (Nov. 18, 2008), <http://www.deseretnews.com/article/1,5143,705263982,00.html>. We have found no report of law enforcement officials apprehending any perpetrators of these acts.

²²Available at <http://www.thedenverchannel.com/news/17964575/detail.html>. Police reportedly investigated the incident as a “bias-motivated arson” related to the church’s position on Prop 8. Jennifer Garza, *Protests over Proposition 8 Outcome Getting Personal*, Deseret News (Nov. 13, 2008), <http://deseretnews.com/article/content/mobile/1,5620,705262671,00.html>.

Some people who supported Prop 8 reportedly received death threats. A threat against the mayor of Fresno allegedly stated, “Hey Bubba, you really acted like a real idiot at the Yes of [sic] Prop 8 Rally this past weekend. Consider yourself lucky. If I had a gun I would have gunned you down along with each and every other supporter.” John-Thomas Kobos, *Proposition 8 Email Threats*, KFSN-TV (Nov. 7, 2008).²³ The New York Times reported that some donors to groups supporting Prop 8 “received death threats.” Brad Stone, *Prop 8 Donor Web Site Shows Disclosure Law Is 2-Edged Sword*, N.Y. Times, Feb. 8, 2009, at BU3. One of the official proponents of Prop 8 reports he was “threatened to be killed” and “told to leave the country.” Declaration of Hak-Shing William Tam in Support of Defendant-Intervenors’ Motion for a Protective Order at 4, *Perry v. Schwarzenegger*, 704 F. Supp. 2d 921 (N.D. Cal. 2010) (No. 3:09-CV-2292-VRW).

Some incidents were more physically intimidating or even violent. For example, one Prop 8 supporter reportedly went to the hospital for stitches after being punched in the face by someone who took several Yes on 8 signs and yelled “What do you have against gays?” *Attack Outside of Catholic Church Part of ‘Wave of Intimidation,’ Says Yes on 8*, Catholic News Agency (Oct. 15, 2008).²⁴ See also

²³Available at <http://abclocal.go.com/kfsn/story?section=news/local&id=6494921>. See *Price of Prop 8*, *supra*, at 9–10 (discussing additional details and providing sources).

²⁴Available at <http://www.catholicnewsagency.com/new.php?n=14069>. See Seth Hemmelgarn, *Prop 8 Fight Gets Ugly on Both Sides*, Bay Area Reporter (Oct. 16, 2008),

Price of Prop 8, supra, at 10 & nn.80–83 (documenting incident involving elderly woman present at an anti-Prop-8 protest who was allegedly spit at and had a cross she was carrying knocked out of her hands and stomped on); *id.* at 10 & nn. 84–88 (documenting incident involving small group of Christians who were allegedly harassed and received police protection when an angry crowd apparently took them for pro-Prop 8 demonstrators as they prayed and sang hymns on a sidewalk).

In addition, many reports concerned what one notable source has described as “widespread economic reprisals.” Reply Brief for Appellant at 28–29, *Citizens United*, 130 S. Ct. 876 (No. 08-205). Some people even targeted organizations that employed Prop 8 supporters with the result that some individuals who supported Prop 8 resigned, took a leave of absence, or have otherwise lost professional opportunities. See Editorial, *Prop. 8—Boycott, or Blacklist?*, L.A. Times (Dec. 10, 2008) (stating that “postelection boycott efforts” by “defenders of same-sex marriage” escalated into “a vengeful campaign against individuals who donated” in support of Prop 8, “usually in the form of pressure on their employers”).²⁵ Boycotting businesses that

<http://www.ebar.com/news/article.php?sec=news&article=3403>; *Prop. 8 Supporter Allegedly Attacked In Modesto*, KCRA TV (Oct. 15, 2008), http://www.nbcbayarea.com/news/politics/Prop_8_Supporter_Allegedly_Attacked_In_Modesto.html.

