

No. 09-559

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In The  
**Supreme Court of the United States**

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JOHN DOE #1, JOHN DOE #2, AND  
PROTECT MARRIAGE WASHINGTON,  
*Petitioners,*

v.

SAM REED, ET AL.,  
*Respondents.*

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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  
ALLIANCE DEFENSE FUND  
IN SUPPORT OF PETITIONERS**

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

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

ADF has advocated for the rights of Americans to exercise their religious beliefs and to express those beliefs in the political arena. ADF has been directly or indirectly involved in at least 500 cases and legal matters, including cases before this Court such as *Good News Club v. Milford Central Schools*, 533 U.S. 98 (2001), *Mitchell v. Helms*, 530 U.S. 793 (2000); *Boy Scouts of America v. Dale*, 530 U.S. 640 (2000); and *Agostini v. Felton*, 521 U.S. 203 (1997).

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

## SUMMARY OF ARGUMENT

ADF contends that the potential for intimidation and harassment of petition signers increases when the government releases signers' identifying information to the public. Fear of harassment at the hands of pressure groups, which publish the identifying information on the Internet and encourage confrontation with signers, discourages people from signing petitions. As signing a petition is a form of political speech protected by the First Amendment, compelling disclosure of the identifying information operates as a restraint on political speech. The Washington Public Records Act ("PRA") restrains protected speech by compelling disclosure of petition signers' identities. Strict scrutiny should be used to evaluate the application of PRA to the referendum process. The District Court correctly applied this legal standard when granting the injunction. Further, release of signers' identifying information offends the senses in the same way that making a citizen's vote public does, reflecting our nation's history and traditions of anonymous participation in the political process. Accordingly, any application of Washington's PRA to compel the disclosure of signatures gathered in the referendum process violates the First Amendment and should not be permitted.

**ARGUMENT****I. THE DISTRICT COURT CORRECTLY RECOGNIZED THAT PETITION SIGNATURES ARE CORE POLITICAL SPEECH. SUCH SPEECH IS SUBJECT TO STRICT SCRUTINY.**

The rights to political speech, free association, and petitioning of the government are core, fundamental rights that include the right to exercise these rights in anonymity. These rights have been accorded specific protections throughout this nation's history and are essential to the functioning of a democratic society. Any government act that operates as a limitation on these rights is subject to strict or exacting scrutiny and can be upheld only if it is narrowly tailored to serve a compelling or overriding state interest.

**A. The First Amendment Protects The Fundamental Rights of Free Speech, Association, and Petitioning the Government.**

Throughout its history, this Court has consistently extolled the virtues and necessity of vigorously preserving the First Amendment's protections regarding freedom of speech and association. "The liberty of opinion keeps governments themselves in due subjection to their duties." *Grosjean v. Am. Press Co., Inc.*, 297 U.S. 233, 247-48 (1936) (quoting Erksine's Speeches 525 (High's ed.)). The fundamental right of free speech "reflects the belief of the framers of the

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

This Court has long recognized that political speech, in particular, lies at the core of these “indispensable” and “great” freedoms. *Thomas*, 323 U.S. at 529-30; *see also McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 346-347 (1995) (recognizing that political advocacy, even anonymous advocacy, of politically controversial viewpoint on referendum issue “is the essence of First Amendment expression”). “Competition in ideas and governmental policies is at the core of our electoral process and of the First Amendment Freedoms.” *Williams v. Rhodes*, 393 U.S. 23, 32 (1968).

Our form of government is built on the premise that every citizen shall have the rights to engage in political expression and association and to petition the government. These rights are enshrined in the

First Amendment. “The Court has recognized a right to associate for the purpose of engaging in those activities protected by the First Amendment—speech, assembly, petition for the redress of grievances, and the exercise of religion.” *Roberts v. U.S. Jaycees*, 468 U.S. 609, 618 (1984). “Any interference with the freedom of a party is simultaneously an interference with the freedom of its adherents. *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957) (plurality opinion). Accordingly, this Court has been, and always should be, “extremely reticent to tread” on the liberty of political expression. *Id.*

**B. The Court Has Long Protected the Right to Exercise First Amendment Rights Anonymously.**

An integral part of the freedoms of speech, association, and petition is the right of the speaker to choose to maintain his or her anonymity. *McIntyre*, 514 U.S. at 342; *Talley*, 362 U.S. at 62; *NAACP*, 357 U.S. at 462. “[A]n author’s decision to remain anonymous, like other decisions concerning omissions or additions to the content of a publication, is an aspect of the freedom of speech protected by the First Amendment.” *McIntyre*, 514 U.S. at 342. Historically, pamphlets and leaflets have been “weapons in the defense of liberty.” *Talley v. California*, 362 U.S. 60, 62 (1960) (quoting *Lovell v. Griffin*, 303 U.S. 444, 452 (1938)). Some of these “weapons” were either signed with pseudonyms or submitted anonymously; indeed “[a]nonymous pamphlets, leaflets, brochures and even books have played an important role in the

progress of mankind.” *See id.* at 63 n.3, 64. Patriots from the Revolutionary War era concealed their authorship or distribution so as to avoid potential prosecution; the writer of the Letters of Junius is still unknown; and even the Federalist Papers were published without disclosing the authors’ true identities. *Id.* at 65.

