

Nos. 19-251 & 19-255

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In the  
Supreme Court of the United States

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**Americans for Prosperity Foundation, *Petitioner***

*v.*

**Xavier Becerra, Attorney General of California,  
*Respondent***

and

**Thomas More Law Center, *Petitioner***

*v.*

**Xavier Becerra, Attorney General of California,  
*Respondent***

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

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**Brief of Amicus Curiae James Madison Center  
for Free Speech Supporting Petitioners**

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February 2021

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## **Question Presented**

California's Attorney General requires submission of both IRS Form 990 and Schedule B (disclosing donors) to the Register of Charitable Trusts. Amicus curiae addresses an aspect of the following issue:

Whether the Schedule B disclosure requirement violates charities' and donors' freedom of association and speech.

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## Interest of Amicus Curiae<sup>1</sup>

The purpose of the James Madison Center for Free Speech (“Madison Center”) is to support litigation and public education activities defending the rights of political expression and association. The Madison Center is an internal educational fund of James Madison Center, Inc., a District of Columbia non-profit corporation. Madison Center is tax-exempt under 26 U.S.C. 501(c)(3). See <https://www.jamesmadisoncenter.org>. Counsel for Amicus have authored articles, testimony, and comments and litigated numerous cases involving campaign-finance and free-speech issues. James Bopp, Jr. is Madison Center’s general counsel. Cases in which he was counsel in this Court include *Republican Party of Minnesota v. White*, 536 U.S. 765 (2002), *FEC v. Beaumont*, 539 U.S. 146 (2003), *McConnell v. FEC*, 540 U.S. 93 (2003), *Wisconsin Right to Life v. FEC*, 546 U.S. 410 (2006), *Randall v. Sorrell*, 548 U.S. 230 (2006), *FEC v. Wisconsin Right to Life*, 551 U.S. 449 (2007), *Citizens United v. FEC*, 558 U.S. 310 (2010), *American Tradition Partnership v. Bullock*, 567 U.S. 516 (2012), and *McCutcheon v. FEC*, 134 S.Ct. 1434 (2014).

### Summary of the Argument

In *NAACP v. Alabama*, 357 U.S. 449 (1958), this Court recognized “that compelled disclosure of affiliation with [advocacy] groups . . . may constitute an effective constraint on freedom of association,” *id.* at 462,

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<sup>1</sup> Rule 37 statement: Petitioners and Respondent in Nos. 19-251 and -255 consent to the filing of this brief; no counsel for any party authored this brief in whole or in part; and no person or entity other than amicus or its counsel funded its preparation or submission except for funding provided by the National Right to Life Committee, Inc.

so compelled disclosure requires special justification. In *Buckley v. Valeo*, 424 U.S. 1 (1976), this Court found that information about *donors* to organizations is similarly protected, so (i) all compelled disclosure requires special justification *id.* at 65-66, and (ii) even where it is generally justified, there must be exemptions for groups with a reasonable probability of threats, harassment, and reprisals, *id.* at 74. The legal harm of publicly exposing donors who wish not to be exposed is that it deters their affiliation with the groups to which they donate and thereby infringes on their First Amendment-protected rights of political association and collective speech.

Limiting the number of organizations providing donors' names and addresses by required submission of Schedule B decreases the potential for harm triggered by exposure to state officials and personnel and by inadvertent or intentional public disclosure. And consideration must be given to the "the gravity of the resulting injury." *United States v. Carroll Towing Co.*, 159 F.2d 169, 173 (2d. Cir. 1947). That is shown herein.

Extensive evidence of such threats, harassment, and reprisals was submitted in *ProtectMarriage.com-Yes on 8 v. Bowen*, 830 F. Supp. 2d 914 (E.D. Cal. 2011) ("*ProtectMarriage*"), *affirmed in part, dismissed in part, and remanded*, 752 F.3d 827 (9th Cir. 2014), *cert. denied sub nom. ProtectMarriage v. Padilla*, 135 S. Ct. 1523 (2015),<sup>2</sup> which informs the present cases. ProtectMarriage was a political committee formed to support Proposition 8—a ballot proposition and constitutional

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<sup>2</sup> *Buckley's* reasonable-probability test, 424 U.S. at 74, was interpreted narrowly and ProtectMarriage didn't get the exemption it sought despite its harms.

amendment recognizing marriage as between one man and one woman—and California required disclosure of its donors. This resulted in substantial harm to the advocacy group and its donors, submitted as evidence in *ProtectMarriage* and summarized here.

Because California required public release of identities, home addresses, and employers of donors to ProtectMarriage, political opponents were able to publish this personal information on websites with maps showing donors' homes and businesses so that aggressive activists could attack them there. The result of this vicious campaign was overwhelming evidence that the publicly disclosed information led directly to threats, harassment, and reprisals for the donors to the advocacy group. Documents filed provide: (1) undisputed testimony and evidence of over 80 instances of threats, harassment, and reprisals against 58 "John Does"; (2) links to 14 videos reporting and in some cases recording ugly and sometimes violent confrontations and "protests" with Prop 8 supporters, and; (3) 157 published accounts of threats, harassment, and reprisals directed at supporters of Prop 8. These vicious campaigns damaged their victims and cast a chill over supporters of traditional marriage who might have considered working with and contributing to ProtectMarriage or similar organizations.

