



1 Presently before the Court are Plaintiffs'<sup>1</sup> Motion for  
2 Summary Judgment ("Plaintiffs' Motion"), Defendants'<sup>2</sup> Motion for  
3 Summary Judgment ("Defendants' Motion") and Defendants' Motion to  
4 Strike ("Motion to Strike"). These matters came on for hearing  
5 before the Court at 2:00 p.m. on Thursday, October 20, 2011. For  
6 the following reasons, Plaintiffs' Motion for Summary Judgment is  
7 DENIED, and Defendants' Motion for Summary Judgment is GRANTED.  
8 Defendants' Motion to Strike is DENIED as moot.

9  
10 **BACKGROUND**

11 **A. Factual History**

12  
13 On November 4, 2008, the citizens of California adopted a  
14 ballot measure, Proposition 8, that changed the California  
15 Constitution such that marriage would thereafter exist only  
16 "between a man and a woman." Plaintiffs' Separate Statement of  
17 Undisputed Facts ("SSUF"), ¶ 29; Cal. Const. art. 1, § 7.5.

18  
19 \_\_\_\_\_  
20 <sup>1</sup> Plaintiffs are ProtectMarriage.com - Yes on 8, a Project  
21 of California Renewal ("ProtectMarriage"); National Organization  
22 for Marriage California - Yes on 8, Sponsored by National  
23 Organization for Marriage ("NOM-California"); John Doe #1, an  
24 individual, and as a representative of the proposed Class of  
25 Major Donors; and National Organization for Marriage California  
26 PAC ("NOM-California PAC").

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

1 Plaintiffs ProtectMarriage and NOM-California were primarily  
2 formed ballot committees established under California's Political  
3 Reform Act of 1974, Cal. Gov. Code § 81000 et seq. ("PRA").  
4 Their specific purpose was to specifically support the passage of  
5 Proposition 8. SSUF, ¶¶ 1-2.

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

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

27 ///

28 ///

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

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

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

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

- 1 • Flyers were circulated denouncing contributors' support  
2 of Proposition 8. Declaration of John Doe #2.
- 3 • "Yes on 8" bumper stickers and yard signs were  
4 vandalized or stolen. In at least one instance, a sign  
5 was used to break a church window. Declarations of  
6 John Does #3, #7-8, #13-14, #16, #18, #22, #24, #26,  
7 #31, #33-48, #50, #55-58.
- 8 • Cars of "Yes on 8" supporters were keyed or vandalized  
9 (i.e., windows were smashed or vehicles were egged and  
10 floured) and at least one supporter's home was egged  
11 and floured. Declarations of John Doe, #11-14.
- 12 • Individuals at "Yes on 8" sign waving events, protests  
13 or flyer distribution events encountered negative  
14 responses (including individuals shouting obscenities  
15 and arguing with sign-waivers, individuals blocking  
16 "Yes on 8" signs with "No on 8" signs, and in one  
17 instance, an individual throwing an object at a sign  
18 waver). Declarations of John Doe #13, #16, #25, #26.
- 19 • Conflicts arose with friends, family or neighbors.  
20 Declarations of John Doe #13, #15, #18, #20-21, #49.
- 21 • Individuals or businesses supporting Proposition 8 had  
22 negative reviews posted on a variety of websites.  
23 Declarations of John Doe #20, #27, #32, #51.

24 Most of the incidents alleged above were responses to public  
25 shows of support the declarants had made in favor of Proposition  
26 8. See, e.g., Decl. of John Doe #4 (protest held outside the  
27 entrance to declarant's gated community when declarant held a  
28 fundraiser in support of Proposition 8 at his home); Decl. of  
John Doe #8 (declarant "attended numerous rallies, three press  
conferences, and spoke at a number of churches...[,] also  
participated on panel discussions" and "attended an election  
night gathering at a hotel...with other supporters of Proposition  
8" where the supporter's picture was taken and eventually  
published); Decl. Of John Doe #9 (photograph of individual at  
election night gathering prompted receipt of unsolicited messages  
on MySpace and Facebook accounts, emails and phone calls);

1 Decl. of John Doe #20 (after seeing a yard sign supporting  
2 Proposition 8 in the yard of a shop owner, two neighbors advised  
3 declarant they would no longer frequent his store).

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

14 Plaintiffs' remaining evidence, Exhibits 3 and 4, is  
15 comprised of a collection of online media, including YouTube  
16 videos, blogs, court filings in other cases, and numerous  
17 articles.<sup>3</sup>

18 ///

19 ///

20 ///

21 ///

22 ///

---

23  
24 <sup>3</sup> Defendants have moved to strike all evidence included in  
25 these Exhibits on the grounds that the contents: 1) are  
26 inadmissible hearsay; 2) exceed the scope of a stipulation  
27 entered into by the parties; 3) were not disclosed during  
28 discovery; or 4) were not properly authenticated. The Court is  
inclined to grant Defendants' Motion for a variety of reasons,  
not the least of which is that most of the exhibits are indeed  
hearsay. However, because consideration of the evidence included  
in these Exhibits does not alter the Court's decision,  
Defendants' Motion to Strike is instead DENIED as moot.

1 Because the incidents reported within these Exhibits are highly  
2 repetitive, and perhaps deceptively overwhelming, they are  
3 catalogued by type of occurrence, rather than by exhibit number,  
4 here.<sup>4</sup>

- 5 • **Yard sign theft and vandalism.** First, as with their Doe  
6 declarations, Plaintiffs' evidence recounts a variety  
7 of incidences of yard-sign theft and vandalism. In  
8 some instances church windows were broken or churches  
9 were spray-painted with "No on 8" messages. One church  
10 was egged and toilet-papered. Another had adhesive  
11 poured on a doormat, keypad and window. A neighborhood  
12 in San Bernardino was targeted by vandals who spray-  
13 painted cars, fences, garages and "Yes on 8" signs.  
14 Vandals also spray-painted residential and commercial  
15 buildings in Fullerton, and a church in San Francisco  
16 was spray-painted with swastikas and angry Proposition  
17 8 messages. Likewise, in October, 2008, someone spray-  
18 painted "No on 8" on a San Jose couple's car and garage  
19 and on their neighbor's garage. Also in San Jose,  
20 someone painted an SUV with "Bigots Live Here" and an  
21 arrow pointing to a house that had a "Yes on 8" sign on  
22 the lawn. Some of the articles make mention that law  
23 enforcement responded and, in some instances, was even  
24 able to make arrests. Exhs. 4-7, 4-29, 4-30, 4-31, 4-  
25 32, 4-33, 4-34, 4-36, 4-37, 4-38, 4-39, 4-40, 4-41, 4-  
26 45, 4-46, 4-50.

17 ///

18 ///

19 ///

---

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

- 1 • **Disclosure lists.** Plaintiffs also provide  
2 documentation of a number of websites that, in  
3 approximately November 2008, began publishing the names  
4 of individuals and businesses that contributed to  
5 Proposition 8. Some of Plaintiffs's evidence extends  
6 beyond Proposition 8 to websites reporting the names of  
7 supporters of similar issues in other states. Exhs. 4-  
8 10, 4-11, 4-12, 4-21, 4-28, 4-83, 4-84, 4-98, 4-99, 4-  
9 103, 4-105, 4-106, 4-108, 4-109, 4-110, 4-113, 4-114,  
10 4-128, 4-138, 4-139, 4-142, 4-152, 4-153, 4-154.
- 11 • **Protests and rallies.** In addition, Plaintiffs provide  
12 evidence of protests and rallies undertaken in  
13 approximately November 2008. For example, a small  
14 group staged a peaceful "kiss-in" near the Mormon  
15 temple in Salt Lake City. Other protests had to be  
16 broken up by law enforcement and some protesters were  
17 arrested. Exh. 3-3, 3-8, 3-9, 4-64, 4-65, 4-66, 4-68,  
18 4-69, 4-70, 4-71, 4-120.
- 19 • **Death threats.** Plaintiffs allege that, after  
20 participating in a rally in favor of Proposition 8 in  
21 front of City Hall, Fresno, California mayor Alan Autry  
22 and a local pastor received death threats. The  
23 pastor's church and house were also purportedly egged.  
24 According to Plaintiffs's evidence, police promptly  
25 investigated those threats and the pastor acknowledged  
26 he was confident in the investigation. Mayor Autry  
27 made clear that supporters of Proposition 8 should not  
28 "blame the gay and lesbian community" and that he  
believed "[m]ost of the opponents of Prop 8 and the  
vast, vast, majority of the gay community would condemn  
this type of thing." See, Exhs. 4-2, 4-3, 4-4, 4-5, 4-  
6, 4-34, 4-44.
- **Bash Back.** Plaintiffs' evidence also repeatedly  
documents the actions taken by radical gay activist  
group "Bash Back." That organization allegedly  
interrupted services at a Michigan church and, among  
other things, arranged for two women to kiss in front  
of the pastor. The incident was investigated and the  
offenders later agreed in federal court to entry of a  
permanent injunction preventing them from invading  
churches anywhere in the country. Violators of that  
injunction could be held in contempt of court and be  
subject to a \$10,000 fine. In addition, a Washington  
Bash Back chapter also purportedly glued door locks and  
spray-painted messages on a Mormon church. Finally,  
the same group appears to have targeted a conference in  
Washington via an anonymous online post. Exhs. 3-5, 3-  
6, 4-7, 4-13, 4-16, 4-17, 4-34, 4-42, 4-43, 4-53, 4-54,  
4-82.