²⁵Available at <http://www.latimes.com/news/opinion/editorials/la-ed-boycott10-2008dec10,0,2703213.story>. See additional sources in *Price of Prop 8, supra*, at 11 & nn.89–97, and incidents occurring long after Prop 8 vote at Juliet Macur,

engage in certain corporate practices or take certain corporate positions is a time-honored American political tactic that both opponents and proponents of same-sex marriage have practiced. Pressuring businesses or other institutions because of politically unpopular viewpoints held by employees or volunteers is a very different, troubling tactic that should be discouraged, not justified.

II. Other Harassment Against People and Groups that Support Marriage as One Man and One Woman.

The events surrounding Proposition 8 created new awareness in the minds of many Americans about the genuine risk of harassment and reprisals faced by people and groups that support marriage as one man and one woman. But hostility against people and groups that support marriage as one man and one woman has not been limited to California or the context of Prop 8.

Facing Criticism, U.S. Official Quits, N.Y. Times (May 6, 2011) (reporting that high level staff member of U.S. Olympic Team resigned based on criticism involving his support of Prop 8), available at <http://www.nytimes.com/2011/05/07/sports/olympics/07usoc.html>, and Phillip Matier and Andrew Ross, *Prop. 8 Aid Puts Paramount Board Member on Hold*, S.F. Chron. (Jan. 20, 2010) (reporting that donation to Prop “appears to have cost” the donor “his seat on the board that oversees Oakland’s historic Paramount Theatre”), <http://www.sfgate.com/bayarea/matier-ross/article/Prop-8-aid-puts-Paramount-board-member-on-hold-3202211.php#ixzz2IF0AHhbw>.

In Michigan, for example, just days after the Prop 8 vote in California, a group called “Bash Back!” allegedly invaded a church and disrupted a service “because of the church’s well-known Christian views on marriage and homosexual behavior.” News Release, Alliance Defending Freedom, Anarchists That Invaded Mich. Church Lose to the Rule of Law (July 12, 2011).²⁶ According to the church’s attorneys, some members of the group staged a protest outside the church while other members of the group “deceptively entered the building” wearing plain clothes. *Id.* Then, at a “coordinated time,” members of the group “sprang up shouting religious slurs, unfurling a sign, and throwing fliers around the sanctuary while two women began kissing near the podium.” *Id.* Affiliates of Bash Back! also have allegedly vandalized churches in other states.²⁷

In 2011, when New York was debating whether to redefine marriage to include same-sex unions, a state senator who opposed the legislation reportedly received death threats against him and his family. See Sarah Armaghan, *Same-sex Marriage Foe State Sen.*

²⁶Available at <http://www.adfmedia.org/News/PRDetail/4974>.

²⁷See Complaint at ¶ 67, *Mount Hope Church v. Bash Back!*, No. 1:09-cv-00427-RHB (W.D. Mich. July 11, 2011) (alleging that Bash Back! vandalized a Mormon church building in the State of Washington); *Churches Vandalized, Ransacked, and Threatened With Disruption*, Speak Up (May 27, 2010), <http://blog.speakupmovement.org/church/uncategorized/churches-vandalized-ransacked-and-threatened-with-disruption/> (alleging that Bash Back broke into and vandalized an Evangelical church in Indiana).

Ruben Diaz & Family Hit with Death Threats over Stance on Issue, N.Y. Daily News (June 1, 2011).²⁸ When the lawmaker hosted a rally to support marriage as one man and one woman, some individual reportedly “wrote on Twitter that he wanted to sexually assault [the senator’s] daughter.” Patrick B. Craine, *Pro-marriage New York Senator Faces Death Threats, Barraged with Hate Calls*, Lifesitenews.com (June 7, 2011).²⁹ Throughout this harassment, the senator reportedly received little if any support from fellow lawmakers: “[T]he feeling is that you reap what you sow,” a local “political source” explained. Armaghan, *supra*.

Voters have also debated marriage and related issues in the state of Washington.³⁰ In 2009, for example, voters considered a ballot measure, known as Referendum 71, that would have rejected a law passed by the state legislature that equated same-sex domestic partnerships with marriage.³¹ During that time, a candidate for the Washington House of

²⁸Available at <http://www.nydailynews.com/new-york/bronx/same-sex-marriage-foe-state-sen-ruben-diaz-family-hit-death-threats-stance-issue-article-1.130499#ixzz2IFABOEVo>.