This Court and its members have cited and acted on the evidence in *ProtectMarriage*, making it the quintessential example of threats, harassment, and reprisals emanating from disclosure of contributors.

The harm and chill from compelled disclosure of donors in *ProtectMarriage* show again why requiring submission of IRS Form 990 Schedules B to California requires strong, special justification.



## Argument

### **Evidence of Harm and Chill from Compelled Disclosure of Support for California’s Proposition 8 Supports Requiring Strong, Special Justification for Compelled Disclosure Here.**

#### **A. Due to the inherent chill on speech and association, mandating donor disclosure requires special justification and exemptions.**

Because compelled disclosure of political and ideological association imposes an inherent chill on speech and association, *NAACP*, 357 U.S. at 462 (“compelled disclosure of affiliation with [advocacy] groups . . . may constitute an effective constraint on freedom of association”), this Court in its wisdom has provided two sorts of protection against such compelled disclosure.

First, *all* compelled disclosure must be specially justified due to the *inherent* chill it imposes. In *Buckley*, 424 U.S. 1, this Court recalled the inherent chill established in *NAACP* and found association by contribution to be as protected as association by membership, *id.* at 65-66, so this Court required special justification for compelled disclosure of contributions too. The chill is inherent because, once one is disclosed, all that is required for harm is for hostile forces to target you, so the potential is always there. So the chill need not be proven and the government always must specially justify compelling disclosure, whether or not a group fits the second protection category.

Second, even where compelled disclosure has been specially justified, and so permitted, there must a second protection category. That provides exemptions for

groups establishing a reasonable probability of threats, harassment, and reprisals. *Id.* at 74. Notably, no group need prove the second category to require the government to meet its duty under the first category to specially justify its compelled disclosure.

The evidence summarized below from California's Proposition 8 experience is a contemporary example of why compelled disclosure of political and ideological association *always* requires special justification. The compelled disclosure of supporters of Proposition 8 (supporting traditional marriage) left those disclosed supporters subject to attack whenever someone chose to target them. And the chill on association and collective speech was well established in *ProtectMarriage*.

California's requirement that groups file IRS Schedule B discloses donors' political and ideological associations to state officials and personnel and increases the risk of public exposure. Given the inherent chill in such compelled disclosure, the government must specially justify its disclosure requirement. Limiting the number of organizations providing donors' names and addresses by required submission of Schedule B decreases the potential for harm triggered by inadvertent or intentional disclosure, while expanding that number into more jurisdictions increases that harm potential. And consideration must be given to the "the gravity of the resulting injury." *Carroll Towing Co.*, 159 F.2d at 173. That is established next.

**B. California's Proposition 8 experience provides evidence of harm from donor disclosure.**

Extensive evidence of donor harassment<sup>3</sup> was

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<sup>3</sup> "Harassment" is used collectively here to include

submitted in *ProtectMarriage*, 830 F. Supp. 2d 914, which evidence informs the present cases. ProtectMarriage was a citizen-advocacy group in California’s Proposition 8 (also called “Prop 8”) campaign, which sought a constitutional amendment to protect traditional marriage in the November 2008 California state elections. As Proposition 8 donor information was disclosed—required by California campaign-finance law—widespread, serious harassment of donors to ProtectMarriage occurred, along with harassment of those identified in any way as Prop 8 supporters. Together, this evidence supported an exemption that ProtectMarriage sought from disclosing donors under *Buckley*’s reasonable-probability test, 424 U.S. at 74, but the Test was interpreted narrowly and ProtectMarriage didn’t get the exemption. But this evidence also supports the special justification required for *all* such disclosure.

The *ProtectMarriage* district court summarized the evidence of harms in a useful way. 830 F. Supp. 2d at 917-23.

That evidence was from Plaintiffs’ summary-judgment Statement of Undisputed Facts (“Fact Statement”) and exhibits, which provide valuable evidence of harm for present consideration. The Fact Statement is doc. 251 on the docket for No. 2:090CV-00058-MCE-DAD, available via <https://pacer.uscourts.gov/>.

The Fact Statement cites (inter alia) Exhibits 1

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“threats, harassment, and reprisals.” *Buckley*, 558 U.S. at 367. Notably, this evidence applies *both* to a disclosure exemption (which was sought by ProtectMarriage) *and* to the general requirement that all compelled disclosure be specially justified (at issue with Schedule B disclosure).

through 4 (each with multiple parts), which are at docs. 246–1 through 250–3 on the docket.<sup>4, 5</sup>

Generally, the evidence showed that, because California required the public release of identities, home addresses, and employers of donors to ProtectMarriage, political opponents were able to publish this personal information on numerous websites, including Map-Questing the donors' homes and businesses so that aggressive activists could attack them there. And they did. The result of this vicious campaign was overwhelming evidence that the publicly disclosed informa-

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<sup>4</sup> The Fact Statement and exhibits are also available at [www.jamesmadisoncenter.org/cases/files/protect-marriage-bowen/plaintiffs-statement-undisputed.pdf](http://www.jamesmadisoncenter.org/cases/files/protect-marriage-bowen/plaintiffs-statement-undisputed.pdf) and [www.regulations.gov/document?D=IRS-2019-0039-8286](http://www.regulations.gov/document?D=IRS-2019-0039-8286). All active links herein were checked February 22, 2021. Some links cited in the evidence are now inactive (and are so noted) but were active when the evidence was introduced and so are historically accurate.