28 ///



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

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

- 17 • The chair of the 2012 U.S. Olympic team allegedly  
18 stepped down after controversy emerged over his  
19 opposition to gay marriage. Exhs. 4-18, 4-144, 4-145,  
20 4-146.
- 21 • Negative reviews of a Sacramento ice cream parlor were  
22 posted online after it was disclosed that the company  
23 supported Proposition 8. The parlor was later the  
24 target of protesters giving out free rainbow sherbert.  
25 Exhs. 4-27, 4-120, 4-130.
- 26 • The manager of an El Coyote restaurant, who was also  
27 the daughter of the owners, left town after her \$100  
28 contribution to Yes on 8 led protesters to target the  
restaurant. Protests have since faded and the manager  
said she has received calls and other shows of support.  
Exhs. 4-34, 4-58, 4-77, 4-117, 4-123, 4-124, 4-125, 4-  
126, 4-127, 4-129, 4-133, 4-139.

27 ///

28 ///

- 1 • Despite some similar shows of support in his favor, the  
2 artistic director of Sacramento's California Musical  
3 Theater resigned after opponents to Proposition 8  
4 discovered he had donated \$1000 to the Yes on 8  
5 campaign. Exhs. 4-34, 4-58, 4-77, 4-115, 4-116, 4-117,  
6 4-118, 4-119, 4-120, 4-121, 4-124, 4-129, 4-142, 4-154.
- 7 • The director of the Los Angeles Film Festival also  
8 resigned under alleged pressure from gay-rights groups  
9 after his \$1500 contribution to "Yes on 8" was  
10 publicized. Though the festival board initially tried  
11 to block his resignation, the director eventually did  
12 tender his resignation when pressure continued. Exhs.  
13 4-34, 4-58, 4-116, 4-117, 4-122.
- 14 • A Palo Alto dentist featured on a boycott website as a  
15 result of his \$1000 contribution to the "Yes on 8"  
16 campaign claims he consequently lost two patients.  
17 Exhs. 4-67, 4-117, 4-154.
- 18 • An artist who had captured images from New York's gay  
19 pride parade was the subject of verbal retaliation and  
20 an article condemning her contribution to Proposition  
21 8. Exhs. 4-96.
- 22 • A movie theater chain, a Ventura County health food  
23 store, a San Diego hotelier, a self-storage company,  
24 and a Utah-based car dealer were all boycotted after  
25 their or their employees' contributions to Proposition  
26 8 were publicized. Exhs. 4-111, 4-116, 4-117, 4-123,  
27 4-129, 4-131, 4-132, 4-133, 4-134, 4-136, 4-141.

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

- 20 • Two Mormon Temples (and a Knights of Columbus printing  
21 plant) received envelopes containing a white, powdery  
22 substance. Plaintiffs presume these incidents were  
23 connected to Proposition 8, though their evidence does  
24 not indicate a connection. Regardless, the FBI  
25 investigated the incidents and determined the powder  
26 was not a biological agent or toxin. Exhs. 4-34, 4-52,  
27 4-67, 4-75, 4-76, 4-79, 4-92.
- 28 • Several churches were also spray-painted with graffiti  
or otherwise vandalized. Police in at least one town  
investigated the vandalism as a hate crime potentially  
linked to Proposition 8, though police in another town  
refused to characterize the vandalism as the work of  
opponents to Proposition 8. Exhs. 4-7, 4-47, 4-48, 4-  
49, 4-51, 4-52, 4-73, 4-90, 4-91.

- 1 • Other groups or individuals reported the Mormon church  
2 to California's Fair Elections Commission for failing  
3 to report contributions to the "Yes on 8" campaign.  
4 Similarly, websites were initiated encouraging people  
5 to petition to have the tax exempt status of the Mormon  
6 church revoked. Exhs. 4-14, 4-15, 4-19, 4-61, 4-62, 4-  
7 107.
- 8 • During the campaign, same-sex marriage advocates also  
9 allegedly produced a commercial depicting Mormon  
10 missionaries destroying the marriage license of a gay  
11 couple. Exhs. 3-7, 4-59, 4-63.
- 12 • Fires were set at Mormon churches in Washington, Utah  
13 and Colorado, and a man was prevented from starting a  
14 fire at a Los Angeles Temple. Some of the articles  
15 speculatively linked the acts or arson to Proposition  
16 8, and in each of instance, authorities undertook an  
17 investigation into the crimes. Exhs. 4-79, 4-80, 4-85,  
18 4-86, 4-87, 4-88, 4-89.
- 19 • Some protests were directed specifically at the Mormon  
20 church. Exhs. 3-8, 3-9, 4-60, 4-68, 4-73, 4-75, 4-80,  
21 4-120.
- 22 • Comedian Margaret Cho wrote and performed a song called  
23 "Fuck You Mormons" directed at the Mormon Church and  
24 its support of Proposition 8. Exh. 3-12.

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

- 27 • Miss California suffered backlash after stating at the  
28 Miss USA pageant that she believed marriage should  
exist between a man and a woman. Exh. 4-112, 4-147, 4-  
148, 4-149, 4-150, 4-151.
- A law firm entertaining an agreement with Republicans  
to defend the federal same-sex marriage ban, withdrew  
from the agreement after drawing fire from gay-rights  
groups. Exhs. 4-18, 4-135, 4-155, 4-156, 4-157.
- A New York state senator purportedly received death  
threats due to his opposition to same-sex marriage.  
Exh. 18.
- Apple, Inc., allegedly withdrew two iPhone apps from  
its app Store after receiving complaints from gay-  
rights supporters. Exh. 18.
- Neighbors engaged in a fist-fight when one attempted to  
steal and replace the other's yard sign. Exh. 4-34.

- 1 • A man was attacked and bitten by a dog while trying to  
2 prevent theft of a "Yes on 8" sign. Exh. 4-34.
- 3 • Cars bearing "Yes on 8" bumper stickers were keyed.  
4 Exh. 4-35.
- 5 • A "Yes on 8" table set up in the quad at the University  
6 of California, Davis, was hit with water balloons, and  
7 students yelled "you teach hate" at those manning the  
8 table. Exh. 4-35.
- 9 • Individuals left comments, sometimes characterized as  
10 "inciting and directly threatening violence" against  
11 supporters of Proposition 8 on a variety of blogs and  
12 websites. Exh. 4-56, 4-57.
- 13 • The parent of a Galt High School student alleges his  
14 son was harassed by a teacher for his stance supporting  
15 Proposition 8. Exh. 4-102.

## 16 **B. Procedural History**

17 In light of the above alleged acts, and because they were  
18 statutorily required to file semiannual reports on January 31,  
19 2009, Plaintiffs initiated this action against Defendants on  
20 January 7, 2009. Plaintiffs have amended their Complaint several  
21 times, resulting in the now operative Third Amended Complaint.

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

///

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

4 On August 25, 2011, Plaintiffs moved for summary judgment.  
5 Defendants, with two exceptions, filed a Cross-Motion and  
6 Opposition to Plaintiffs' Motion on September 15, 2011.<sup>5</sup> At the  
7 same time, Defendants moved to strike a large portion of  
8 Plaintiffs' evidence. Plaintiffs filed a Reply as to their own  
9 Motion and Oppositions to Defendants' Motions on September 29,  
10 2011. Defendants filed a Reply to both their Motion for Summary  
11 Judgment ("Defendants' Reply") and their Motion to Strike on  
12 October 13, 2011.

13 ///

14 ///

15 ///

16 ///

17 ///

18 ///

19 ///

20 ///

---

21  
22 <sup>5</sup> Defendant Jan Scully, on behalf of herself and as  
23 representative of the designated Class of District Attorneys in  
24 the State of California, submitted a position statement  
25 indicating that the Defendant Scully and the District Attorney  
26 Class "are, at best, peripheral Defendants in this case."  
27 Position Statement, 2:6-7. This class thereby states their  
28 position as follows: "[T]o the extent that the Court determines  
that the Motion for Summary Judgment filed by Plaintiffs is not  
well-taken, then Defendant Scully and the District Attorney Class  
oppose that motion; however, to the extent that the Court  
determines that any Cross-Motions filed by any other party in  
this case are not well-taken, Defendants herein oppose those  
motions." Id., 2:18-3:4.

**STANDARD**

1  
2  
3 The Federal Rules of Civil Procedure provide for summary  
4 judgment when "materials in the record, including depositions,  
5 documents, electronically stored information, affidavits or  
6 declarations, stipulations..., admissions interrogatory answers,  
7 or other materials" "show[] that there is no genuine dispute as  
8 to any material fact and the movant is entitled to judgment as a  
9 matter of law." Fed. R. Civ. P. 56(a), (c)). One of the  
10 principal purposes of Rule 56 is to dispose of factually  
11 unsupported claims or defenses. Celotex Corp. v. Catrett,  
12 477 U.S. 317, 323-324 (1986).