²⁹Available at <http://www.lifesitenews.com/news/pro-marriage-new-york-senator-faces-death-threats-barraged-with-hate-calls>.

³⁰In 2012, Washington voters approved same-sex marriage legislation passed by the state legislature. See, e.g., Rachel La Corte, *Washington Voters Approve Gay Marriage*, Seattle Times (Nov. 8, 2012), http://seattletimes.com/html/politics/2019639905_apusgaymarriage.html.

³¹Voters rejected the ballot measure thereby approving the legislation. See, e.g., Rachel La Corte, *Voters Approve ‘Everything but Marriage’ Bill*, KOMOnews.com (Nov. 5, 2009), available at <http://www.komonews.com/news/69333537.html>.

Representatives allegedly received a death threat against her and her family on the same day that a local newspaper published an article reporting her support for Referendum 71. *See* Plaintiffs' Response to Defendants' Motion for Summary Judgment at 1–3, *Doe v. Reed*, 823 F. Supp. 2d 1195 (W.D. Wash. 2011) (No. 3:09-cv-05456-BHS). In another incident, someone allegedly responded to a YouTube video showing this candidate explain her support for traditional marriage by posting a comment stating, "Oh my God, this woman is so [expletive deleted] stupid. Someone please shoot her in the head, again and again." *Id.*

Newsweek, in a story about harassment involving Referendum 71, described an Internet post that stated, "I advocate using violence against the property of ALL of those who are working tirelessly to HURT my family; starting with churches and government property . . . any NORMAL man would be driven to get a gun and kill those who tried such evil cruelty against his loved ones." Krista Gesaman, *Threats, Legal Action in Washington's Gay-Marriage Debate*, Newsweek (Sep. 8, 2009).³² The posting specifically named the campaign manager for the one of the groups supporting Referendum 71.³³

³²*Available at* <http://www.thedailybeast.com/newsweek/blogs/the-gaggle/2009/09/08/threats-legal-action-in-washington-s-gay-marriage-debate.html> (quoting Internet posting).

³³*See* Letter from Stephen Pidgeon to Public Disclosure Commission Ex. 1 (Aug. 6, 2009), *available at* <http://www.pdc.wa.gov/archive/commissionmeetings/meetingshearings/pdfs/2009/8.27.09.mod.pmw.pdf> (reproducing Internet posting).

That campaign manager, in turn, reportedly “received many harassing and threatening emails,” Plaintiffs’ Renewed Notice of Motion and Motion for Protective Order 8, *Reed*, 823 F. Supp. 2d 1195 (No. 3:09-cv-05456-BHS), including one email from an individual who allegedly “stated that he hoped that [the campaign manager and his wife] would have to watch [their] daughters being molested and raped,” Plaintiffs’ Response to Defendants’ Motion for Summary Judgment Ex. 13, at ¶ 4, *Reed*, 823 F. Supp. 2d 1195 (No. 3:09-cv-05456-BHS). At one point the campaign manager became so worried that he allegedly “made his children sleep in an interior living room because he feared for their safety if they slept in their own bedrooms.” Verified Complaint for Declaratory and Injunctive Relief at ¶ 27, *Reed*, 823 F. Supp. 2d 1195 (No. 3:09-cv-05456-BHS).

Citizens have also debated the marriage issue in Maine. In 2009, shortly after voters approved a ballot measure that overturned same-sex marriage legislation previously passed by the state legislature,³⁴ the headquarters of a group that had supported the ballot measure allegedly received a voicemail stating, “You will be dead. Maybe not today, not tomorrow. But soon you’ll be dead.” *Threats Made Against Gay Marriage Opponents in Maine*, Bangor Daily News (Nov. 9, 2009, 10:28 AM).³⁵ When a high school counselor in Maine

³⁴Maine voters approved same-sex marriage in 2012. See Geoffrey A. Fowler, *Gay Marriage Gets First Ballot Wins*, Wall St. J. (Nov. 7, 2012), <http://online.wsj.com/article/SB10001424052970204755404578102953841743658.html>.