History has shown that “it is plain that anonymity has sometimes been assumed for the most constructive purposes.” *Id.* *See generally Citizens United v. FEC*, \_\_\_ U.S. \_\_\_, 175 L.Ed.2d 753, 871-72 (2010) (Thomas, J., concurring in part, dissenting in part) (emphasizing “right to anonymous speech”); *McIntyre*, 514 U.S. at 358-71 (Thomas, J., concurring) (recounting historical underpinnings for anonymity right). In fact, “an advocate may believe her ideas will be more persuasive if her readers are unaware of her identity. Anonymity thereby provides a way for a writer who may be personally unpopular to ensure that readers will not prejudge her message simply because they do not like its proponent.” *McIntyre*, 514 U.S. at 342.

A vital relationship exists between the freedom of association and *privacy* in those associations, and the government generally cannot compel group members to be publicly identified. *See NAACP*, 357 U.S. at 462-66; *Talley*, 362 U.S. at 65; *Bates v. City of Little Rock*, 361 U.S. 516 (1960). “[W]hether a group is popular or unpopular, the right of privacy implicit in the First Amendment creates an area into which the Government may not enter.” *Gibson v. Fla. Legis. Investigation Comm’n*, 372

U.S. 539, 570 (1963) (Douglas, J., concurring). “Inviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs.” *NAACP*, 357 U.S. at 462. “[I]dentification and fear of reprisal might deter perfectly peaceful discussions of public matters of importance.” *Talley*, 362 U.S. at 65. “Persecuted groups and sects from time to time throughout history have been able to criticize oppressive practices and laws either anonymously or not at all.” *Id.* at 64.

Under the First Amendment, this Court has protected the rights of both individuals and groups to anonymously distribute campaign literature. *See McIntyre*, 514 U.S. at 351-52. The Court has also protected the rights of an organization to anonymously distribute literature announcing an economic boycott over equal employment opportunities for minority groups, *see Talley*, 362 U.S. at 61.

Moreover, this Court and lower federal courts applying *NAACP* and its progeny have held that the First Amendment protects against forced disclosure of past political activities because such disclosure has a chilling effect on participation in the political process. Such protected activities include, among other things, attending political meetings, discussing common political views and goals with like-minded persons, strategizing about public-policy stances, evaluating possible legislation, and *petitioning* government officials to influence public policy. *See, e.g., DeGregory v.*

*Attorney Gen. of N.H.*, 383 U.S. 825, 828-29 (1966) (individual investigated for subversive activities could refuse to disclose political associations, meetings attended, and views and ideas expressed at such meetings because the “realm of political and associational privacy protected by the First Amendment” was not overcome by a compelling state interest); *Pleasant v. Lovell*, 876 F.2d 787, 795 (10th Cir. 1989) (protecting from disclosure advocacy concerning modification to tax laws); *FEC v. Machinists Non-Partisan Political League*, 655 F.2d 380, 384, 388 (D.C. Cir. 1981) (protecting documents related to “political expression and association,” including communications regarding decisions to support or oppose political candidates); *In re Motor Fuel Temperature Sales Practices Litig.*, 258 F.R.D. 407, 413-14 (D. Kan. 2009) (protecting confidential communications regarding legislative affairs and lobbying efforts); *Wyoming v. USDA*, 208 F.R.D. 449, 452, 454 (D.D.C. 2002) (protecting documents regarding regulations sent or received from government officials or other advocacy groups, meetings or conversations regarding regulations, reports or notes related to advocacy groups, and daytimers or diaries related to political activities); *Int’l Action Ctr. v. United States*, 207 F.R.D. 1 (D.D.C. 2002) (protecting from disclosure “political demonstration activities . . . , including dates, locations and a detailing of ‘all action’ related to demonstration activities”); *Austl./E. U.S.A. Shipping Conf. v. United States*, 537 F. Supp. 807, 810 (D.D.C. 1982), *vacated as moot*, 1986 WL 1165605 (D.C. Cir. Aug. 27, 1986) (quashing civil investigative demand due to

chilling effect on First Amendment activities where government sought documents regarding “petitioning the government,” including protests filed with administrative agencies).

**C. The First Amendment Protects  
Against the Compelled Public  
Disclosure of the Petitions at Issue.**

If the First Amendment protects against the compelled disclosure of activities *that relate to petitioning* the government and other political activities, as shown above, it surely also protects against the compelled disclosure of the petitions themselves. Forced public disclosure of the petitions in this lawsuit would not only reveal the *identity* of the signers, it would also make known the signers’ *political activity*—that is the activity of petitioning the state government to put a referendum on the ballot and the position that the signers almost certainly will take in the referendum. Relying on Washington’s statutory scheme for referendum qualification, which does not permit public release and dissemination of the petitions, the signers undoubtedly expected that they were participating in relative anonymity, with their identity being known only to the few like-minded individuals whose signatures appeared on the same page, the state verification official, and the direct proponents and opponents of the referendum.