<sup>5</sup> Plaintiffs' Exhibits 1 through 4 were filed in support of ProtectMarriage's (and other plaintiffs') summary-judgment motion, i.e., doc. 245. Exhibits 1 through 4 contain broad categories of exhibits and were broken into smaller parts for filing: **Exhibit 1** is doc. 246–1 and doc. 246–2 (John Doe declarations); **Exhibit 2** is doc. 246–3 (election results); **Exhibit 3** is doc. 246–4 (videos); **Exhibit 4** is doc. 247–1 through doc. 250–3 (online and news articles and blog postings). Within Exhibits 1 through 4 are sub-exhibit identifications, e.g., Exhibit 4 is divided into ex. 4-1 through ex. 4-157. Despite being broken up for filing purposes each of plaintiffs' Exhibits 1 through 4 is internally numbered in the lower-right footer with numbers that are sequential throughout each (regardless of it being broken up), and citations herein are to those internal Exhibit numbers.

tion led directly to harassment directed at donors to an advocacy group. Documents filed provide: (1) undisputed testimony and evidence of over 80 previously unreported instances of harassment against 58 “John Does”; (2) links to 14 then-contemporary videos reporting and in some cases recording ugly and sometimes violent confrontations and “protests” with Prop 8 supporters, and; (3) 157 contemporarily published accounts of harassment directed at supporters of Prop 8. Among the incidents reported in this evidence were death threats, threats of violence, vandalism, threats of destruction of property, arson, threats of arson, angry and lewd protests, intimidating emails and phone calls, mailed envelopes of suspicious powder, entire web sites dedicated to blacklisting supporters of traditional marriage and similar causes, loss of employment and job opportunities, intimidation and reprisals on campus and in the classroom, economic reprisals and demands for “hush money,” and gross expressions of anti-religious bigotry, including vandalism and threats directed at religious institutions and religious adherents. Not surprisingly, this vicious campaign damaged the victims of it and cast a chill over supporters of traditional marriage who might have considered working with ProtectMarriage or other organizations in favor of traditional marriage. *See generally* Statement. *See also ProtectMarriage*, 830 F. Supp. 2d at 917-23 (district court’s evidence summary).

More specifically, on November 4, 2008, California passed Proposition 8, defining marriage as between one man and one woman. During and after the campaign, Prop 8 opponents publicized on the Internet the names, employers, and contact information of Proposition 8 campaign contributors from public filings to ha-

rass and intimidate them using (inter alia) then-active links at [www.eightmaps.com](http://www.eightmaps.com)<sup>6</sup> and [www.californiansagainsthate.com](http://www.californiansagainsthate.com).<sup>7</sup> This evidence was summarized in the Facts Statement and some quoted selections follow (with paragraph numbers replaced by bullet points):

**EightMaps.com and Blacklists**

- The efforts of individuals or groups who wish to inappropriately target persons who supported traditional marriage are greatly facilitated by Internet web sites that combine information gleaned from state-mandated political reports with other publicly available information, thus enabling those so inclined to more easily threaten and intimidate marriage supporters at home and at work.

Fact Stmt. ¶ 66.

- For example, the web site EightMaps.com [now inactive] is a GoogleMaps “mashup”<sup>8</sup> that combines data obtained from the California Secretary

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<sup>6</sup> Though this is no longer active, the Wayback Machine has page snapshots (not now disclosing donors). See, e.g., <https://web.archive.org/web/20110224025618/http://www.eightmaps.com/>.

<sup>7</sup> Though this is no longer active, the Wayback Machine has page snapshots(not now disclosing donors). See, e.g., <http://www.californiansagainsthate.com/>.

<sup>8</sup> “PCMag.com, ‘Mashup,’ [http://www.pcmag.com/encyclopedia\\_term/0,,t=&i=55949,00.asp](http://www.pcmag.com/encyclopedia_term/0,,t=&i=55949,00.asp) ([now inactive]) (defining ‘mashup’ as: ‘A mixture of content or elements. For example, an application that was built from routines from multiple sources or a Web site that combines content and/or scripts from multiple sources is said to be a mashup. The term became popular in the 2005 time frame.’).” Fact Stmt. ¶ 67 n.7.

of State (for political donation reports) with an interactive geographical map. (Exs. 4-152, 4-153.) An individual can use the web site to search for any city and print a map graphically illustrating the name, address, amount, occupation, and employer of each individual in that city who donated to Prop. 8. A *New York Times* article commented, “Eight-maps.com is the latest, most striking example of how information collected through disclosure laws intended to increase the transparency of the political process, magnified by the powerful lens of the Web, may be undermining the same democratic values that the regulations were to promote.” (Ex. 4-154.)

Fact Stmt. ¶ 67.

- Other web sites popularly called “blacklists” have sprung up that list citizens (and groups as well), by name, that contributed in support of Prop. 8. (*E.g.*, Exs. 4-58, 4-133, 4-139.) Each of the following web sites lists donors or known supporters of traditional marriage and encourages action against them:<sup>9</sup>

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<sup>9</sup> “The web site ‘You Can’t Hide Your Hate’ identifies individual supporters of Prop. 8, but includes a disclaimer that the web site does not advocate violence, vandalism, or threats, or, for that matter, even boycotts. (Ex. 4-114.) However, as the *Long Beach Press-Telegram* noted in an editorial, the web site’s actions speak louder than its quiet disclaimer. If nothing else, the editorial pointed out, the name of the web site—You Can’t Hide Your Hate—‘tars people . . . with a broad and clumsy brush,’ adding that so long as this debate rages, what is needed is a ‘huge dose of civility.’ (Ex. 4-113.)