³⁵Available at <http://bangordailynews.com/2009/11/09/politics/>

appeared in an ad supporting the traditional understanding of marriage, two ethics complaints were filed against him with a state licensing board, even though another teacher from the same school had appeared in an ad supporting sex-marriage. *See* News Release, Alliance Defending Freedom, Complaints Dismissed Against Maine Counselor Who Supported Marriage (Apr. 12, 2010).³⁶ In another case, a woman from Maine alleges that, soon after she told a manager at work that “not everyone agrees with same-sex marriage,” she was no longer scheduled for any hours and her position was later filled with someone else. *See Maine Sisters, Marriage Anti-Defamation Alliance* (Nov. 7, 2012) (footage from 2:30–3:15).³⁷

In Rhode Island, volunteers holding signs in support of the traditional understanding of marriage were allegedly attacked by a group of four women. *See* Plaintiffs’ Motion for Summary Judgment and Brief in Support of Motion for Summary Judgment Ex. 4, at 412, *Reed*, 823 F. Supp. 2d 1195 (No. 3:09-cv-05456-BHS) (reproducing Maria Armental, *Same-sex Marriage Protestors Assaulted with Food*, Projo 7

threats-made-against-gay-marriage-opponents-in-maine/. *See* *Question 1 Backers Receive Death Threats, Former Homosexual Leader Says They Should Not Live in Fear*, Catholic News Agency (Nov. 16, 2009), available at http://www.catholicnewsagency.com/news/question_1_backers_should_not_live_in_fear_after_death_threats_former_homosexual_leader_says/ (reporting same death threat with slightly different wording and also reporting second death threat).

³⁶Available at <http://www.adfmedia.org/News/PRDetail/3330>.

³⁷Available at <http://marriageada.org/maine-sisters/>.

to 7 News Blog (July 29, 2009)). According to a press release, “Three women approached us – one threw mayonnaise, while the other two grappled with our photographer. Then we were sprayed with mace. Finally, a burly woman got out of a car and punched our photographer in the face. They shouted obscenities the whole time.” Press Release, The American FTP, Traditional Marriage Group Assaulted by Pro-homosexual Activists: Police Report Filed (July 28, 2009).³⁸

In Minnesota, a former gubernatorial candidate alleges that he lost a professional opportunity in higher education because of his support for marriage as one man and one woman. See Doug Belden, *Tom Emmer Says He’s a Victim of ‘Political Bigotry,’* St. Paul Pioneer Press, Dec. 13, 2011. The individual claims that a university had agreed to hire him for a teaching job and to fill a position as “executive in residence” but that the university—which has denied that a “finalized agreement” was ever in place, see *id.*—changed course after certain staff members “objected to his political views, including his opposition to same-sex marriage.” Dennis Lien, *Emmer Says Hamline Reneged on Job Offer Because*

³⁸Available at <http://www.tfp.org/current-campaigns/traditional-marriage-crusade/press-release-traditional-marriage-group-assaulted-by-pro-homosexual-activists-police-report-filed.html>. See Kate Bramson, *Update: 4 Accused of Hurling Food at Activists in Warwick*, Providence Journal (July 30, 2009), <http://news.providencejournal.com/breaking-news/2009/07/four-charged-in.html> (reporting that police arrested four women on various charges).

of Faculty Opposition, St. Paul Pioneer Press, Dec. 13, 2011. See Belden, *supra*.

In Washington, D.C., a congressionally established university for deaf and hard of hearing students reportedly placed its “chief diversity officer” on administrative leave *simply for signing a petition* to allow Maryland voters to vote on the question of marriage directly. See, e.g., Angela McCaskill, *Gallaudet University Chief Diversity Officer, Placed On Leave For Signing Anti-Gay Marriage Petition*, Huffington Post (Nov. 18, 2012);³⁹ *Statement from Gallaudet University President T. Alan Hurwitz Regarding the Chief Diversity Officer*, Post to Facebook Page of Gallaudet University, Facebook (Oct. 10, 2012, 12:56 PM EST).⁴⁰ After the petition signatures were posted online by a LGBT-oriented news source, a faculty colleague reportedly saw the signature and submitted a complaint to the university’s president asking for disciplinary action. See Dominique Ludvigson, Op., *Marriage Debate: Reason to Worry About Free Speech and Religious Freedom*, St. Paul Pioneer Press (Oct. 29, 2012).⁴¹ The university took nearly three months to reinstate the employee. *Angela McCaskill Reinstated: Gallaudet University Diversity Officer Returns Three*

³⁹Available at http://www.huffingtonpost.com/2012/10/10/angela-mccaskill-gallaudet-gay-marriage-petition_n_1955814.html.