The act of signing this type of petition implicates multiple First Amendment rights, including free speech, association, and petitioning the

government. This Court has held that persons have a right to participate in these protected activities in anonymity, if they so choose. “The decision in favor of anonymity may be motivated by fear of economic or official retaliation, by concern about social ostracism, or merely by a desire to preserve as much of one's privacy as possible.” *McIntyre*, 514 U.S. at 341-42. The Petitioners have clearly indicated a desire to have their identities, speech, associations, and political activities remain anonymous. This Court should honor this desire and expectation of anonymity by upholding the values of the First Amendment and the precedents of this Court.

## **II. PUBLISHING PETITION SIGNERS’ IDENTIFYING INFORMATION WILL DISCOURAGE PARTICIPATION IN THE POLITICAL PROCESS.**

The purpose underlying the Constitution’s protection of an individual’s right to maintain anonymity in speech is no less prominent today than in other periods of our nation’s history where important social and political issues were being debated and decided. The adverse consequences that may result from the voicing of one’s political expression are just as likely today as they have been at any time in this nation’s history. One has to look no further than recent election cycles for real-world examples of the reprisals which have been exacted on persons who have done nothing more than exercise their constitutionally protected right to express their political opinions, reprisals which appear to become more and more likely as

the tools to quickly and comprehensively transmit information continue to develop.

The examples below demonstrate a “reasonable probability” that the compelled public disclosure of the identities of the petition signers would chill First Amendment activity by subjecting them to “threats, harassment, or reprisals from either Government officials or private parties.” *Buckley v. Valeo*, 424 U.S. 1, 74 (1976). In showing the reasonable probability of a chilling effect on First Amendment freedoms, one may “offer evidence of reprisals and threats directed against individuals or organizations holding similar views.” *Id.*

Opponents of some initiative petitions have targeted individuals who merely attempted to collect the required number of signatures in order to place a measure on a ballot. In 2006, signature gatherers for the Tax and Spending Control (“TASC”) initiative petition filed a lawsuit against Nevadans for Nevada, a group formed to oppose the ballot measure. Molly Ball, [Tax and Spending Control Backers’ Foes Get Physical](#), Las Vegas Rev. J., June 7, 2006. (Appendix 1)<sup>2</sup>. The lawsuit alleged that opponents intimidated petition signers, blocked access to petitions, and poured soda over the petitions. *Id.* That lawsuit resulted in a court order commanding workers for Nevadans for Nevada to abide by a set of rules that would allow the TASC group to collect signatures. Carri

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<sup>2</sup> The appendices referenced herein are attached to, and submitted with, this brief.

Geer Thevenot, Judge Chides Ballot Groups, Las Vegas Rev. J., June 9, 2006. (Appendix 2).

In 2006, in Truro, Massachusetts, Leo Childs' bid for reappointment to the board of fire engineers was denied, in part, because Childs signed a petition against same-sex marriage. KnowThyNeighbor.org, *Petitioner Signer Denied Reappointment to Local Board*, available at [http://knowthyneighbor.blogspot.com/home/2006/04/petition\\_signer.html?cid=16496447](http://knowthyneighbor.blogspot.com/home/2006/04/petition_signer.html?cid=16496447) (last visited on March 3, 2010). Defending his vote, Selectman Paul Asher-Best said "There are a lot of households in Truro headed by gay and lesbian people, and I just need to make sure that they're going to have equal protection and not have people who are biased against them in charge of public safety situations." *Id.* Asher-Best became aware that Childs had signed the petition through the list of petition signers on the website KnowThyNeighbor.org. *Id.* The KnowThyNeighbor.org website indicates on its front page that Washington is "[u]p [n]ext," if this Court lifts the injunction and permits disclosure of signers' names. KnowThyNeighbor.org, available at <http://knowthyneighbor.org/> (last visited on March 3, 2010).

Earlier this year, in West Linn, Oregon, Mary Ann Mattecheck chose not to send in over 1,500 signatures to recall three city councilors, because she was worried about the consequences to the signers. Elizabeth Hovde, *Worried about Retaliation, Campaign Backer Keeps Signatures to Herself*, The Oregonian, February 8, 2010,

*available* *at*  
[http://www.oregonlive.com/hovde/index.ssf/2010/02/worried\\_about\\_retaliation\\_camp.html](http://www.oregonlive.com/hovde/index.ssf/2010/02/worried_about_retaliation_camp.html) (last visited on February 25, 2010). While collecting signatures, Mattechek received intimidating phone calls. *Id.* Additionally, one signer requested that Mattechek remove his name from the petition for fear of the adverse impact on his business or his family. *Id.*

Several recent examples of persons suffering from retributive acts for political speech come from California. Proposition 8 was a ballot proposal for a state constitutional amendment, confirming the definition of marriage as being between a man and a woman. Cal. Const. art. 1, § 7.5. The California Government Code requires any committee that supports or opposes a ballot measure to disclose the name, address, and employer of any individual who makes a contribution to that committee in an amount over \$100. Cal. Gov't Code §84211. The same code requires the California Secretary of State to post that information on the Internet. *Id.* §§ 84600–12. Activists used the personal information disclosed by the California Secretary of State to harass individuals who opposed the activists' point of view.