13 Rule 56 also allows a court to grant summary adjudication on  
14 part of a claim or defense. See Fed. R. Civ. P. 56(a) ("A party  
15 may move for summary judgment, identifying each claim or defense-  
16 the part of each claim or defense-on which summary judgment is  
17 sought."); see also Allstate Ins. Co. v. Madan, 889 F. Supp. 374,  
18 378-79 (C.D. Cal. 1995); France Stone Co., Inc. v. Charter  
19 Township of Monroe, 790 F. Supp. 707, 710 (E.D. Mich. 1992).

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

24 A party seeking summary judgment always bears the  
25 initial responsibility of informing the district court  
26 of the basis for its motion, and identifying those  
27 portions of "the pleadings, depositions, answers to  
28 interrogatories, and admissions on file together with  
the affidavits, if any," which it believes demonstrate  
the absence of a genuine issue of material fact.  
Celotex, 477 U.S. at 323 (quoting Rule 56(c)).

1 If the moving party meets its initial responsibility, the  
2 burden then shifts to the opposing party to establish that a  
3 genuine issue as to any material fact actually does exist.  
4 Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574,  
5 585-87 (1986); First Nat'l Bank v. Cities Serv. Co., 391 U.S.  
6 253, 288-89 (1968).

7 In attempting to establish the existence of this factual  
8 dispute, the opposing party must tender evidence of specific  
9 facts in the form of affidavits, and/or admissible discovery  
10 material, in support of its contention that the dispute exists.  
11 Fed. R. Civ. P. 56(c)). The opposing party must demonstrate  
12 that the fact in contention is material, i.e., a fact that might  
13 affect the outcome of the suit under the governing law, and that  
14 the dispute is genuine, i.e., the evidence is such that a  
15 reasonable jury could return a verdict for the nonmoving party.  
16 Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 251-52  
17 (1986); Owens v. Local No. 169, Assoc. of Western Pulp and Paper  
18 Workers, 971 F.2d 347, 355 (9th Cir. 1987). Stated another way,  
19 "before the evidence is left to the jury, there is a preliminary  
20 question for the judge, not whether there is literally no  
21 evidence, but whether there is any upon which a jury could  
22 properly proceed to find a verdict for the party producing it,  
23 upon whom the onus of proof is imposed." Anderson, 477 U.S. at  
24 251 (quoting Schuylkill and Dauphin Improvement Co. v. Munson,  
25 81 U.S. 442, 448 (1871)).

26 ///

27 ///

28 ///

1 As the Supreme Court explained, "[w]hen the moving party has  
2 carried its burden under Rule 56(c)), its opponent must do more  
3 than simply show that there is some metaphysical doubt as to the  
4 material facts .... Where the record taken as a whole could not  
5 lead a rational trier of fact to find for the nonmoving party,  
6 there is no 'genuine issue for trial.'" Matsushita, 475 U.S. at  
7 586-87.

8 In resolving a summary judgment motion, the evidence of the  
9 opposing party is to be believed, and all reasonable inferences  
10 that may be drawn from the facts placed before the court must be  
11 drawn in favor of the opposing party. Anderson, 477 U.S. at 255.  
12 Nevertheless, inferences are not drawn out of the air, and it is  
13 the opposing party's obligation to produce a factual predicate  
14 from which the inference may be drawn. Richards v. Nielsen  
15 Freight Lines, 602 F. Supp. 1224, 1244-45 (E.D. Cal. 1985),  
16 aff'd, 810 F.2d 898 (9th Cir. 1987).

17  
18 **ANALYSIS**  
19

20 Plaintiffs' basic arguments in support of their Motion are  
21 as follows: 1) California's campaign contribution disclosure  
22 requirements are unconstitutional as applied to Plaintiffs  
23 because there is a reasonable probability that such exposure will  
24 lead to threats, harassment and reprisals; 2) the \$100 reporting  
25 threshold is unconstitutional, both facially and as applied to  
26 Plaintiffs, because the threshold cannot survive the requisite  
27 scrutiny and because disclosure will result in the above-  
28 described threats; and



1 3) post-election public ballot-measure reporting and the failure  
2 to purge public disclosures post-election are unconstitutional.  
3 Defendants counter that: 1) Plaintiffs have not shown a  
4 reasonable probability that an ordinary contributor to  
5 Plaintiffs' will face threats, harassment or reprisals; 2) the  
6 State has an important interest in disclosure that outweighs the  
7 minimal burden imposed on Plaintiffs; and 3) post-election  
8 disclosure requirements and the \$100 threshold survive exacting  
9 scrutiny.

10 These are essentially the same arguments first brought  
11 before the Court almost three years ago on Plaintiffs' Motion for  
12 Preliminary Injunction. There, the Court held that: 1) the State  
13 had a compelling informational interest in the disclosure of  
14 contributors to ballot-initiative campaigns; 2) the \$100  
15 reporting threshold was narrowly tailored to that informational  
16 interest; 3) the post-election reporting requirement was directly  
17 related to the State's informational interest and burdened no  
18 more speech than was required; and 4) Plaintiffs were unlikely to  
19 show a reasonable probability that disclosure of the identities  
20 of Proposition 8 contributors would result in threats, harassment  
21 and reprisals, and thus Plaintiffs were unlikely to show an  
22 exemption from the disclosure requirements was warranted.

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

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

9  
10 **A. Whether Plaintiffs Have Shown a Reasonable Probability**  
11 **that Disclosure of their Contributors' Identities will**  
12 **Result in Threats, Harassment or Reprisals**

13 According to Plaintiffs, disclosure of the identities of  
14 their contributors must be barred because they have demonstrated  
15 a reasonable probability that such disclosure will lead to  
16 threats, harassment or reprisals. Plaintiffs' Motion, 5:16-22  
17 (citing Citizens United v. FEC, \_\_\_ U.S. \_\_\_, 130 S. Ct. 876, 914  
18 (2010) (internal quotations omitted); Buckley v. Valeo, 424 U.S.  
19 1, 74 (1976)). This Court rejected this same argument in its  
20 Order Denying Preliminary Injunction explaining the rule as  
21 follows<sup>6</sup>:

22 ///

23 ///

24 ///

---

25  
26 <sup>6</sup> At times the Court has chosen to quote extensively from  
27 its prior Order Denying Preliminary Injunction because the issues  
28 facing the Court today are largely unchanged from those facing  
the Court then and because the Court's prior analysis is still  
highly relevant and directly applicable to the current facts  
before it today.

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

12 The Buckley Court began its discussion by noting that  
13 the "governmental interest in disclosure is diminished  
14 when the contribution in question is made to a minor  
15 party with little chance of winning an election. As  
16 minor parties usually represent definite and publicized  
17 viewpoints, there may be less need to inform the voters  
18 of the interests that specific candidates represent.  
19 Major parties encompass candidates of greater  
20 diversity. In many situations the label 'Republican'  
21 or Democrat' tells a voter little. The candidate who  
22 bears it may be supported by funds from the far right,  
23 the far left, or any place in between on the political  
24 spectrum. It is less likely that a candidate of, say,  
25 the Socialist Labor Party will represent interests that  
26 cannot be discerned from the party's ideological  
27 position." Id. at 70.

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

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

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

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

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

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

19 Moreover, "[t]he District Court also found a past  
20 history of government harassment of the SWP. FBI  
21 surveillance of the SWP was 'massive' and continued  
22 until at least 1976. The FBI also conducted a  
23 counterintelligence program against the SWP and the  
24 Young Socialist Alliance, the SWP's youth organization.  
25 One of the aims of the 'SWP Disruption Program' was the  
26 dissemination of information designed to impair the  
27 ability of the SWP and the YSA to function. This  
28 program included 'disclosing to the press the criminal  
records of SWP candidates, and sending anonymous  
letters to SWP members, supporters, spouses, and  
employers.' Until at least 1976, the FBI employed  
various covert techniques to obtain information about  
the SWP, including information concerning the source of  
its funds and the nature of its expenditures. The  
District Court specifically found that the FBI had  
conducted surveillance of the Ohio SWP and had  
interfered with its activities within the State.  
Government surveillance was not limited to the FBI.  
The United States Civil Service Commission also  
gathered information on the SWP, the YSA, and their  
supporters, and the FBI routinely distributed its  
reports to Army, Navy, and Air Force Intelligence, the  
United States Secret Service, and the Immigration and  
Naturalization Service." Id. at 99-100.

29 Finally, "the Government possesse[d] about 8,000,000  
30 documents relating to the SWP, YSA...and their  
31 members...Since 1960, the FBI ha[d] had about 300  
32 informants who were members of the SWP and/or YSA and  
33 1,000 non-member informants. Both the Cleveland and  
34 Cincinnati FBI field offices had one or more SWP or YSA  
35 member informants. Approximately 2 of the SWP member  
36 informants held local branch offices. Three informants  
37 even ran for elective office as SWP candidates.

1 The 18 informants whose files were disclosed to [the  
2 Special Master] received total payments of \$358,648.38  
for their services and expenses." Id. at 100 n.18.