⁴⁰Available at <https://www.facebook.com/Gallaudet1864/posts/10151220323200854>.

⁴¹Available at http://www.twincities.com/opinion/ci_21882345/dominique-ludvigson-marriage-debate-reason-worry-about-free.

Months After Signing Anti-Gay Marriage Petition, Huffington Post (Jan. 8, 2013).⁴²

Harassment against traditional viewpoints appeared to reach new heights when, on August 15, 2012, an individual allegedly shot and wounded a security guard at the Washington, D.C. headquarters of a conservative policy organization that supports marriage as one man and one woman. See, e.g., Criminal Complaint, Nabors Aff. at ¶¶ 8, 9, 11, *United States v. Corkins*, No. 1:12-cr-00182-RWR (D.D.C. Aug. 16, 2012) (docket last checked Jan. 25, 2013). The shooter's motives, as some might put it, do not yet appear to have been subjected to "adversarial testing." Brief of *Amici Curiae* Lambda Legal Defense and Education Fund, Inc., et al. in Support of Respondents at 3, *Reed*, 130 S. Ct. 2811 (No. 09-559) ("Lambda Br."). See Press Release, LGBT Organizations Release Joint Statement Regarding the Shooting at Family Research Council (FRC), GLAAD (Aug. 15, 2012) (emphatically condemning shooting and stating that "motivation and circumstances" behind it "are still unknown").⁴³ But according to initial evidence put forth by the Government, the shooter was witnessed "stat[ing] words to the effect of, 'I don't like your politics,'" and had in his possession "fifteen sandwiches from Chick-fil-A." Nabors Aff. at ¶¶ 8, 11, *supra*. The allegation about the Chick-fil-A sandwiches drew

⁴²Available at http://www.huffingtonpost.com/2013/01/08/angela-mccaskill-reinstated-gallaudet_n_2432838.html.

⁴³Available at <http://www.glaad.org/blog/lgbt-organizations-release-joint-statement-regarding-shooting-family-research-council-frc>.

attention because the shooting occurred soon after several public officials throughout the country—including the mayor of Washington, D.C.—judged it to be an appropriate use of their bully pulpits to publicly criticize Chick-fil-A for statements made by a senior company executive in support of the traditional understanding of marriage. *See, e.g.*, Todd Starnes, *D.C. Mayor Calls Chick-fil-A “Hate Chicken,”* Fox News Radio (July 29, 2012) (explaining that “[o]fficials in at least a half dozen American cities have vowed to strong arm Chick-fil-A after the company’s president said he supports the traditional view of marriage”);⁴⁴ Alan Blinder, *Gray Won’t Back Chick-fil-A in D.C.*, *The Examiner* (July 26, 2012);⁴⁵ *see also* Nabors Aff. at ¶¶ 8, 11, 14, *supra*, (asserting that “a senior executive of Chick-fil-A, Inc., recently announced publicly his opposition to same-sex marriage,” this announcement “received substantial publicity,” the institution where the shooting occurred “is a Christian conservative policy organization which supports traditional marriage,” and the defendant’s parents informed law enforcement officials that the defendant “has strong opinions with respect to those he believes do not treat homosexuals in a fair manner”).

⁴⁴*Available at* <http://radio.foxnews.com/toddstarnes/top-stories/d-c-mayor-calls-chick-fil-a-hate-chicken.html>.

⁴⁵*Available at* <http://washingtonexaminer.com/gray-wont-back-chick-fil-a-in-d.c./article/2503362#.UPsVmidEGSp>.

III. Some Responses Have Failed to Understand or Address the Concerns Raised by Harassment Against People and Groups that Support Marriage as One Man and One Woman.