In addition, at least two major California newspapers

- a. <http://www.californiansagainsthate.com> [now inactive] (Ex. 4-62)
- b. <http://fighttherightwingnuts.blogspot.com/2009/01/pro-h8-bigots-who-donated-in-palo-alto.html> [now inactive] (Ex. 4-110)
- c. <http://knowthyneighbor.org/> [now inactive] (Ex. 4-109)
- d. <http://www.mormonsstoleourrights.com/> [now inactive]<sup>10</sup>
- e. <http://mormonsfor8.com/><sup>11</sup> [now inactive] (Exs. 4-106, 4-105)
- f. <http://www.stopthemormons.com/> [now inactive] (Ex. 4-104)

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have compiled searchable databases on their respective web sites that enable easy access to look up Prop. 8 contributors. (Exs. 4-138, 4-83.)” Fact Stmt. ¶ 68 n.8.

<sup>10</sup> “It appears that MormonsStoleOurRights.com has been stripped of its content, but it is evident from other Internet blogs and article that the site was, for a time at least, the focal point of a ‘petition drive . . . to the IRS to strip the Mormon church of its tax exempt status.’ (See, e.g., Ex. 4-107.) In any event, the site MormonsStoleOurRights.com was only one of several web sites that openly called for the revocation of the Mormon church’s tax-exempt status because of its support for traditional marriage. (E.g., Exs. 4-14, 4-15, 4-19.)” Fact Stmt. ¶ 68 n.9.

<sup>11</sup> “Mormonsfor8.com is a web site whose goal is to identify every Mormon donor to Prop. 8. The site actively solicits help from visitors to the web site. The web site lists every individual contributor to Prop. 8, and whether each contributor is Mormon or not Mormon. It encourages visitors to the site to review the list, to spot the Mormons they know, and report them by sending an email to [yeson8donors@mormonsfor8.com](mailto:yeson8donors@mormonsfor8.com). (Ex. 4-105.)” Fact Stmt. ¶ 68 n.10.



g. <http://www.antigayblacklist.com/><sup>12</sup> [now inactive] (Ex. 4-10)

h. <http://www.hrc.org/news/11542.htm> [now inactive] (Ex. 4-21)

i. <http://www.dontbuyfrombigots.com/> [now inactive] (Ex. 4-28)

j. <http://www.afterellen.com/node/39787> [now inactive] (Ex. 4-98)

k. <http://boycotta-1selfstorage.com/> [now inactive] (Ex. 4-134).

Fact Stmt. ¶ 68.

- The blacklists have been used, for instance, to go onto the restaurant web site [yelp.com](http://www.yelp.com), and give bad reviews to restaurants that supported traditional marriage. (Ex. 4-123.) Others have spread the word via email (*e.g.*, Exs. 4-129, 4-154) and on sites like [Facebook.com](http://www.facebook.com) (*e.g.*, Ex. 4-137), [Craigslist.com](http://www.craigslist.com) (*e.g.*, Ex. 4-123), and [InsiderPages.com](http://www.insiderpages.com) (*e.g.*, Ex. 4-27).

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<sup>12</sup> “Though the web site [AntiGayBlacklist.com](http://www.AntiGayBlacklist.com) appears to have been removed, a print-screen of the web site is reproduced in Exhibit 4-190. Multiple media reports confirm its existence and its purpose. *Time* magazine, for example, reported that on ‘[AntiGayBlacklist.com](http://www.AntiGayBlacklist.com), individuals who gave money toward Prop. 8 are publicized, and readers are urged not to patronize their businesses or services.’ (Ex. 4-142; *see also, e.g.*, Ex. 4-128 (reporting that the writer personally ‘looked up the Anti-Gay Blacklist, a collection of names and affiliations lifted from the public record of political donations to the Yes on 8 campaign’).) Moreover, the original Anti-Gay Blacklist has been replicated (and is still available) at several web sites. (*See, e.g.*, Exs. 4-84, 4-99, 4-103.)” Fact Stmt. ¶ 68 n.11.

Fact Stmt. ¶ 69.

- Other emerging technology is also threatening the privacy of our political views. A new product called “Inbox Influence” is now being marketed by the Sunlight Foundation “that allows you to see the political contributions of the people and organizations that are mentioned in emails you receive”—simply by dragging the mouse over the name of any person or entity in the body of the email. (Ex. 4-27.) The Sunlight Foundation touts its product:

Inbox Influence provides details on any entity in the body of the email, plus information on both the sender of the email and the company from which it was sent. With it, you can even see how your friends and family have given to political campaigns. Perhaps Uncle Joe has more mainstream views after all?

(Ex. 4-26.)

Fact Stmt. ¶ 70.

- Several news reports confirm that the blacklists and other emerging political-exposure technology are being compiled by referencing government-compiled political exposure reports. For example, the *Los Angeles Times* reported that “activists” found their targets by “por[ing] through campaign contribution databases” (Ex. 4-123), and an article appearing in the *San Francisco Chronicle* reported that same-sex marriage advocates “harness[ed] technology and open-records laws in their efforts” to “focus on the Mormons” (Ex. 4-60).