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

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

9 Based on the same above authorities, Plaintiffs now ask this  
10 Court to issue a similar decision and to exempt those  
11 contributing to Plaintiffs' cause from the disclosure  
12 requirements of the PRA. In support of their argument,  
13 Plaintiffs point to the incidents described by the Court above.  
14 Those incidents are characterized by Plaintiffs as including  
15 death threats, physical assaults and threats of violence,  
16 vandalism and threats of destruction of property, arson and  
17 threats of arson, angry protests, lewd demonstrations,  
18 intimidating emails and phone calls, hate mail, mailed envelopes  
19 containing white suspicious powder, blacklisting, loss of  
20 employment and job opportunities, intimidation and reprisals on  
21 campus and the classroom, acts of intimidation through  
22 photography, economic reprisals and demands for hush money, and  
23 gross expressions of anti-religious bigotry. Plaintiffs' Motion,  
24 7:14-8:2. For their part, Defendants disagree with Plaintiffs'  
25 characterization of the evidence. Before turning to the  
26 sufficiency of Plaintiffs' evidence, however, there is one core  
27 point pertaining to the Buckley test itself that necessitates  
28 initial consideration.

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

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

22 Unlike the facts in Brown, the proponents of  
23 Proposition 8 succeeded in persuading over seven  
24 million voters to support their cause. They were  
25 successful in their endeavor to pass the ballot  
26 initiative and raised millions of dollars in the  
27 process. This set of circumstances is a far cry from  
28 the sixty-member SWP party, repeatedly unsuccessful at  
the polls, and incapable of raising sufficient funds.  
Indeed, it became abundantly clear during oral argument  
that Plaintiffs could not in good conscience analogize  
their current circumstances to those of either the SWP  
or the Alabama NAACP circa 1950.

25 ///

26 ///

27 ///

28 ///

1 Additionally, the Court has already extensively  
2 evaluated the nature of the State's interest<sup>7</sup> and, in  
3 light of the marked differences between this and every  
4 other case in which an exemption has been allowed,  
5 simply cannot by any stretch of the imagination say  
6 that the Government's interest "is so insubstantial  
7 that the Act's requirements cannot be constitutionally  
8 applied" to Plaintiffs. To the contrary, as applied to  
9 the massive movement waged by Plaintiffs, the State's  
10 interest in disclosure is at full force.

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

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

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

---

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



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

9 Finally, it would appear that, while minor status is a  
10 necessary element of a successful as-applied claim,  
11 even minor status alone could not independently sustain  
12 Plaintiffs' current cause of action. Brown and its  
13 progeny each involved groups seeking to further ideas  
14 historically and pervasively rejected and vilified by  
15 both this country's government and its citizens. In  
16 dicta, the Ninth Circuit addressed this pattern when it  
17 rejected a plea for exemption waged by a contributor to  
18 a minor party that "was not promoting a reviled cause  
19 or candidate." Goland v. U.S., 903 F.2d 1247, 1260  
20 (9th Cir. 1990).

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

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

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

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

19 Similarly, in Hall-Tyner, a committee supporting the  
20 Communist Party successfully sought exemption from  
21 state disclosure laws. 678 F.2d 416. Later, in  
22 McArthur v. Smith, members of the SWP, described as a  
23 "small and unpopular political party," again  
24 successfully challenged state disclosure requirements.  
25 716 F. Supp. 592, 593 (S.D. Fla. 1989). There is  
26 simply no plausible analogy to be had in this case.

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

24 ///

25 ///

26 ///

27 ///

28 ///

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

7 Plaintiffs' reliance on dicta in Doe v. Reed, \_\_\_ U.S. \_\_\_,  
8 130 S. Ct. 2811 (2010) ("Reed"), for the proposition that the  
9 Supreme Court has already determined Plaintiffs are privy to the  
10 exemption does nothing to change this Court's opinion. Reed  
11 concerned a challenge, by groups and individuals similar to  
12 Plaintiffs, to Washington's compelled disclosure requirement  
13 insofar as those requirements pertained to referendum  
14 signatories. According to Plaintiffs, "the [Reed] Court never so  
15 much as hinted that the exposure exemption would not be available  
16 to the group. To the contrary, a clear majority of the Court  
17 agreed that an exemption was indeed available to the group  
18 (although the Justices differed widely as to the threshold  
19 showing of threats, harassment, or reprisals that would be  
20 required to grant an exemption)." Plaintiffs' Reply, 4:5-9.  
21 Plaintiffs overstate their case.

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

1 Plaintiffs thus appear to argue that, by remanding for the lower  
2 courts to consider Plaintiffs' as-applied challenge based on any  
3 potential threats, harassment or reprisals contributors might  
4 suffer upon disclosure, the Supreme Court somehow sanctioned  
5 application of the Buckley exemption to major parties. However,  
6 Justice Alito was the only Justice that even alluded to the  
7 possibility that the Washington plaintiffs might succeed in their  
8 as-applied challenge, and his sweeping assertions as to the  
9 strength of Plaintiffs' case are premature given the posture of  
10 the case before that Court.<sup>8</sup> See id. at 2823-3827. Accordingly,  
11 nothing in Doe v. Reed, at least at this juncture, overrides the  
12 clear statements made in past Supreme Court cases indicating that  
13 disclosure exemptions were primarily intended to combat harms  
14 suffered by small, persecuted groups.

15 Even if Plaintiffs could overcome the above hurdle, however,  
16 their evidence is still insufficient to warrant an exemption.  
17 Indeed, in its Order Denying Preliminary Injunction, this Court  
18 found Plaintiffs unlikely to succeed on the merits of their claim  
19 for the reasons reiterated below, and nothing Plaintiffs have  
20 currently presented has convinced this Court departure from its  
21 former logic is now warranted on summary judgment. In its prior  
22 Order, this Court stated:

23 ///  
24 ///  
25 ///

---

26  
27 <sup>8</sup> Notably, on remand, the Washington District Court rejected  
28 those plaintiffs' arguments that they were entitled to the same  
type of exemption sought here. See Doe v. Reed, 2011 WL 4943952  
(W.D. Wash. October 17, 2011).

1 Unlike prior cases, in which plaintiffs alleged to have  
2 suffered mistreatment over extended periods of time,  
3 the alleged harassment directed at Proposition 8  
4 supporters occurred over the course of a few months  
5 during the heat of an election battle surrounding a  
6 hotly contested ballot initiative. Only random acts of  
7 violence directed at a very small segment of the  
8 supporters of the initiative are alleged.

9 Moreover, while Plaintiffs are quite correct that under  
10 Buckley evidence of harassment "from either Government  
11 officials or private parties" could suffice to  
12 establish the requisite proof of reprisals, the facts  
13 of subsequent cases evidence not only the existence of  
14 some governmental hostility, but quite pervasive  
15 governmental hostility at that. Buckley, 424 U.S. at  
16 74 (emphasis added); see also McArthur, 716 F. Supp. at  
17 594 ("[H]arassment, reprisals or threats from private  
18 persons are sufficient to allow [the] court to enforce  
19 the plaintiff's first amendment rights by cloaking the  
20 contributors and recipients' names in secrecy.").

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

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

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

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

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

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

19 As much as those channels are available today, it is  
20 unlikely that groups previously successful in seeking  
21 exemptions were privy to the same opportunities.  
22 Again, Plaintiffs have shown no societal or  
23 governmental hostility to their cause. Contrary to  
24 groups such as the SWP, Plaintiffs can seek adequate  
25 relief from law enforcement and the legal system. Such  
26 was not the case for those thought to be supporting the  
27 SWP or communist groups, those subject to actual  
28 criminal liability based on their beliefs and their  
associations.

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

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

1 First, while Plaintiffs characterize their evidence as  
2 voluminous and comprised of "virtually countless reports of  
3 threats, harassment, and reprisals," Plaintiffs' Motion, 4:14-15,  
4 they have pointed to relatively few incidents allegedly suffered  
5 by persons located across the entire country who had somehow  
6 manifested their support for traditional marriage. In addition,  
7 while the evidence before this Court indicates that at least 7  
8 million voters showed up at the California polls alone to support  
9 the passage of Proposition 8, this number, though large, still  
10 deceptively underestimates the number of supporters for  
11 Plaintiffs' cause. Indeed, this figure does not capture all  
12 individuals supporting Proposition 8 on a national scale, nor  
13 does it capture those individuals who may have no connection to  
14 California's campaign, but have supported the same cause in other  
15 regions. Plaintiffs' evidence of harassment, nonetheless extends  
16 much farther than California's borders and includes incidents  
17 that arose in other states and that were directed at the much  
18 broader social issue of gay marriage in general.

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

27 ///

28 ///

1 The declarations of 58 individuals signed in the months just  
2 following the election, along with Plaintiffs' anecdotal evidence  
3 from the same time period as documented in Exhibits 3 and 4, is  
4 simply insufficient on the facts of this case to convince this  
5 Court an ordinary contributor to Proposition 8 would have faced  
6 any backlash worthy of quashing the names of all contributors.<sup>9</sup>  
7 See, e.g., Doe v. Reed, 130 S. Ct. at 2829 (taking the position  
8 exemptions may be permitted "in the rare circumstance in which  
9 disclosure poses a reasonable probability of serious and  
10 widespread harassment") (Sotomayor, J., concurring - joined by  
11 Stevens and Ginsburg).

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

19 ///

20 ///

21 ///

22 ///

23 ///

---

24  
25 <sup>9</sup> Plaintiffs even acknowledge in their papers that only a  
26 minority of individuals on the other side of the campaign  
27 resorted to the complained of tactics that are cause for concern.  
28 Plaintiffs' Motion, 1:10-12 ("Some groups and individuals,  
certainly a minority, have resorted to advancing their cause, not  
by debating the merits of the issue, but by discouraging  
participation in the democratic process through acts calculated  
to intimidate.") (emphasis added).