Some proponents of same-sex marriage, as stated above, *see supra* at 2, have condemned certain forms or instances of harassment directed against people and groups that support marriage as one man and one woman. The Marriage Anti-Defamation Alliance welcomes all expressions of support for a more civil debate that—instead of demonizing people and chilling their speech—focuses on core issues such as the public purposes, goods, and meaning of marriage. The Marriage Anti-Defamation Alliance also joins all people of good will in condemning any threats, violence, or other forms of harassment that have been directed against people who opposed Prop 8 or who support redefining marriage to include same-sex unions more generally.⁴⁶

In some cases, however, proponents of redefining marriage to include same-sex unions have responded by disparaging claims that people who support

⁴⁶One brief, for example, cites three sources that discuss alleged harassment that was both somehow connected to Prop 8 and directed against either opponents of Prop 8 or individuals in the LGBT community. *See* Lambda Br. at 12, 27, and 29. *See also id.* at 11–12 (discussing incidents said to be correlated more generally to political debate concerning marriage issue); *id.* at 5–7 (discussing hate crimes statistics and other reports more generally); *id.* at 36 (discussing boycotts by conservative groups).

marriage as one man and one woman in our society today face the real risk of harassment. In responding to attempts to expose hostility and harassment, for example, some proponents of same-sex marriage have used words such as “outlandish,” Lambda Br. at 39, “cynical[],” *id.* at 39, “diversion strategy,” Bret Evans & Jeff Krehely, *Voters as Victims: A Right-Wing Sleight of Hand*, Center for American Progress (Apr. 27, 2010),⁴⁷ “side issue[],” *id.*, “feint of victimization,” Lambda Br. at 4, “sleight of hand,” Evans & Krehely, *supra*, (capitalization modified), “hypocritical shamelessness,” *id.*, “cynical political tactic,” *Washington United for Marriage Condemns Harassment but Notes Pervasive Political Tactic*, Washington United for Marriage,⁴⁸ and “absurd,” Zack Ford, *NOM Pushes Self-Victimization With New ‘Marriage Anti-Defamation Alliance,’* Think Progress (Sept. 23, 2011, 2:03 PM).⁴⁹

The given reasons for disparaging attempts to expose harassment against people with traditional viewpoints vary widely. One brief, for example, argues at great length that harassment against people who support traditional marriage is not “systematic.” Lambda Br. at 3–4, 17–39.

⁴⁷*Available at* <http://www.americanprogress.org/issues/lgbt/news/2010/04/27/7683/voters-as-victims-a-right-wing-sleight-of-hand/>.

⁴⁸*Available at* <http://washingtonunitedformarriage.org/shington-united-for-marriage-condemns-harassment-but-notes-pervasive-political-tactic/>.

⁴⁹*Available at* <http://thinkprogress.org/lgbt/2011/09/23/327380/nom-pushes-self-victimization-with-new-marriage-anti-defamation-alliance/?mobile=nc>.

Nonsystematic harassment, though harder to organize against, is probably preferable to systematic harassment—but either form is a problem for the people that experience it. The same brief also responds to certain evidence of harassment, including certain “news reports,” *id.* at 23, by stating that it had not been subjected to “adversarial testing,” *id.* at 23 n.25, and was mostly “inadmissible hearsay,” *id.* But this Court has credited sources such as news reports in this context, *see Hollingsworth*, 130 S. Ct. at 713 (citing compilation of “71 news articles detailing incidents of harassment related to people who supported Proposition 8”), and not every instance of harassment results in full-blown litigation with lawyers on both sides and a judge in the middle.