Fact Stmt. ¶ 71.

- Those who publish the blacklists have used the fact that their data is compiled from publicly

available reports as justification for their actions. Fred Karger—founder of CaliforniansAgainstHate.com, which has its own blacklist dubbed the “dishonor roll”—was quoted: “People are going to do what they want, and it’s in this society where you have campaign reporting that is all public information.” (Ex. 4-123.)

Fact Stmt. ¶ 72.

- The advent of Internet blacklists, together with the tense and hostile atmosphere surrounding the debate over same-sex marriage, caused many in the media (across the political spectrum) to openly question whether society can handle, civilly, the instant availability of public records exposing private citizens’ controversial political views. The *Los Angeles Times*, for instance, ran an editorial entitled “Prop. 8—Boycott, or Blacklist?” with the subtitle “Shunning businesses is one thing; intimidation crosses the line.” The *Times* described the actions of those who blacklisted and boycotted Prop. 8 donors as the “vengeful campaign against individuals who donated to the gay-marriage ban.” “As much as we abhorred Proposition 8, there’s nothing to cheer about when private individuals are afraid to donate to the political campaigns of their choice because it may cost them their livelihood.” (Ex. 4-115.)

Fact Stmt. ¶ 73.

- Likewise, *The New York Times* published an article critical of what it called the “ugly specter of intimidation”—referring to several documented episodes of threats, harassment, and reprisals:

With tools like eightmaps—and there are bound to be more of them—strident political partisans can challenge their opponents directly, one voter

at a time. The results, some activists fear, could discourage people from participating in the political process altogether.

(Ex. 4-154.)

Fact Stmt. ¶ 74.

The described harassment campaign was facilitated by the compelled disclosure of contributors to committees supporting Proposition 8. This is clear from the fact that some John Does who made Prop 8 contributions that were publicly disclosed and suffered harassment were not otherwise known as Prop 8 supporters than by contributions. But equally important is evidence of persons harassed for being known Prop 8 supporters generally because, if one is likely to be harassed for supporting a cause, disclosure identifies one as a supporter. The Fact Statement provides evidence of both situations in (inter alia) summaries of the John Doe Declarations (with cites to the record). Declaration samples follow. Doc. 246–1.

#### **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 2008, 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 2008, 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. (Decl. of John Doe 1.)

Fact Stmt. ¶ 143.

#### **Declaration of John Doe #2**

John Doe #2 made two donations to ProtectMarriage.com and posted a "Yes on 8" bumpersticker on his car. Subsequently, in November 2008, 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. (Decl. of John Doe 2.)  
Fact Stmt. ¶ 144.

**Declaration of John Doe #4**

John Doe #4, an attorney who is the sole shareholder in his firm, donated funds to NOMCalifornia. 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 on 8 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](http://www.californiansagainsthate.org). (Decl. of John Doe 4.)

Fact Stmt. ¶ 146.

**Declaration of John Doe #5**

John Doe #5 contributed funds to ProtectMarriage.com. In November 2008, John Doe #5 received

an email suggesting that his company's image would be damaged as a result of his support of Proposition 8. John Doe #5 now feels threatened and uneasy knowing that his company could be targeted. (Decl. of John Doe 5.)

Fact Stmt. ¶ 147.

#### **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](http://www.californiansagainsthate.com). At the end of November 2008, 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!" (Decl. of John Doe 6.)

Fact Stmt. ¶ 148.

#### **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 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. (Decl. of John Doe 7.)

Fact Stmt. ¶ 149.

#### **Declaration of 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 published 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. (Decl. of John Doe 8.)

Fact Stmt. ¶ 150.

#### **Declaration of 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 2008, 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 2008, 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.

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. (Decl. of John Doe 9.)

Fact Stmt. ¶ 151.

The *ProtectMarriage* Fact Statements also summarized harms established by plaintiffs evidence under the headings of (inter alia) “Death Threats,” Doc. 251 at 5-6 (¶¶ 31-33); “Violence and Threats of Violence,” *id.* at 6-7 (¶¶ 34-35); “Chilled Speech,” *id.* at 7-9 (¶¶ 36-52); “Forced Resignations, Boycotts, and Demands for ‘Hush Money,’” *id.* at 9-13 (¶¶ 53-65); “Anti-Religious Hostility: Vandalism and Overt Threats,” *id.* at 16-25 (¶¶ 75-107); “Vandalized Vehicles, Homes, and Commercial Buildings,” *id.* at 25 (¶¶ 108-16); “Harassing and Intimidating Telephone Calls,” *id.* at 26 (¶¶ 117-20); “Emails and Letters,” *id.* at 26-27 (¶¶ 121-27); “Other Acts of Intimidation,” *id.* at 27-28 (¶¶ 128-31); and “Harassment and Intimidation on Campus

and in the Classroom,” *id.* 29-31 (¶¶ 138-42).

These cannot all be excerpted here, but some further summarized evidence is provided next, starting with “Death Threats”:

### **Death Threats**

- In California, the mayor of Fresno and a local pastor received death threats for opposing same-sex marriage. The threat against the mayor 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.” (Exs. 4-2, 4-3, 4-4.)