Many persons who contributed to organizations that supported the passage of Proposition 8 have suffered greatly as a direct result of the disclosure of their donation. Examples of retributive acts against donors in favor of the measure are prevalent and widespread. John R. Lott & Bradley Smith, [Donor Disclosure Has Its Downsides](#), Wall St. J., December 26, 2008 (Appendix 3).

Supporters of Proposition 8 have been subjected to threatening and harassing phone calls, emails, and postcards. See *ProtectMarriage.com v. Bowen*; 599 F. Supp. 2d 1197, 1201-04 (E.D. California 2009) Some of the phone calls and emails have been accompanied by death threats. *Id.* One such message relayed to a supporter “Consider yourself lucky. If I had a gun I would have gunned you down along with each and every other supporter....I’ve also got a little surprise for Pasor [sic] Franklin and his congregation of lowlife’s [sic] in the coming future . . . . He will be meeting his maker sooner than expected . . . . If you thought 9/11 was bad, you haven’t seen anything yet.” *Id.* at 1200.

Churches and religious organizations have also been targeted for their support of Proposition 8. *Id.* at 1201-04. Two temples owned by the Church of Jesus Christ of Latter-day Saints and a Knights of Columbus facility received envelopes containing a suspicious white powdery substance. *Id.* Similarly, Bash Back!, a homosexual activist group, noisily disrupted a worship service at Mount Hope Church near Lansing, Michigan by shouting and throwing pro-gay flyers. Church Sues Homosexual Activists for Disrupting Service, The Associated Press, May 14, 2009, *available at* <http://www.onenewsnow.com/Legal/Default.aspx?id=529214> (last visited on March 3, 2010). The group was protesting what Bash Back! members called the church’s “anti-queer agenda.” *Id.*

These intimidation tactics only add to already existing fears of retaliation for expressing one’s

opinion, seen in a recent Massachusetts poll “[t]hirty-six percent of all Massachusetts voters agreed with the statement, ‘Some people I know personally would be reluctant to admit they oppose gay marriage because they would worry about the consequences for them or their children.’ (Twenty-four percent agreed strongly).” Maggie Gallagher, *Five Years After Goodridge: Gay Marriage Divides Massachusetts Voters*, National Organization for Marriage, May 17, 2009, available at <http://www.nationformarriage.org/site/apps/nlnet/content2.aspx?c=omL2KeNOLzH&b=5075189&ct=7000219> (last visited on March 3, 2009)

Although much retaliation has come in the form of personal attacks and threats, the retribution has come in economic form as well. See Lott & Smith, Donor Disclosure Has Its Downsides. Scott Eckern, director of the nonprofit California Musical Theater in Sacramento, and Richard Raddon, director of the L.A. Film Festival, were both forced to resign from their jobs after their employers were targeted for protests and boycotts because of the individuals’ campaign donations to “Yes on 8,” the committee established to advocate for the passage of Proposition 8. Likewise, a Californian store owner who personally donated money to ProtectMarriage.com — Yes on 8, displayed a yard sign, and made phone calls on behalf of the campaign received retaliation because of the owner’s personal support for Proposition 8 and the subsequent compelled posting of that support. *ProtectMarriage.com*; 599 F. Supp. 2d 1197, Decl. of [John Doe #1] in Support of Plaintiffs’ Motion for Preliminary Injunction, ¶¶ 2–27 (Appendix 4).

Fliers referencing the owner's support of Proposition 8 were posted on cars parked in the store's parking lot, the store was picketed twice, harassing phone calls were made, and efforts were undertaken to cause persons to boycott the store because of the owner's personal support of Proposition 8. *Id.* at ¶¶ 8, 10–15. Additionally, Facebook groups have been created urging persons to boycott the store, a sponsored link on Google was purchased and the website referenced the owner's donation and urged a boycott, and negative reviews were posted on other websites based only on the store owner's personal donation to Proposition 8, made known through the donor-disclosure laws. *Id.* at ¶¶ 10–14.

Similarly, a boycott was organized against El Coyote, a California restaurant where Margie Christoffersen was a manager, when it was revealed that Christoffersen donated one hundred dollars in support of Proposition 8. Steve Lopez, *Prop. 8 Stance Upends Her Life*, Los Angeles Times, Dec. 14, 2008, available at <http://articles.latimes.com/2008/dec/14/local/me-lopez14> (last visited on Feb. 25, 2010). Activists wrote scathing reviews about the restaurant on various websites, and police had to break up a riotous group of protestors who were shouting at restaurant customers. *Id.* El Coyote had to cut the hours of restaurant employees, as business became uncharacteristically slow. *Id.*