That brief also heavily spins certain allegations or aspects of harassment. For example, an incident involving a Prop 8 supporter who reportedly was taken to the hospital for medical treatment after being punched in the face by someone who had yelled “What do you have against gays?” *see supra* at 13, is downplayed as “someone threw a punch in a scuffle,” Lambda Br. at 25. Elsewhere, the “extensive media coverage” of certain harassment surrounding Prop 8 is attributed to the “exotic” nature of the harassment, *id.* at 22, rather than to widespread concerns about breakdown of political discourse or the “unsettling consequences” of “disseminating contributors’ names and addresses to the public through searchable websites,” Reply Brief for Appellant at 29, *Citizens United*, 130 S. Ct. 876 (No. 08-205); *see Dick Carpenter, Neighbor Against Neighbor*, Wall St. J. (Apr. 28, 2010) (stating that

posting personal information about Prop 8 donors on Internet “led to death threats, physical violence, vandalism and economic reprisals”).⁵⁰ Similarly, an orchestrated church invasion—by a group that at one point in its history allegedly depicted itself wearing terrorist-like garb and brandishing weapon-like objects—is passed off as a “juvenile stunt” and “possible” trespass, “at most,” Lambda Br. at 25;⁵¹ a federal court, in contrast, has since issued a special order to protect the church’s witnesses and permanently enjoined the defendant group from further “harassing or intimidating” the church’s members and staff, *see* Permanent Injunction at 2, *Mount Hope Church v. Bash Back!*, 1:09-cv-00427-RHB (W.D. Mich. July 11, 2011); Protective Order, *Mount Hope Church v. Bash Back!*, 1:09-cv-00427-RHB (W.D. Mich. July 11, 2011).

Attempts to soft pedal other harassment or hostilities come off no better. One source explains that destruction and theft of pro-Prop-8 signs caused

⁵⁰*Available at* http://online.wsj.com/article/SB10001424052748703465204575208453830203396.html?mod=djemEditorialPage_h.

⁵¹The incident in question is discussed *supra* at 18. Attorneys for the church have posted a “banner photo,” *see Bash Back! Photos*, Alliance Defending Freedom, <http://oldsite.alliancedefensefund.org/userdocs/BashBackPhoto.jpg>, which they assert was featured on the defendant group’s web site and shows “members dressed in terrorist-like garb and wielding various objects as weapons,” News Release, Alliance Defending Freedom, ADF Files Suit Against Radical Group That Invaded Mich. Church (May 13, 2009), *available at* <http://www.adfmedia.org/News/PRDetail/2263>.

no “personal physical harm.” Evans & Krehely, *supra*. But many types of harassment—such as death threats or loss of professional opportunities—involve no “physical” harm. Similarly, another source explains that threats against “visible advocates” on “hotly-contested issues” are an “unfortunate reality.” Lambda Br. at 27. *See id.* (stating that people “who assume leadership in political campaigns” should not be “subjected to such threats” but it is “unfortunately not uncommon”). Even if true, this hardly makes exposing such threats a “cynical[],” Lambda Br. at 39, “feint of victimization,” *id.* at 4.

Other attempts to downplay harassment are more disheartening. One source, for example, states that certain people who suffered harassment “thrust themselves into a position where an unfriendly reaction was foreseeable.” *Id.* at 25. Similarly, the fact that obscene gestures made toward Prop 8 supporters took place while they were holding Prop 8 signs in public places is said to “evidenc[e]” those individuals’ “own actions” in directing their speech at a “potentially unfriendly audience,” *id.* at 35. Variations of the “she was asking for it” argument are never tasteful.

More generally, some proponents of same-sex marriage have attempted to paint discussion of harassment as a “red herring[]” designed to “distract” people from core issues because, the argument goes, support for marriage as one man and one woman is losing ground. Evans & Krehely, *supra*. This argument is as disingenuous as it is desperate. The reason that the groups such as the

Marriage Anti-Defamation Alliance attempt to expose harassment of people that support marriage as one man and one woman is because people are being harassed for supporting marriage as one man and one woman. America should be a place where passionate moral disagreements about important issues such as marriage are expressed with respect, thoughtfulness, and civility and without fear, or threats of retaliation, on both sides. See *FEC v. Hall-Tyner Election Campaign Committee*, 678 F.2d 416, 420 (2d Cir. 1982) (explaining that “[s]ociety suffers” when “the free flow of ideas, the lifeblood of the body politic,” is reduced). If support for marriage is not as strong as it once was, one possible reason is that the pressure tactics and extreme hostility often associated with same-sex marriage advocacy are bearing some fruit. When people who support marriage as one man and one woman feel intimidated by the potential for reprisals and harassment merely by donating, signing a petition, holding a sign in public, putting a bumper sticker on their car, or even just going to work, having a free and fair debate on the issue is obviously much more difficult. Whether or not certain people and groups laboring in the cause of same-sex marriage favor precisely that outcome is a question for each of those people and groups to answer for themselves.