1 Perhaps recognizing this, Plaintiffs argue "[t]here can be no  
2 question that in many areas in California, and around the  
3 country, views against same-sex marriage...are extremely  
4 unpopular" and "[e]ven our courts of law have characterized those  
5 who fight against such laws as advocates of hate and bigotry who  
6 act 'without reason.'" Plaintiffs' Motion, 12:15-18.

7 Nonetheless, any attempt by Plaintiffs to show governmental  
8 animosity here is half-hearted at best. As described above,  
9 parties entitled to an as-applied exemption (namely the NAACP and  
10 the SWP) in the past had suffered from systematic governmental  
11 discrimination, persecution and abuse. Those plaintiffs were not  
12 only directly victimized by the government, they consequently  
13 lacked adequate recourse to pursue means short of non-disclosure  
14 to protect against private violence. In this case, Plaintiffs  
15 cannot assert that there is some sort of governmental hostility  
16 to their cause, nor can they in good conscience argue that law  
17 enforcement was or would be non-responsive to any illegal acts  
18 directed at Plaintiffs contributors.<sup>10</sup>

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

22 ///

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

1 This factor is critical in light of the comments made by several  
2 concurring Justices in Doe v. Reed, indicating the ability of law  
3 enforcement to deal with threats, harassment and reprisals would  
4 weigh heavily against a need for an exemption. See, e.g., Doe,  
5 130 S. Ct. at 2829 (exemption may be warranted "in the rare  
6 circumstance in which disclosure poses a reasonable probability  
7 of serious and widespread harassment that the State is unwilling  
8 or unable to control") (Sotomayor, J., concurring, joined by  
9 Stevens and Ginsburg); id. at 2831 ("From time to time throughout  
10 history, persecuted groups have been able to criticize oppressive  
11 practices and laws either anonymously or not at all...In my view,  
12 this is unlikely to occur in cases involving the PRA. Any burden  
13 on speech that petitioners posit is speculative as well as  
14 indirect. For an as-applied challenge to a law such as the PRA  
15 to succeed, there would have to be a significant threat of  
16 harassment directed at those who sign the petition that cannot be  
17 mitigated by law enforcement measures.") (Stevens and Breyer,  
18 JJ., concurring); id. at 2837 ("There are laws against threats  
19 and intimidation; and harsh criticism, short of unlawful action,  
20 is a price our people have traditionally been willing to pay for  
21 self-governance.") (Scalia, J., concurring).

22 In addition, the vast majority of the incidents cited by  
23 Plaintiffs are arguably, as characterized by Defendants, typical  
24 of any controversial campaign. For example, picketing,  
25 protesting, boycotting, distributing flyers, destroying yard  
26 signs and voicing dissent do not necessarily rise to the level of  
27 "harassment" or "reprisals," especially in comparison to acts  
28 directed at groups in the past.

1 Moreover, a good portion of these actions are themselves forms of  
2 speech protected by the United States Constitution. Indeed this  
3 Court previously held that:

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

17 In Thornhill v. Alabama, 310 U.S. 88 (1940),  
18 the Court held that peaceful picketing was  
19 entitled to constitutional protection, even  
20 though, in that case, the purpose of the  
21 picketing "was concededly to advise customers  
22 and prospective customers of the relationship  
23 existing between the employer and its  
24 employees and thereby to induce such  
25 customers not to patronize the employer." Id.  
26 at 99. Cf. Chauffeurs v. Newell, 356 U.S.  
27 341. In Edwards v. South Carolina, 372 U.S.  
28 229, we held that a peaceful march and  
demonstration was protected by the rights of  
free speech, free assembly, and freedom to  
petition for a redress of grievances.

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

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

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

///

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

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

23 ///

24 ///

25 ///

---

27 <sup>11</sup> To the contrary, those resorting to these sorts of  
28 tactics do more to undermine their cause than to further any  
civilized and productive discourse.

1 And, perhaps more importantly, the Supreme Court has never  
2 indicated that even a few acts of violence, when directed at a  
3 target as massive as the groups supporting Plaintiffs, would  
4 suffice to shield those groups from the scrutinizing light of the  
5 political process.

6 This Court also observes that, even assuming there is no  
7 "strict" requirement that Plaintiffs prove a chilling effect on  
8 anticipated speech, any such effect is notably absent here.  
9 Plaintiffs appear to have had no problem collecting contributions  
10 and those contributions continued to increase even during the most  
11 heated portions of the Proposition 8 campaign. Cassady Decl.,  
12 ¶¶ 24-25. A few John Doe declarants mentioned they may be wary of  
13 donating in the future, but those relatively few individual  
14 statements are unpersuasive to the Court given Plaintiffs'  
15 enormous multi-state backing. Plaintiffs have therefore simply  
16 not shown any real chill, nor have they shown, as feared by  
17 Buckley, that Plaintiffs' movement was at all susceptible to a  
18 fall-off in contributions or that, absent an exemption, the  
19 movement might not survive. Buckley, 424 U.S. at 71.

20 Finally, this case is unique because Plaintiffs' contributors'  
21 names were actually disclosed years ago and yet Plaintiffs have  
22 produced almost no evidence of any ramifications suffered in the  
23 almost three years post-disclosure. While the evidence contained  
24 in Plaintiffs' Exhibits 3 and 4 contain a few instances of  
25 vandalism that have occurred more recently than during the height  
26 of the Proposition 8 campaign and its aftermath, none of those  
27 articles draw any real connection between the incidents alleged  
28 and the victims' support of traditional marriage.

1 See, e.g., Plaintiffs' Exhs. 4-89, 4-90, 4-91, 4-93. Even  
2 Plaintiffs' counsel at oral argument in 2011 admitted he was only  
3 aware of one instance of harassment that had occurred post-  
4 election. Accordingly, from a practical perspective, it makes no  
5 sense to buy in to the argument that disclosure may result in  
6 repercussions when there is simply no real evidence in the record  
7 that such repercussions actually did occur in the past three  
8 years. Plaintiffs' evidence is, quite simply, stale. See Doe v.  
9 Reed, 2011 WL 4943952 at \*10 n.3.

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

22 ///

23 ///

24 ///

---

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

1           **B.    Whether California's \$100 Reporting Threshold is**  
2           **Unconstitutional<sup>13</sup>**

3                   **1.    Standard of review.**

4  
5           In their papers, Plaintiffs argue that the disclosure  
6 provisions in this case are subject to strict scrutiny such that  
7 those requirements must be narrowly tailored to a compelling  
8 state interest. Defendants adamantly contend that only "exacting  
9 scrutiny" is required. While the issue of the appropriate  
10 standard of review has previously been muddled, the Supreme Court  
11 recently clarified that exacting scrutiny applies here. See  
12 Reed, 130 S. Ct. at 2818 ("We have a series of precedents  
13 considering First Amendment challenges to disclosure requirements  
14 in the electoral context. These precedents have reviewed such  
15 challenges under what has been termed 'exacting scrutiny.'")  
16 (internal quotations omitted); see also Human Life of Washington  
17 Inc. v. Brumsickle, 624 F.3d 990, 1003-1005 (9th Cir. 2010).  
18 Despite their disagreement with the underlying authorities,  
19 Plaintiffs thus conceded at oral argument in 2011 that this Court  
20 is bound to apply that less stringent standard of review.  
21 Accordingly, this Court must now determine whether California's  
22 specific disclosure requirements "are substantially related to a  
23 sufficiently important governmental interest." Id. at 1005.

24 ///

25 ///

---

26  
27           <sup>13</sup> Plaintiffs challenge the State's reporting threshold both  
28 facially and as-applied. Since Plaintiffs' as-applied challenge  
is based on the same arguments already disposed of by the Court  
above, only Plaintiffs' facial challenge will be addressed here.

1                   **2. The State's informational interest.**

2  
3           Plaintiffs assert here that the State has no interest  
4 sufficiently compelling or substantial to justify compelled  
5 disclosure. While Plaintiffs assert that a number of cases have  
6 "suggested" that the State's "informational interest may be  
7 sufficient to justify compelled ballot-measure disclosure,"  
8 Plaintiffs further contend any such finding is based on a  
9 misreading of Buckley. Plaintiffs' Motion, 20:22-21:1. More  
10 specifically, Plaintiffs argue this informational interest is  
11 only implicated in candidate elections and is of minimal import  
12 when it comes to ballot-initiative campaigns. Id., 21:6-12.  
13 Plaintiffs believe voters can derive all necessary information  
14 pertaining to ballot measures from the text of an initiative  
15 itself. Id., 21:13-14.

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

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



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

15 However, unlike the election before the Buckley Court,  
16 which concerned candidates, the instant case bears on a  
17 recent ballot initiative measure. Since Buckley, the  
18 Ninth Circuit has determined that "[o]nly the  
19 informational interest applies in the ballot-measure  
20 context." See Getman I, 328 F.3d at 1105 n.23.  
21 Nevertheless, the Supreme Court has repeatedly  
22 emphasized the importance of disclosure as it relates  
23 to the passage of initiatives. See CPLC v. Getman, No.  
24 00-1698, slip op. at 15:9-11 (E.D. Cal. February 25,  
25 2005) ("Getman II").