The harassment to which supporters of Proposition 8 have been subjected goes beyond economic acts, extending to property damage and

physical violence. For example, in November 2008, someone used a “Yes on 8” yard sign, which was posted on property owned by a Lutheran Church, and a heavy object to break a large window on the church building. *ProtectMarriage.com*; 599 F. Supp. 2d 1197, Decl. of [John Doe #3] in Support of Plaintiffs’ Motion for Preliminary Injunction, ¶¶ 9-16 (Appendix 5). Churches owned by the Church of Jesus Christ of Latter-day Saints have been vandalized, one of which had the words “No on 8” spray painted upon it. Adrienne S. Gaines, Radical Gay Activists Seek to Intimidate Christians, *Charisma Magazine*, Nov. 19, 2008, *available at* <http://www.charismamag.com/cms/news/archives/11908.php> (last visited Dec. 5, 2008) (Appendix 6). Other churches were egged and toilet-papered, had a window broken, marquee vandalized, flags stolen, and adhesive poured onto a doormat, keypad, and window. *Id.* Other businesses’ buildings were spray painted with messages like “Prop H8TE.” Vandals Spray Paint Signs in Downtown Fullerton, *Orange County Register*, Oct. 20, 2008, *available at* <http://www.ocregister.com/articles/macdonald-one-police-2200383-paint-vandals#> (last visited Dec. 5, 2008) (Appendix 7).

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

A 69-year-old Palm Springs woman was allegedly pushed and spit on by protestors opposing Proposition 8. *Id.*

The harassment has become so severe that some of the contributors to the “Yes on 8” committee filed a lawsuit in federal district court to have their names removed from the California Secretary of State’s website. *See ProtectMarriage.com*, 599 F. Supp. 2d at 1197. The committee alleges that supporters of Proposition 8 have been subjected to threats, harassment, and reprisals for their support of Proposition 8. *Id.* at 1200. The reprisals were well-coordinated and were solely designed to punish the supporters of Proposition 8 for exercising their respective freedom of speech and association. In fact, opponents of Proposition 8 have gone so far as to establish a website that is designed to identify supporters of Proposition 8 and encourages donations to the website in order to “take action” against those that supported Proposition 8. *See* <http://www.californiansagainsthate.com>. There is also a website that plots the disclosed names, addresses, occupations, and employers of purported Proposition 8 supporters on a Google street map with the language: “Proposition 8 changed the California state constitution to prohibit same-sex marriage. These are the people who donated in order to pass it.” *See Prop. 8 Maps*, <http://www.eightmaps.com> (last visited March 4, 2010).

This brief discussion of recent reprisals exacted upon persons as a result of the exercise of their free-speech rights is indicative of the heated nature

of political debate and of the tensions inherent within the political process. When disclosure requirements subject political participants—participants who would rather act anonymously—to the types of retaliation described above, there is indeed “cause for concern.” *Citizens United v. FEC*, \_\_\_ U.S. \_\_\_, 175 L. Ed. 2d 753, 802 (2009). These examples should serve to remind this Court of the reasons why the First Amendment’s protections have always extended to protecting one’s right to choose to voice his or her opinion, especially one of a political nature, anonymously. They should serve also to remind the Court of the need to guard against any weakening of these protections.

**III. THE STATE CAN SATISFY ANY VALID INTERESTS IN ENSURING THE INTEGRITY OF THE REFERENDUM PROCESS JUST AS IT DOES IN ENSURING THE INTEGRITY OF ELECTIONS – THROUGH MEANS THAT DO NOT INFRINGE FIRST AMENDMENT RIGHTS.**

The Ninth Circuit lightly dismissed the chilling effect that the public identification of those who signed a referendum petition could have on participation in Washington’s referendum process. The court reasoned that only an “incidental effect” would occur by “deterring some would-be signers from signing petitions.” *Doe v. Reed*, 586 F.3d 671, 678 (9th Cir. 2009). The court identified two “important government interests” that were furthered by the PRA. The first identified interest was that of preventing fraud or “preserving the

integrity of the election by promoting government transparency and accountability.” *Id.* at 679. ADF concedes that this is a legitimate government interest, but publishing the names of petition signers is not a narrowly tailored method of pursuing the anti-fraud interest. The second purported interest was that of “providing Washington voters with information about who supports placing a referendum on the ballot.” *Id.* at 679. This purported interest simply is not a valid one, any more than it could be said to exist in the context of any other political speech, including the actual casting of a ballot.

Exposing petition signers to harassment by publicly identifying them is not narrowly tailored to advance the government’s fraud prevention interest in light of the many mechanisms currently in place to prevent fraud that do not require one’s anonymity rights to be violated. The mechanisms states use to prevent voter fraud can also prevent petition fraud without restricting the individuals’ freedom to choose to do so anonymously. In fact, Washington currently uses similar fraud prevention techniques to monitor elections and petition drives. For example, Washington allows referendum proponents and opponents to observe the canvassing of petition signatures. *See* Wash. Rev. Code § 29A.72.230. Similarly, representatives of major parties may be present to observe the voting at polling places during elections. *See* Wash. Rev. Code § 29A.44.410. Similar canvassing techniques are used to ensure the authenticity of votes cast and petitions signed. *See* Wash. Rev.

Code § 29A.72.230 (explaining canvassing of petition signatures) and Wash. Rev. Code § 29A.60.