Perhaps the most vigorous response to allegations of harassment, however, is the argument that harassment against people who support marriage as one man and one woman is “dwarf[ed]” by harassment against people who experience same-sex attraction. Lambda Br. at 5; Evans & Krehely, *supra* (explaining that “crimes” against Prop 8

supporters must be put into “context” by “comparing” them to the number of hate crimes regularly faced by LGBT community). This argument is obviously and understandably deeply felt but reveals an equally deep misunderstanding of the purpose of a group such as Marriage Ant-Defamation Alliance in laboring to expose harassment against people who support marriage as one man and one woman. If a political group is widely perceived to use methods that result in harassment, intimidation, or violence against opponents, that can undermine whatever political power that group might otherwise attain. This case presents legal questions regarding the political power of Prop 8 opponents, not the political power of Prop 8 supporters. Therefore, as a legal matter, harassment directed against Prop 8 supporters is relevant to questions of political power in a way that any harassment going the other direction is not. For its part, however, the Marriage Anti-Defamation Alliance opposes *all* violence and injustice against *any* person or institution *no matter* their viewpoint on marriage. Instead of their speech being “demonize[d] and silence[d],” Lambda Br. at 4., people who support marriage as one man and one woman should feel “open, honest and safe at home, at work and in the community,” *id.* at 2, and the same is true, of course, for people who engage in the political process to support redefining marriage to include same-sex unions. The purpose of shining a light on harassment is to refocus the marriage debate on core issues and to increase civility, not to win an interest group competition.

CONCLUSION

Proponents of redefining marriage to include same-sex unions have come to enjoy significant political and cultural power in this country. *See, e.g.*, Br. on the Merits for Respondent the Bipartisan Legal Advisory Group of the U.S. House of Representatives, *supra*, at 51–54. If they do not enjoy as much power as they would like, one likely reason is the growing public awareness of the harassment and reprisals directed against people and groups that continue to stand for marriage as one man and one woman. As Plaintiffs’-Appellees’ own expert witness has testified in this case, “if a group is trying to use an appeal to an internalized norm of fairness or equity, the moment it engages in violence, much of that appeal dissipates,” Trial Tr., *supra*, at 1718:16–19, and the same could be said about certain forms of nonviolent harassment.

Despite the chilling effect of political reprisals and other acts of hostility, many people in this country continue to demonstrate great civic courage in endeavoring to preserve marriage as a vital social institution that promotes the public interest in strengthening the unique relationship between mothers, fathers, and children. This perseverance, often in the face of great hostility, testifies to their good will and honest belief that society benefits from strengthening marriage rather than redefining it in a way that would divorce it from its roots in human biology and the needs of children. Those views are worthy of reflection and the people who hold them are worthy of respect.

For this reason, and for the reasons set forth by the Petitioners, *see generally* Br. of Petitioners, *supra*, the Court should reject any argument made in this case that support for marriage as one man and one woman is irrational, bigoted, or worse. Declaring marriage as one man and one woman to be an irrational and bigoted viewpoint *per se* would encourage even greater hostility than already exists against those who seek to preserve marriage as a fundamentally pro-child social institution that benefits all society. *Cf. Board of Trustees of University of Alabama*, 538 U.S. at 375 (Kennedy, J., concurring) (“the law can be a teacher”); *Goodridge*, 798 N.E. 2d at 963 (applying principle that government policy can “confer[] an official stamp of approval” on social attitudes and ideas). The harassment, intimidation, reprisals, and even violence documented in this brief reflect, at least in part, the social consequences of teaching that support for marriage as one man and one woman is no better than support for racism. The time for a more reasoned, open-minded, and civil debate is now.

The judgment of the Court of Appeals should be reversed, and Proposition 8 should be upheld as a matter proper for political deliberation by the citizens of the State of California.

Respectfully submitted,

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