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

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

1 Despite the fact that powerful issues are presented to  
2 the California voters and that the economic support for  
3 state initiatives is staggering, Plaintiffs argue that  
4 the public's "general want of knowledge" is  
5 insufficient to sustain the burden disclosure imposes  
6 on contributors' First Amendment liberties. Motion,  
7 28:11-13. However, the Government's interest before the  
8 Court cannot be diminished by characterization as a  
9 general want of knowledge. The influx of money  
10 referenced above "produces a cacaphony of political  
11 communications through which California voters must  
12 pick out meaningful and accurate messages. Given the  
13 complexity of the issues and the unwillingness of much  
14 of the electorate to independently study the propriety  
15 of individual ballot measures,... being able to  
16 evaluate who is doing the talking is of great  
17 importance." Getman I, 328 F.3d at 1105.

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

Moreover, this Court cannot ignore the fact that,  
"[v]oters act as legislators in the ballot-measure  
context, and interest groups and individuals advocating  
a measure's defeat or passage act as lobbyists; both  
groups aim at pressuring the public to pass or defeat  
legislation.... Californians, as lawmakers, have an  
interest in knowing who is lobbying for their vote,  
just as members of Congress may require lobbyists to  
disclose who is paying for the lobbyists' services and  
how much." Getman I, 328 F.3d at 1106. It follows  
that "[i]f our Congress 'cannot be expected to explore  
the myriad pressures to which they are regularly  
subjected,' then certainly neither can the general  
public. People have jobs, families, and other  
distractions.

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

11 That shorthand is arguably even more necessary to the  
12 evaluation of ballot initiatives than it is in the  
13 scrutiny of candidates for political office. "'Even  
14 more than candidate elections, initiative campaigns  
15 have become a money game, where average citizens are  
16 subjected to advertising blitzes of distortion and  
17 half-truths and are left to figure out for themselves  
18 which interest groups pose the greatest threats to  
19 their self-interest.'" Knowing which interested parties  
20 back or oppose a ballot measure is critical, especially  
21 when one considers that ballot-measure language is  
22 typically confusing, and the long-term policy  
23 ramifications of the ballot measure are often unknown.  
24 At least by knowing who supports or opposes a given  
25 initiative, voters will have a pretty good idea of who  
26 stands to benefit from the legislation." Getman I, 328  
27 F.3d at 1105-1106.

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

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

1 As here, that plaintiff conceded the state's interest  
2 was compelling, but the court nevertheless engaged in  
3 an extensive discussion of why that the government's  
informational interest is not only compelling, but of  
the highest order.

4 [FN #5] That court stated:

5 Despite the fact that CPLC conceded that  
6 California has a compelling informational  
7 interest, California also presented persuasive  
evidence demonstrating the importance of providing  
8 the electorate with pertinent information.  
9 Researcher David Binder conducted a telephone  
10 survey from June 23-26, 2001. "The goals of this  
11 project were to determine objectively, using  
12 established methods of scientific public opinion  
13 research, what sources of information regarding  
14 candidates and ballot measures are important to  
15 California voters." According to Binder's  
16 findings, "[m]ore than seven of ten California  
17 voters (71%) state that it is important to know  
18 the identity of the source and amount of campaign  
19 contributions to the ballot measure by both  
20 supporters and opponents, including unions,  
businesses or other interest groups." "Fifty  
seven percent (57%) of California voters state  
that endorsements by interest groups, politicians  
or celebrities are important in helping them make  
up their mind [sic] on how to vote on ballot  
measures." "A majority of California voters (57%)  
state they would be less likely to vote for a  
proposition to build senior citizen housing if the  
proposition was supported by a well-known and  
respected senior activist who was discovered to  
have been paid by developers to promote the  
proposition. Only one-third (34%) stated that this  
information would not make any difference in their  
vote."

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

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

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

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

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

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

1 [FN #6] See also McConnell v. Fed. Election  
2 Comm'n, 540 U.S. 93, 128 (2003) ("Because FECA's  
3 disclosure requirements did not apply to so-called  
4 issue ads, sponsors of such ads often used  
5 misleading names to conceal their identity.  
6 'Citizens for Better Medicare,' for instance, was  
7 not a grassroots organization of citizens, as its  
8 name might suggest, but was instead a platform for  
9 an association of drug manufacturers. And  
10 'Republicans for Clean Air,' which ran ads in the  
11 2000 Republican Presidential primary, was actually  
12 an organization consisting of just two  
13 individuals-brothers who together spent \$25  
14 million on ads supporting their favored  
15 candidate."); id. at 128 n.23 ("Other examples of  
16 mysterious groups included 'Voters for Campaign  
17 Truth,' 'Aretino Industries,' 'Montanans for  
18 Common Sense Mining Laws,' 'American Seniors,  
19 Inc.' 'American Family Voices,' and the 'Coalition  
20 to Make our Voices Heard.'") (internal citations  
21 omitted).

22 "Interest groups also seek to conceal their political  
23 involvement by availing themselves of complicated  
24 arrangements consisting of nonprofit corporations,  
25 unregulated entities and unincorporated entities.  
26 Without disclosure requirements, citizens are likely to  
27 be uninformed and unaware that tens of millions of  
28 dollars are spent on ballot measure campaigns by such  
veiled political actors." Id. at 18:14-20. Of  
particular relevance in this case is the number of out-  
of-state individuals and corporations contributing to  
the passage of a California referendum. Surely  
California voters are entitled to information as to  
whether it is even citizens of their own republic who  
are supporting or opposing a California ballot measure.

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

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

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

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

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

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

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

29 Providing information to the electorate is vital to the  
30 efficient functioning of the marketplace of ideas, and  
31 thus to advancing the democratic objectives underlying  
32 the First Amendment...Thus, by revealing information  
33 about the contributors to and participants in public  
34 discourse and debate, disclosure laws help ensure that  
35 voters have the facts they need to evaluate the various  
36 messages competing for their attention.

37 This vital provision of information repeatedly has been  
38 recognized as a sufficiently important, if not  
compelling governmental interest.

39 ///

40 ///



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

19 ///

20 ///

21 ///

22 ///

23 ///

24 \_\_\_\_\_

25 <sup>14</sup> Plaintiffs contend the Human Life court’s “informational  
26 interest” discussion is dicta and is not relevant here, in part  
27 because that court was asked to evaluate only political committee  
28 definitions, not disclosure requirements. Plaintiffs’ Motion, 21  
n.19. Plaintiffs do not articulate, however, how the court’s  
inquiry into the state’s interest there was any less relevant to  
the issue before it, or how the analysis would differ here.



1 In addition, the Supreme Court in Citizens United, also  
2 recently spoke favorably of disclosure provisions. 130 S. Ct. at  
3 914 ("In Buckley, the Court explained that disclosure could be  
4 justified based on a governmental interest in providing the  
5 electorate with information about the sources of election-related  
6 spending.") (internal citations and quotation omitted); id. at  
7 915 ("The disclaimers required...provide the electorate with  
8 information, and insure that the voters are fully informed about  
9 the person or group who is speaking.") (internal quotations and  
10 citations omitted). Plaintiffs, nonetheless argue that Citizens  
11 United should be ignored because that case involved candidate  
12 campaigns as opposed to ballot measure initiatives. Plaintiffs'  
13 Motion, 22 n.20. In light of the Ninth Circuit's prior  
14 recognition, however, that a State's informational interest can  
15 be even more powerful in the ballot measure elections than in  
16 candidate races, the Supreme Court's discussion in Citizens  
17 United cannot be ignored.

18 Plaintiffs nonetheless ask this Court to ignore the great  
19 weight of the above authorities and to rely instead on the Tenth  
20 Circuit decision in Sampson v. Buescher, 625 F.3d 1247 (10th Cir.  
21 2010), a case in which that circuit reached a different  
22 conclusion than the above courts with respect to a ballot measure  
23 campaign. According to Plaintiffs, the Tenth Circuit was correct  
24 in finding that "the justifications for requiring disclosures in  
25 a candidate election may not apply, or may not apply with as much  
26 force, to a ballot initiative." Plaintiffs' Motion, 22:19-22  
27 (quoting Sampson, 625 F.3d at 1249).

28 ///

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

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

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

25 625 F.3d at 1249.<sup>15</sup> That court later elaborated:

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

...

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

---

<sup>15</sup> Notably, the court's latter point appears to go to the State's inapplicable "Corruption Interest" rather than to its "Informational Interest."

1 The voter must evaluate a human being, deciding what  
2 the candidate's personal beliefs are and what  
3 influences are likely to be brought to bear when he or  
4 she must decide on the advisability of future  
5 governmental action. The identities of those with  
6 strong financial ties to the candidate are important  
7 data in that evaluation. In contrast, when a ballot  
8 issue is before the voter, the choice is whether to  
9 approve or disapprove of discrete governmental action,  
10 such as annexing territory, floating a bond, or  
11 amending a statute. No human being is being evaluated.  
12 When many complain about the deterioration of public  
13 discourse-in particular, the inability or unwillingness  
14 of citizens to listen to proposals made by particular  
15 people or by members of particular groups-one could  
16 wonder about the utility of ad hominem arguments in  
17 evaluating ballot issues. Nondisclosure could require  
18 the debate to actually be about the merits of the  
19 proposition on the ballot.