The Ninth Circuit argues that publishing the names of petition signers allows the public to detect fraud and respond to it by challenging the certification of the petition in court. *See Doe v. Reed*, at 680. But the fraud-prevention interest is already served sufficiently by the existing – far less chilling – mechanisms listed above. Moreover, most forms of petition fraud (and election fraud) depend on inaccurate voter registration rolls to succeed. Publishing the names of petition signers does not significantly advance the public’s ability to prevent fraud when checking for inaccurate voting rolls is already possible. The voter registration rolls are public record and can be reviewed for errors without disclosing whether a voter signed a petition. *See* Wash. Rev. Code § 29A.08.720 (“Subject to the restrictions of RCW 29A.08.710 and 40.24.060, poll books, precinct lists, and current lists of registered voters are public records and must be made available for public inspection and copying under such reasonable rules and regulations as the county auditor or secretary of state may prescribe”).

The techniques used to prevent election fraud are sufficient to satisfy the government’s anti-fraud interest in the petition context. Exposing petition signers to harassment by publicly identifying them is not narrowly tailored to advance the government’s fraud prevention interest.

The second purported interest was that of “providing Washington voters with information about who supports placing a referendum on the ballot.” *Id.* at 679. This purported interest simply is not a valid one, any more than it could be said to exist in the context of any other political speech, including the actual casting of a ballot. Our nation’s traditions are based upon the freedom to express one’s viewpoint, especially those of a political nature, and to do so anonymously, if we so choose. *See McIntyre*, 514 U.S. at 343 (“respected tradition of anonymity in the advocacy of political causes . . . is perhaps best exemplified by the secret ballot, the hard-won right to vote one’s conscience without fear of retaliations”). Accordingly, there can be no legitimate governmental interest in providing the registered electorate information about how other members of the registered electorate intend to vote. To say otherwise is akin to saying that the government has a legitimate interest in providing afternoon ballot-casters with identifying information (name, address, and how the individual cast his or her vote) of the morning ballot-casters.

## CONCLUSION

*Amicus* Alliance Defense Fund respectfully requests that this Court reverse the judgment of the Ninth Circuit, and reinstate the preliminary injunction granted by the District court.

Respectfully submitted,

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March 4, 2010

## **APPENDIX**

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## APPENDIX 1

Jun. 07, 2006

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

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

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

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

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

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

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

Nevadans for Nevada Chairman Danny Thompson denied the allegations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## APPENDIX 2

Jun. 09, 2006

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### **Judge chides ballot groups**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **APPENDIX 3**

#### **Donor Disclosure Has Its Downsides**

**By John R. Lott Jr.  
And Bradley Smith**

How would you like elections without secret ballots? To most people, this would be absurd. We have secret balloting for obvious reasons. Politics frequently generates hot tempers. People can put up yard signs or wear political buttons if they want. But not everyone feels comfortable making his or her positions public -- many worry that their choice might offend or anger someone else. They fear losing their jobs or facing boycotts of their businesses.

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

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

Richard Raddon, the director of the L.A. Film Festival, donated \$1,500 to Yes on 8. A threatened boycott and picketing of the next festival forced him to resign. Alan Stock, the chief executive of the Cinemark theater chain, gave \$9,999.

Cinemark is facing a boycott, and so is the gay-friendly Sundance Film Festival because it uses a Cinemark theater to screen some of its films.

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

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

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

Indeed, supporters of Prop. 8 engaged in pressure tactics. At least one businessman who donated to "No on 8," Jim Abbott of Abbot & Associates, a real estate firm in San Diego, received a letter from the Prop. 8 Executive Committee threatening to

publish his company's name if he didn't also donate to the "Yes on 8" campaign.

In each case, the law required disclosure of these individuals' financial support for Prop. 8.

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

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

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

Ironically, it has long been minorities who have benefited the most from anonymous speech. In the 1950s, for example, Southern states sought to obtain membership lists of the NAACP in the name of the public's "right to know." Such disclosure would have destroyed the NAACP's financial base

in the South and opened its supporters to threats and violence. It took a Supreme Court ruling in *NAACP v. Alabama* (1958) to protect the privacy of the NAACP and its supporters on First Amendment grounds. And more recently, it has usually been supporters of gay rights who have preferred to keep their support quiet.

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

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

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

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

**APPENDIX 4**

**John Doe #1**

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\* *Pro Hac Vice Application Pending*

\*\* Designated Counsel for Service

**United States District Court  
Eastern District of California**

<b>ProtectMarriage.com, <i>et al.,</i></b>  <b><i>Plaintiffs,</i></b>	Case No. 2:09-CV-00058- MCE-DAD  <b>DECLARATION OF REDACTED IN</b>
---	---

<p><i>v.</i></p> <p><b>Debra Bowen, et al.,</b></p> <p style="text-align: center;"><i>Defendants.</i></p>	<p><b>SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION</b></p> <p style="text-align: right;">Date: TBD Time: TBD Judge England</p>
---	--

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

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

2. I supported the passage of Proposition 8.

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

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

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

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

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

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

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

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

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

the first website that appears on the list of sponsored links.

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

13. On Yelp.com, a website featuring reviews of local businesses and restaurants, several negative reviews of my stores have been posted. None of the reviews have anything to do with my business, but instead reference my donation to ProtectMarriage.com – Yes on 8.

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

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

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

17. Several of the protestors who came to the **REDACTED** store on November **XX**, 2008 were fairly aggressive. They stood in front of the entrance to the store and attempted to give flyers to my customers stating that they should not shop

at my stores because of my donation to Proposition 8. A true and correct copy of the flyer distributed by the picketers is attached to this Declaration as Exhibit A.