Fact Stmt. ¶ 31.

- The same perpetrator also mentioned a “little surprise” for a local pastor (who voiced support for traditional marriage) and “his congregation of lowlifes.” “Keep letting him preach hate and he’ll be sorry,” the perpetrator threatened. “He will be meeting his maker sooner than expected.” (Exs. 4-2, 4-3, 4-4.) The death threat against the pastor came “just days after some one egged [his] home and church.” (Ex. 4-5.) The threat also stated that anyone in Fresno displaying a Yes on Prop. 8 yard sign or bumper sticker was “in danger of being shot or firebombed.” (Exs. 4-2, 4-3, 4-4.) Police took the threats seriously, launched a criminal investigation, and took extra steps to protect the mayor and pastor. (Exs. 4-5, 4-6.)

Fact Stmt. ¶ 32.

- In 2008, a small group of Christians entered the “Castro District”—a predominantly homosexual neighborhood in San Francisco—to sing hymns and pray on the public sidewalks, something they had

been doing on a regular basis for years. (Exs. 4-7, 4-8, 4-9, 5-1.) On this occasion, however, their ordinarily peaceful gathering quickly escalated into a menacing situation. A large crowd of homosexuals surrounded the group, and one of the homosexuals hit one of the Christian women in the head with a book, knocked her to the ground, and then kicked her while she was lying on the ground. (Exs. 4-7, 4-8, 3-1.) The angry crowd shouted words like “haters” and “bigots” and then “started throwing hot coffee, soda and alcohol on [them] and spitting (and maybe even peeing) on [them].” (Ex. 4-8.) Several in the crowd started taking pictures of the Christians, threatening, “We’re going to kill you. We know who you are.” (Ex. 3-2.)

The group was surrounded by several guys with whistles, who “blasted them inches away from [their] ears continually.” (Ex. 4-8.) The mob then became violent, shoving and kicking some members of the group. Some shouted death threats at the group’s leader. A man in the Christian group reported that someone in the throng “repeatedly tried to pull his pants down.” (Ex. 4-7.) Video footage posted on the Internet shows a band of police officers dressed in riot gear fending off the angry crowd and escorting the Christians to safety. (Exs. 5-2, 5-3.) A local news source reported that “San Francisco Police officers in riot gear formed a line and escorted the religious group into a van to safely get them out of the area.” (Ex. 4-9.)

Fact Stmt. ¶ 33.

The *ProtectMarriage* record included extensive evidence of economic harm from being identified as a supporter of Prop 8, including by being a disclosed donor.

Doc. 251 at 9-13 (¶¶ 53-65). Excerpts follow:

**Forced Resignations, Boycotts, and Demands for “Hush Money” . . . .**

- Some were adamant about retribution. Chad Griffin, a political advisor to Hollywood executives said, “A dollar to the yes campaign is a dollar in support of bigotry, homophobia and discrimination. There are going to be consequences. Any individual who has held homophobic views and who has gone public by writing a check, you can expect to be publicly judged. Many can expect to pay a price for a long time to come.” (Ex. 4-116.)

Fact Stmt. ¶ 55.

- Scott Eckern was employed as director of the nonprofit California Musical Theater in Sacramento before being targeted for personally donating \$1,000 to Prop. 8. Once Mr. Eckern’s support for traditional marriage was discovered, the theater was “deluged” with criticism from prominent artists who supported same-sex marriage. (Ex. 4-117.) Critics included Marc Shaiman, the composer of *Hairspray*, who stated that his work could not be performed at the theater because of Mr. Eckern’s support for traditional marriage. (Exs. 4-118; see also Exs. 4-119, 4-120.) Mr. Eckern eventually resigned. (Exs. 4-117, 4-120, 4-121.)

Fact Stmt. ¶ 56.

- Richard Raddon was the director of the Los Angeles Film Festival before he landed in the cross-hairs of traditional marriage opponents. Mr. Raddon personally donated \$1,500 to Prop 8. As in the case of Mr. Eckern, once information about Mr. Raddon’s personal donation was disclosed to the state and published on the Internet, he became a

target of traditional marriage opponents. (Ex. 4-117; see also Ex. 4-122.) According to an op-ed in the *Wall Street Journal*, “A threatened boycott and picketing of the next festival forced him to resign.” (Ex. 4-117.)

Fact Stmt. ¶ 57.

- Some donors were targeted for truly insignificant contributions. Marjorie Christoffersen was a 67-year-old restaurant employee who donated \$100 to support traditional marriage in California. (Ex. 4-58.) Once information about Ms. Christoffersen’s \$100 donation was published on the Internet, traditional marriage opponents launched a protest against El Coyote, the restaurant where she worked—even though the restaurant itself had not made a donation—prompting the restaurant to offer activists a free brunch and Ms. Christoffersen to offer an apology. (See Ex. 4-58.) However, when Ms. Christoffersen refused to renounce her support for Prop. 8—like Scott Eckern and Richard Raddon, Marjorie Christoffersen is a Mormon—the meeting “turned ugly” and “[b]oisterous street protests erupted that night.” (Ex. 4-58.) “Hundreds of protesters converged on [the restaurant] . . . , and the picketing got so heated that LAPD officers in riot gear had to be called.”<sup>5</sup> (Ex. 4-123.) The *Los Angeles Times* referred to the demonstrators as an “angry mob.” (Ex. 4-124.) “The mob left, but so did the customers” (Ex. 4-124), the *Times* reported, and Ms. Christoffersen decided to take a leave of absence to protect the restaurant (which is owned by her mother) and the other employees who worked there. (Ex. 4-58; see also Ex. 4-125.)