11 Id. at 1255-1257.

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

27 ///

28 ///

1 The Tenth Circuit's analysis regarding a state's  
2 informational interest in ballot initiative campaigns is  
3 unpersuasive. First, that court rejected the reasoning in  
4 several critical Supreme Court cases by categorizing those  
5 discussions as dicta. In addition, the Sampson decision is  
6 contrary to Ninth Circuit precedent that relies on the same  
7 Supreme Court authorities rejected by the Tenth Circuit to find  
8 that the State's interest in ballot initiatives is important, and  
9 even compelling. In light of the contrary Supreme Court and  
10 Ninth Circuit authority already presented to this Court, this  
11 Court declines Plaintiffs' invitation to rely on Sampson.

12 Moreover, even if this Court was persuaded by the Tenth  
13 Circuit's analysis, that case is distinguishable from the instant  
14 case on its facts. More specifically, in Sampson the Tenth  
15 Circuit was confronted with a challenge to a state requirement  
16 that a small group raising less than \$800 register as a campaign  
17 committee in an election of just a few hundred voters. Id. at  
18 1249, 1251-52. The Sampson court reasoned that an average  
19 citizen could not be expected to master campaign finance laws and  
20 to determine which ones apply in a given election. Id. at 1259-  
21 60. Accordingly, even small groups, such as the plaintiffs in  
22 that case, would have been required to hire counsel to do so.  
23 Id. at 1260. Obtaining legal counsel to support such a small  
24 campaign was itself a substantial burden, which was then  
25 compounded by the time plaintiffs themselves were required to  
26 expend on the subject. Id. Moreover, the public interest in  
27 disclosure is minimal when the value of the financial information  
28 is so small. Id.

1 ("We agree with the Ninth Circuit that '[a]s a matter of common  
2 sense, the value of this financial information to the voters  
3 declines drastically as the value of the expenditure or  
4 contribution sinks to a negligible level.'") (citing Canyon Ferry  
5 Road, 556 F.3d at 1033). Accordingly, Sampson held that, on the  
6 facts before it, the burden on plaintiffs in compelled disclosure  
7 of their financial information, outweighed any benefit to the  
8 State. The Court did include the following important caveat in  
9 its decision:

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

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

25 **3. Relationship between the \$100 reporting threshold  
26 and the State's interest.**

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

31 ///

1 According to Plaintiffs, "common sense dictates—and the Ninth  
2 Circuit has found—that the 'value of this financial information  
3 to the voters declines drastically as the value of the  
4 expenditure or contribution sinks to a negligible level.'" Id.,  
5 28:8-10 (quoting Canyon Ferry Road, 556 F.3d at 1033)).  
6 Plaintiffs also argue the failure to account for inflation  
7 undermines any connection between the disclosure requirements and  
8 the State's interest. Id., 29:14. Contrary to Plaintiffs'  
9 assertions, Defendants contend the \$100 threshold is  
10 constitutional unless it is "wholly without rationality."  
11 Defendants' Motion, 34:25-28. Defendants further argue that the  
12 threshold is the result of "considered legislative judgment,"  
13 id., 36:6, and that the threshold need not be indexed for  
14 inflation, id., 36:23.

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

17 Plaintiffs argue that the Government's interest in the  
18 compelled disclosure of those who contributed amounts  
19 as low as \$100 to support Proposition 8 is negligible.  
20 Specifically, Plaintiffs express disbelief that "the  
21 public is clamoring for the knowledge of the name,  
22 address, occupation, and employer of every person who  
23 contributed one hundred dollars or more to a ballot  
24 measure." Id., 21-23. According to Plaintiffs, the  
25 State's threshold is therefore set too low and must  
26 fail for lack of adjustment for inflation. This Court  
27 disagrees and holds that the legislative line drawn is  
28 narrowly tailored to the State's compelling  
informational interest, that the threshold need not be  
indexed for inflation, and that a contrary holding  
would call into question scores of statutes in which  
the legislature or the people have sought to draw  
similar lines.

1 In Buckley, as here, the appellants argued "that the  
2 monetary thresholds in the record-keeping and reporting  
3 provisions lack[ed] a substantial nexus with the  
4 claimed governmental interests, for the amounts  
5 involved [were] too low even to attract the attention  
6 of the candidate, much less have a corrupting  
7 influence." Buckley, 424 U.S. at 82. There, the Act  
8 "required political committees to keep detailed records  
9 of both contributions and expenditures." Id. at 63. As  
10 in the instant case, "[e]ach committee...[was] required  
11 to file quarterly reports. The reports [were] to  
12 contain detailed financial information, including the  
13 full name, mailing address, occupation, and principal  
14 place of business of each person who had contributed  
15 over \$100 in a calendar year, as well as the amount and  
16 date of those contributions." Id. (internal citations  
17 omitted). On facts remarkably similar to those before  
18 this court, the Supreme Court held that "the \$100  
19 threshold was...within the 'reasonable latitude' given  
20 the legislature 'as to where to draw the line.'" Id. at  
21 83.

22 The Court elaborated on its decision stating, "The \$10  
23 and \$100 thresholds are indeed low. Contributors of  
24 relatively small amounts are likely to be especially  
25 sensitive to recording or disclosure of their political  
26 preferences. These strict requirements may well  
27 discourage participation by some citizens in the  
28 political process, a result that Congress hardly could  
have intended. Indeed, there is little in the  
legislative history to indicate that Congress focused  
carefully on the appropriate level at which to require  
recording and disclosure. Rather it seems merely to  
have adopted the thresholds existing in similar  
disclosure laws since 1910. But we cannot require  
Congress to establish that it has chosen the highest  
reasonable threshold. The line is necessarily a  
judgmental decision, best left in the context of this  
complex legislation to congressional discretion. We  
cannot say on this bare record that the limits are  
wholly without rationality." Id.

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

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

1 First, this Court finds the disclosure thresholds set  
2 in other states to be instructive. California's current  
3 \$100 threshold falls well within spectrum of those  
4 mandated by its sister states, which range from no  
5 threshold requirement to \$300. In fact, only six  
6 states in the United States have higher threshold  
7 requirements.

8 [FN #10 Omitted.]

9 The Supreme Court has previously made similar  
10 comparisons. Randall v. Sorrell, 548 U.S. 230 (2006).  
11 That Court stated, "As compared with the contribution  
12 limits upheld by the Court in the past, and with those  
13 in force in other States, [the Act's] limits are  
14 sufficiently low as to generate suspicion that they are  
15 not closely drawn." Id. at 249. That Court went on to  
16 point out that "[t]hese limits are well below the  
17 limits this Court upheld in Buckley. Indeed, in terms  
18 of real dollars (i.e., adjusting for inflation), the  
19 Act's \$200 per election limit on individual  
20 contributions to a campaign for governor is slightly  
21 more than one-twentieth of the limit on contributions  
22 to campaigns for federal office before the Court in  
23 Buckley. Adjusted to reflect its value in 1976,  
24 Vermont's contribution limit on campaigns for statewide  
25 office (including governor) amounts to \$113.91 per  
26 2-year election cycle, or roughly \$57 per election, as  
27 compared to the \$1,000 per election limit on individual  
28 contributions at issue in Buckley." Id. at 250.

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

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

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



1 According to Plaintiffs, the \$100 disclosure threshold  
2 approved of in Buckley would equate to approximately  
3 \$38.79 today. Motion, 24:6-8. Therefore, Plaintiffs  
4 contend that Buckley establishes the benchmark below  
5 which disclosure thresholds should not be permitted to  
6 fall.

7 Such a conclusion runs contrary to both logic and the  
8 law. "In Buckley, [the Court] specifically rejected  
9 the contention that \$1,000, or any other amount, was a  
10 constitutional minimum below which legislatures could  
11 not regulate...[The Court] referred instead to the  
12 outer limits of contribution regulation by asking  
13 whether there was any showing that the limits were so  
14 low as to impede the ability of candidates to 'amas[s]  
15 the resources necessary for effective advocacy,' 424  
16 U.S., at 21. [The court] asked, in other words,  
17 whether the contribution limitation was so radical in  
18 effect as to render political association ineffective,  
19 drive the sound of a candidate's voice below the level  
20 of notice, and render contributions pointless. Such  
21 being the test, the issue in later cases cannot be  
22 truncated to a narrow question about the power of the  
23 dollar, but must go to the power to mount a campaign  
24 with all the dollars likely to be forthcoming...[T]he  
25 dictates of the First Amendment are not mere functions  
26 of the Consumer Price Index. 161 F.3d at 525  
27 (dissenting opinion)." Nixon v. Shrink Mo. Gov't PAC,  
28 528 U.S. 377, 397 (2000). Neither can the  
constitutional principles at issue in the current case  
be construed solely in terms of the rate of inflation,  
and the Court finds that the disclosure threshold  
negligibly affects, if it affects at all, Plaintiffs'  
ability to amass resources or to advocate their cause.