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

19. The second time that my **REDACTED** store was picketed, several people assembled in front of the entrance to the store and tried to get my customers to sign some sort of petition.

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

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

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

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

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

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

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

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

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

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

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

\_\_\_\_\_  
**REDACTED**

**APPENDIX 5**

**John Doe #3**

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**United States District Court  
Eastern District of California**

<b>ProtectMarriage.com, <i>et al.,</i></b>  <b><i>Plaintiffs,</i></b>	Case No. 2:09-CV-00058- MCE-DAD  <b>DECLARATION OF REDACTED IN</b>
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<p><i>v.</i></p> <p><b>Debra Bowen, <i>et al.</i>,</b></p> <p style="text-align: center;"><b><i>Defendants.</i></b></p>	<p><b>SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION</b></p> <p style="text-align: right;">Date: TBD Time: TBD Judge England</p>
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I, **REDACTED**, make the following declaration pursuant to 28 U.S.C. § 1746:

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

2. I supported the passage of Proposition 8.

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

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

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

6. Sometime between 10:00 p.m. on November █, 2008 and 8:00 a.m. on November █, 2008, the “Yes on 8” yard sign that had been placed on the church property and a heavy object, such as a rock, were used to break a large window of our church building. Pictures of the broken window and the “Yes on 8” sign are attached as Exhibit A. These pictures are a true and accurate representation of the broken window and “Yes on 8” sign as I discovered them on November █, 2008.

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

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

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

**REDACTED**

## APPENDIX 6

### **Radical Gay Activists Seek to Intimidate Christians**

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

[11.19.08] The Nov. 4 passage of constitutional amendments banning gay marriage in California, Arizona and Florida has evoked a sometimes-violent response from radical gay activists who have vandalized churches, mobbed intercessors and disrupted a worship service in Michigan.

Intercessors with a house of prayer in San Francisco said they feared they might be killed Friday night during a routine prayer walk through the area's Castro district, which has a large gay community. They said a crowd who thought they were marriage amendment demonstrators shouted lewd remarks, pushed them, threw hot coffee on their faces and threatened the prayer group leader with death. ([See related video.](#))

One man reportedly hit an intercessor on the head with her Bible before shoving her to the ground and kicking her. Before police arrived, another house of prayer member said someone repeatedly tried to pull his pants down.

“We hadn’t preached, we hadn’t evangelized,” one of the intercessors said after the incident. “We worshipped God in peace, and we were about to die for it.”

Police eventually escorted the group to their van, telling the intercessors they had to leave if they wanted to make it out, one witness said.

“These are the nicest kids,” said TheCall founder Lou Engle, who knows many of the young intercessors involved in the incident. “That night they were doing only worship. They weren’t trying to aggravate anything.”

“I think what’s happening is an exposure of what’s really there and an underbelly of this [radical gay] movement,” Engle added. “I think the church has to really reveal what’s going on there so the nation gets a clue about what they’re making an alliance with.”

In Michigan, where voters in 2004 approved an amendment defining marriage as the union of one man and one woman, a Chicago-based gay rights organization called Bash Back interrupted a Nov. 9 service at an Assemblies of God congregation in Lansing. ([See related video.](#))

After staging a demonstration outside Mount Hope Church to draw most of the security staff away from the worship service, protestors masked as congregants stood up in the middle of the service, “declared themselves fags and began screaming

loudly,” Bash Back leaders said in a statement posted online.

The protestors pulled the fire alarm and threw thousands of fliers into the congregation, while a gay couple rushed to the front and began kissing in front of the pastor. "Let it be known: So long as bigots kill us in the streets, this pack of wolves will continue to BASH BACK!" the group said in a statement about the incident.

Bash Back leaders said Mount Hope was targeted because it is “complicit in the repression of queers” by working to “institutionalize transphobia and homophobia” through “repulsive” ex-gay conferences and hell house plays, “which depict queers, trannies and womyn [sic] who seek abortions as the horrors.”

In a statement posted on Mount Hope’s Web site, church leaders said they don’t “attempt to identify the church as anti-homosexual, anti-choice, or right wing” but do “take the Bible at face value and believes what the Bible says to be the truth.”

Mount Hope spokesman David J. Williams Jr., said the sheriff’s department had launched an investigation into the incident. “We’re really asking for prayer for the people that did this,” Williams said. “They need Jesus; they need to know His love.”

Attorney John Stemberger, who chaired Florida’s marriage amendment campaign, said many gay

protestors want to intimidate the public into silence. “Their goal is to create an intense climate of intimidation and hostility within the culture to try and deter people from supporting traditional marriage and other pro-family initiatives in the future,” Stemberger said. “We will not be bullied into silence, indifference or inaction.”

In Palm Springs, Calif., a 69-year-old woman planned to file charges against protesters who reportedly pushed the woman and spit on her during a Nov. 8 rally opposing the passage of Proposition 8, which amends the state constitution to define marriage as the union of one man and one woman. Phyllis Burgess said authorities convinced her to press charges against the attackers.