Fact Stmt. ¶ 58.

### **C. Harms from Proposition 8 disclosure chilled speech and association.**

From a First Amendment perspective, chilled speech is a great, irreparable harm. *See, e.g., Elrod v. Burns*, 427 U.S. 347, 373 (1976). And there was ample evidence of speech being chilled by the Prop 8 harassment, which seems to have been an intent of that harassment. Doc. 251 at 7-9 (¶¶ 36-52). Excerpts follow:

#### **Chilled Speech**

- A California woman, though “ashamed to admit” it, refused to put a bumper sticker on her car in support of traditional marriage “because of the aggression directed towards [her] family and friends that resulted from their [public] support.” (Decl. of John Doe 39.)

Fact Stmt. ¶ 36.

- Another woman decided to remove the traditional marriage bumper sticker from her car after someone keyed her car and let the air out of the tires while she was in the grocery store. (Decl. of John Doe 12.)

Fact Stmt. ¶ 37.

- A woman from Michigan who had “no idea that [her] name would be made public” for making a donation in support of Prop. 8, admitted that had she known, she “probably would not have donated” because it “had been [her] intention to remain anonymous.” (Decl. of John Doe 27.)

Fact Stmt. ¶ 38.

- One father, concerned about the safety of his children, determined that he will no longer speak out publicly in support of traditional marriage. (Decl. of John Doe 30.)

Fact Stmt. ¶ 39.

- Another woman declared she would have to “seriously consider . . . the safety of [her] family in the future when deciding to support a cause similar to Proposition 8.” (Decl. of John Doe 45.)

Fact Stmt. ¶ 40.

- Another supporter will “think twice” about supporting a similar cause in the future because she is “worr[ie]d that someone could go after [her family.]” (Decl. of John Doe 19.)

Fact Stmt. ¶ 41.

- One father with young children will consider donating “a lesser amount under the disclosure threshold” in the future, or possibly donating to an organization in such a way that would not require him to divulge his name. (Decl. of John Doe 23.)

Fact Stmt. ¶ 42.

- And another woman admitted that her support for a similar cause in the future was “negatively affect[ed]” by the fact that her yard sign was stolen while her neighbors’ signs supporting same-sex marriage were left untouched throughout the entire campaign. (Decl. of John Doe 44.)

Fact Stmt. ¶ 43.

- Similarly, a mother in California who witnessed repeated vulgarities at sign-waving events said she felt nervous and scared, chose not to take her children with her, and worried about future violence to her family should she decide to support a similar cause in the future. (Decl. of John Doe 13.)

Fact Stmt. ¶ 44.

- Another woman concluded that in the future she would make sure that at least one man was with each group of sign wavers to help ensure the



safety and protection of the group. (Decl. of John Doe 20.)

Fact Stmt. ¶ 45.

- One man would not bring children to demonstrations in the future. (Decl. of John Doe 25.)

Fact Stmt. ¶ 46.

- One father, who was “blacklisted” on the Internet for his financial contribution in support of traditional marriage, became so concerned for the safety of his children that he contacted the children’s principal and made it explicit that only he or his wife were authorized to pick up the children from school. (Decl. of John Doe 23.)

Fact Stmt. ¶ 47.

- One man reported that although he intends to support causes similar to Prop. 8 in the future, he will look for alternative ways to contribute his money, which may involve finding a way to donate anonymously or through an organization that would allow him to keep his personal information and support from becoming public record. (Decl. of John Doe 53.)

Fact Stmt. ¶ 48.

- In one community, speech was chilled so significantly that newspaper editors could not convince anyone to submit opinion pieces presenting countervailing views in the same-sex marriage debate, absent a solemn pledge to keep their names anonymous. In 2008, the student newspaper at the University of California, San Francisco decided to reverse its policy prohibiting anonymous opinion letters—but only in the case of the same-sex marriage debate. The newspaper was prompted to make this special exception because it had “printed many

articles from those opposing Prop 8, but hadn't received any from the other side." After tracking down someone with a pro-traditional-marriage opinion, the newspaper endeavored "to get the writer to agree to use his name, but he refused, citing fear of harassment." (Ex. 4-101.)

Fact Stmt. ¶ 49.

- The editors of the paper treated seriously the decision to break from their standard policy. In a formal announcement explaining their rationale, the editors cited a newspaper article by the *San Francisco Chronicle's* Editorial Page Editor John Diaz that revealed what happened to a gentleman who had written a letter to the editor pleading with readers to "[p]lease show respect for democracy." (See discussion of Diaz's article in Plaintiffs' opening brief at pages 10–11.) The student editors concluded, "In this democracy, the way to rectify errors at the polls is to convince a majority at a future election of the rightness of your cause. No matter how passionately one feels about an issue, it is important to maintain a civil dialogue and a reasoned debate." (Ex. 4-101.)

Fact Stmt. ¶ 50.