Nationwide, gay rights advocates protested marriage bans on Saturday, pointing particularly to California’s Proposition 8, which defined marriage as between one man and one woman and overturned a state Supreme Court ruling that had legalized gay marriage. Many of the demonstrations were peaceful, according to Associated Press (AP) reports, with participants waving rainbow-colored flags and holding signs saying “Don’t Spread the H8.”

But pastors across the country, particularly in California, say incidents of vandalism and theft have increased since Nov. 4. One California pastor said a minister in his state received death threats for his support of Proposition 8.

According to reports from California’s Protect

Marriage campaign:

- At Messiah Lutheran Church in Downey, Calif., a “Yes on 8” sign was wrapped around a heavy object and used to smash the window of the pastor’s office.
- Several “Yes on 8” yard signs were stolen from Calvary Chapel Ventura, as well as a large banner displaying the church’s name and service times.
- Park Community Church in Shingle Springs, Calif., received harassing phone calls and has been threatened with lawsuits by Proposition 8 opponents.
- Bloggers targeted Yorba Linda, Calif., pastor Jim Domen, who is open about his past struggle with same-sex attraction, and his girlfriend for harassment after seeing the couple’s photo in news reports about the passage of Proposition 8.
- The words “No on 8” were spray-painted on a Mormon church in Orangevale, Calif.
- A brick was thrown through the window of Family Fellowship Church in Hayward, Calif., and at Trinity Baptist Church in Arcata, Proposition 8 opponents vandalized the church’s marquee, which encouraged support for the marriage amendment; stole the church’s flags; and committed other acts of vandalism totaling \$1,500.
- Eggs thrown on the building of San Luis Obispo

Assembly of God and toilet paper was strewn across the property, while a Mormon church in the same city had adhesive poured onto a doormat, a keypad and a window.

The Mormon Church, headquartered in Salt Lake City, Utah, has also become a target of gay rights activists because it provided major funding to the Proposition 8 campaign and encouraged its members to support the marriage amendment, which passed with 52 percent of the vote.

Some gay rights advocates have called for a boycott of the state of Utah, and Bash Back leaders admitted to vandalizing Mormon churches there, as well as in Washington state and California. A Mormon temple in Salt Lake City reported receiving a letter containing a white, powdery substance that forced the facility to close while police launched an investigation.

"The hypocrisy, hatred, and intolerance shown by the gay rights movement isn't pretty," said Randy Thomasson, president of the Campaign for Children and Families, a leading California-based pro-family group. "While claiming to be against hate and for tolerance and choice, the homosexual activists are revealing their hatred of voters and religion and showing their intolerance of people's personal choices to support man-woman marriage. By attacking the people's vote to protect marriage in the state constitution, homosexual activists have declared war on our republic and our democratic system."

Christian leaders say the backlash is likely to continue and may worsen. “It’s actually desperation time for us all across the nation to be praying,” Engle said. “They’re calling [Christians] haters when all they’re doing is simply saying there’s a higher authority. It’s a raging against Christ and His loving, foundational laws. It is becoming an anti-Christ rage. They are creating a Jesus of their own mind, a Jesus who lets everybody do whatever they want.

“I think the church has to be prepared [for religious persecution],” he added. “Our allegiance is to God and His Word, and if that means imprisonment and martyrdom, so be it.” -- **Adrienne S. Gaines**

**APPENDIX 7**

**VANDALS SPRAY PAINT SIGNS IN  
DOWNTOWN FULLERTON  
IF CAUGHT, VIOLATORS COULD FACE UP  
TO ONE YEAR IN PRISON, \$10,000 FINE.**

**By BARBARA GIASONE**

The Orange County Register

FULLERTON – Vandals used gold spray paint to scrawl anti-Proposition 8 messages on commercial and residential buildings in the downtown and east Fullerton over the weekend, police said.

The "Prop H8TE" message was found on the Bank of America and Union Bank on north Harbor Boulevard, and on a retail store in the 500 block of north Harbor. Additional tagging was found on houses near Dorothy Lane.

Sgt. Mike MacDonald said anyone caught causing more than \$400 in damages is subject to one year in state prison or county jail – and \$10,000 in fines. Suspects who are caught causing less than \$400 in damages could be charged \$1,000 and spend one year in county jail.

In addition to the spray-paint vandalism, 500 "Yes on 8" signs valued at \$10 apiece were reported missing throughout the city by a Yes on 8 community organizer, MacDonald said.

At least one resident in the city is using a night-vision camera to catch sign vandals, police said.

The homeowner told police he captured images of a woman stealing signs.

"While we respect people's rights to have an opinion on state politics, it's never appropriate to

deface property to further their own beliefs," MacDonald said. "We treat this type of crime very seriously.

"Violators will be prosecuted to the fullest extent of the law," he said.

A resident in the northeast section of the city reported late Monday morning that his property was also defaced with gold paint.

"I've lived in the city for 18 years, and I've never had anything like this," Randy Reece said.

"It's ironic the purveyors of tolerance seem to not have any respect for the First Amendment and it's disgusting," Reece said. "I'd like to have a discussion with them if they want to."

Vandalism should be reported to the Fullerton Police Department at 714-738-6715.