- One woman reported that she is worried that she may lose her job as a result of her support for Prop 8. She wrote two letters to the editor advocating against same-sex marriage. The day after one of the letters was published, she heard her boss (who she suspects is a homosexual) conversing with an openly homosexual man in "[un]complimentary" tones. And a few weeks later her boss called her in and told her "he could not guarantee [her] job beyond the current year" and that she would be wise

to “keep [her] options open.” She “suspect[s]” that her support for Prop. 8 put her job “in jeopardy.” (Decl. of John Doe 16.)

Fact Stmt. ¶ 51.

- One man received several harassing and threatening phone messages and emails at work, some of which indicated that the senders knew where he worked and that they were going to attempt to have him fired. His co-workers, in fact, received emails informing them that he came “from a long line of bigots and racists.” (Decl. of John Doe 9.)

Fact Stmt. ¶ 52.

Thus, the result of these harassing actions was individuals intimidated from engaging in political speech and association. Though most prevalent in California, intimidation efforts have been directed at supporters of traditional marriage across the country.<sup>13</sup> Given

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<sup>13</sup>The harm to exposed Prop 8 contributors continued for years. See, e.g., Salvador Rodriguez, *Mozilla CEO Brendan Eich Resigns under Fire for Supporting Prop. 8*, L.A. Times (Apr. 3, 2014), [articles.latimes.com/2014/apr/03/business/la-fi-tn-mozilla-ceo-resigns-under-fire-prop-8-20140403](http://articles.latimes.com/2014/apr/03/business/la-fi-tn-mozilla-ceo-resigns-under-fire-prop-8-20140403). The system of matching people’s contributions and views with their addresses and other personal information that maximized the Prop 8 flood of threats and harassment has been replicated, expanded, and made almost instantly deployable. Even *journalists* are subject to having their personally identifying information exposed. See, e.g., Reporters Committee for Freedom of the Press, *The Dangers of Doxxing* (Spring 2015), [www.rcfp.org/journals/news-media-and-law-spring-2015/dangers-doxxing](http://www.rcfp.org/journals/news-media-and-law-spring-2015/dangers-doxxing) (“doxxing” “involves serious intimidation, harassment and threats against journalists that could interfere with their reporting, place them in real

current cancel culture and its enablement by Internet, social media, and the like, great care must be taken to protect the freedom of speech and association.

**D. This Court and its members have cited and acted on the *ProtectMarriage* record.**

This Court and its members have cited and acted on the evidence in *ProtectMarriage*, making it the quintessential example of threats, harassment, and reprisals emanating from disclosure of contributors:

- In *Hollingsworth v. Perry*, 558 U.S. 183 (2010), the Court relied on the record in *ProtectMarriage* in staying broadcast of the Prop 8 trial. *Id.* at 185-86.
- In *Doe v. Reed*, 561 U.S. 186 (2010) (harassment of traditional-marriage supporters), this Court rejected a facial challenge to Washington’s petition-signer disclosure but remanded for a possible exemption, *id.* at 200, and, concurring, Justice Alito said “widespread harassment and intimidation suffered by supporters of California’s Proposition 8 provides strong support for an as-applied exemption in the present case,” *id.* 205.
- In *Citizens United*, 558 U.S. 310, this Court cited amici briefs about harassment of Proposition 8 supporters, saying it was “cause for concern,” *id.* at 370, and Justice Thomas relied on the record in *ProtectMarriage* in dissenting from upholding contributor disclosure, *id.* at 480-85 (noting, inter alia,

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danger and, ultimately, drive them from the work they love.”). Ordinary disagreement is now considered to justify invoking violence. See Peter Boghossian, *Welcome to Culture War 2.0: The Great Realignment* (Nov. 8, 2019), [americanmind.org/essays/welcome-to-culture-war-2-0](https://americanmind.org/essays/welcome-to-culture-war-2-0)).

that “opponents of Proposition 8 compiled [government-disclosed personally-identifying contributor information] and created Web sites with maps showing the locations of homes or businesses of Proposition 8 supporters.”).

Because compelled donor disclosure chills association and collective speech, it *always* requires strong, special justification (and also exemptions for organizations with a reasonable probability of threats, harassments, or reprisals). The *ProtectMarriage* evidence is a sobering modern demonstration of the alacrity with which campaigns to harass donors are carried out and of the chill on donors resulting from such campaigns.

**E. The *ProtectMarriage* record supports requiring strong, special justification for compelled disclosure of political and ideological association.**

The *ProtectMarriage* record supports requiring strong, special justification for compelled disclosure of political and ideological association here. Submitting Schedules B to California exposes donors’ names and addresses to state officials and personnel and a serious risk of public disclosure. Multiplying the places where Schedules Bs are required amplifies the risk of exposure. Advocacy organizations exist to promote views on public issues that are universally controversial *somewhere*. The likelihood of donor information being used to launch harassment campaigns is heightened by the increased polarity of opinion in our society and the ease with which personally identifying information can be made public and shared to organize harassment campaigns to chill association and collective speech. The *ProtectMarriage* experience teaches that a serious

First Amendment injury can be inflicted by public disclosure of contributors to an advocacy group. So the compelled donor disclosure must be strongly, specially justified.

### **Conclusion**

Given the risk to First Amendment association and speech, the Court should require a strong, special justification of the compelled donor disclosure at issue. Absent such justification, this Court should rule for petitioners in these consolidated cases.

Respectfully submitted,

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