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

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

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

22 Thus, disclosure requirements, by their very nature,  
23 are the least restrictive means through which to  
24 educate the electorate. The requirements do not limit  
25 the amount of contributions or expenditures by the  
26 entity or the contributor. They do not limit the  
27 entity's ability to raise funds, nor do they impose  
28 burdensome structural requirements on Plaintiffs. See  
Alaska Right to Life Committee v. Miles, 441 F.3d 773,  
791 (9th Cir. 2006). Moreover, Plaintiffs point to no  
threshold that would be more narrowly tailored to serve  
the State's interest. The Court simply cannot say that  
the cumulative effect of the disclosure of the  
contributors of \$100 is not narrowly tailored to the  
Government's compelling informational interest.<sup>16</sup>

20 [FN #11] As an example, the public could very  
21 well be swayed by the fact that numerous donations  
22 to Plaintiffs, and likely to others, came from out  
23 of state.

---

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

1 It appears very probable to this Court that the  
2 California electorate would be interested in  
3 knowing if a California initiative was funded by  
4 the citizens it is intended to affect or by out-  
5 of-state interest groups and individuals. In order  
6 to properly capture the number of non-California  
7 donors, it is quite logical to require a lower,  
8 rather than a higher, reporting threshold.

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

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

18 Plaintiffs nonetheless contend now that the \$100 reporting  
19 threshold does nothing to combat the State's informational  
20 interest, which it attempts to define more narrowly as an  
21 interest in combating "voter ignorance." Plaintiffs' Motion,  
22 24:12-14. Plaintiffs primarily believe that disclosure of large  
23 special interest groups will promote any such interest and that  
24 the identity of small donors, such as those contributing less  
25 than \$100, is irrelevant. Id., 26:1-9. Plaintiffs also argue  
26 there are other legislative actions that can be taken to combat  
27 voter ignorance (e.g., making measures simpler and clearer for  
28 voters). Id., 25:1-12. Plaintiffs thus conclude that the only  
justification for disclosure requirements that could actually  
alleviate voter ignorance is the need to prevent the "wolf from  
masquerading in sheep's clothing." Id., 27:6-18 (quoting  
Getman I, 328 F.3d at 1106 n.24). Plaintiffs then go on to argue  
that this final justification cannot be met when the amount of  
contributions to be disclosed "sinks to a negligible level."

1 Id., 28:4-10 (quoting Canyon Ferry Road, 556 F.3d at 1033).

2 First and foremost, Plaintiffs' citation to Canyon Ferry Road  
3 does little to further their argument.

4 In Canyon Ferry Road, plaintiff Canyon Ferry Road Baptist  
5 Church challenged Montana's campaign finance laws, including its  
6 disclosure requirements. 556 F.3d at 1023. In that case, the  
7 Church's Pastor became interested in supporting a Montana  
8 initiative amending the state constitution, as here, to define  
9 marriage as between a man and a woman. Id. at 1024. With the  
10 hope of having the initiative placed on the ballot, a member of  
11 the church printed out a petition and used the Church's copy  
12 machine and her own paper to print less than fifty copies of the  
13 document. Id. With the Pastor's approval, the member placed  
14 approximately twenty copies of the petition in the Church's  
15 foyer. Id. At roughly the same time, the Pastor also arranged  
16 for a simulcast entitled "Battle for Marriage," which did not  
17 expressly support or oppose any Montana initiative or candidate,  
18 to be shown at the Church. Id. The Church did not charge for  
19 attendance and utilized unpaid public service radio announcements  
20 to advertise the event. Id. The Church also printed flyers,  
21 which did not mention the state initiative, publicizing the  
22 broadcast. Id. After the simulcast, the Pastor did speak in  
23 support of the Montana initiative. Id. at 1024-25. The Pastor  
24 then circulated the petition and indicated that petitions were  
25 available in the lobby. Id. at 1025.

26 ///

27 ///

28 ///

1 The Montana initiative was successfully passed, after which  
2 groups opposing the ballot measure filed suit against the Church  
3 alleging it had created an "incidental political committee" and  
4 had failed to file the requisite disclosure forms. Id. The  
5 Church countered that it could not "constitutionally be subjected  
6 to the disclosure and reporting requirements applicable to  
7 'incidental political committees' under Montana law on the sole  
8 basis of its activities of de minimis economic effect in  
9 connection with the 'Battle for Marriage' event and related  
10 petition-signing efforts in support of CI-96." Id. at 1028. It  
11 further argued that the Montana state law was unconstitutionally  
12 vague as applied to the Church. Id. The Ninth Circuit agreed,  
13 holding that "as applied to (1) the placement of the petition in  
14 its foyer and (2) [the Pastor's] exhortation to sign the petition  
15 in support of [the initiative] during a regularly scheduled  
16 Sunday service, the...interpretation of 'in-kind expenditures' is  
17 unconstitutionally vague." Id. That court also agreed "that the  
18 designation of the Church as an 'incidental committee' because of  
19 its one-time, in kind 'expenditures' of de minimis economic  
20 effect violates the Church's First Amendment free speech rights."  
21 Id.

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

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

8 Looking to Buckley, the Ninth Circuit then asked “whether  
9 Montana’s ‘zero dollar’ threshold for disclosure is ‘wholly  
10 without rationality.’” Id. at 1033. The court concluded that it  
11 could not “say that the informational value derived by the  
12 citizenry is the same across expenditures of all sizes.” Id.  
13 Moreover, “[a]s a matter of common sense, the value of this  
14 financial information to the voters declines drastically as the  
15 value of the expenditure or contribution sinks to a negligible  
16 level. As the monetary value of an expenditure in support of a  
17 ballot issue approaches zero, financial sponsorship fades into  
18 support and then into mere sympathy.” Id. (emphasis in  
19 original). The court also noted that the burden of reporting  
20 remains unchanged despite the minimal nature of any expenditures.  
21 Id. at 1034. Accordingly, the Ninth Circuit concluded that “if  
22 the Supreme Court’s ‘rationality’ test for threshold disclosure  
23 levels has any force at all, there must be a level below which  
24 mandatory disclosure of campaign expenditures by ‘incidental  
25 committees’ runs afoul of the First Amendment.” Id. On the  
26 facts before it, the Canyon Ferry Road court therefore held that:

27 ///

28 ///

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

15 Id. The court specifically limited its holding, however, to the  
16 above formulation and declined to express any views regarding the  
17 constitutionality of the state's disclosure requirements  
18 pertaining to either candidate elections or to monetary  
19 contributions of any size. Id. Accordingly, while Plaintiffs  
20 attempt to carve out and rely on language that is persuasive to  
21 their position, that language is simply not on point. In  
22 addition, that case is factually distinguishable since it dealt  
23 with in-kind contributions that were entirely negligible, not  
24 monetary contributions in excess of a threshold rationally set by  
25 the state legislature. Moreover, while the in-kind contributions  
26 in that case were of no real consequence there, the totality of  
27 small contributions in this case were very consequential because  
28 a review of those contributions in the aggregate demonstrated,  
for example, just how much money supporting Proposition 8 was  
coming in to California from out of state. This Court finds it  
highly relevant to a California voter's decision making process  
whether a ballot measure amending California's Constitution is  
being supported by fellow Californians or by citizens of  
neighboring states. Accordingly, Canyon Ferry Road, has no real

1 bearing on this case.

2 A First Circuit decision from just a few months ago is much  
3 more on point. In National Organization for Marriage v. McKee,  
4 that court addressed a challenge to Maine's campaign disclosure  
5 provisions requiring "anyone spending more than an aggregate of  
6 \$100 for communications expressly advocating the election or  
7 defeat of a candidate to report the expenditure to the  
8 Commission." 649 F.3d 34, 59 (1st Cir. 2011). As here, the  
9 plaintiff in that case argued the state lacked a sufficiently  
10 important interest justified by its \$100 reporting threshold.  
11 Id. at 60. Also as here, that plaintiff relied on Randall v.  
12 Sorrell, 548 U.S. 230, to argue that disclosure thresholds must  
13 fail unless indexed to inflation." Id. at 60-61. The McKee  
14 court rejected both of plaintiff's arguments stating:

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

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

28 ///



1 Accordingly, Plaintiffs' Motion for Summary Judgment as to this  
2 claim is DENIED and Defendants' Motion for Summary Judgment is  
3 GRANTED.

4  
5 **C. Whether Post-Election Reporting of Contributors or a**  
6 **Failure to Purge Reports Post-Election is**  
7 **Unconstitutional**

8 Finally, Plaintiffs argue that California's only possible  
9 interest, its informational interest, is insufficient to justify  
10 post-election compelled disclosure or the State's failure to  
11 purge reports post-election.<sup>17</sup> Plaintiffs' Motion, 33:7-8.  
12 According to Plaintiffs, "the problem of voter ignorance is, by  
13 definition, a pre-election concern." Id., 33: 11-13. Plaintiffs  
14 also contend any post-election State interest could be served  
15 solely through non-public, as opposed to public, disclosure.  
16 Id., 35:8-12.

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

---

25  
26 <sup>17</sup> From a practical perspective, Plaintiffs' latter argument  
27 is somewhat illogical given the fact Plaintiffs acknowledge  
28 contribution reports are reproduced on the internet and  
elsewhere. It is not entirely clear what purpose would be served  
by the State's purging of reports post-election when that  
information has already entered the public domain.

1 Defendants disagree, arguing that the State's informational  
2 interest does not end with an election. Defendants' Motion,  
3 32:6-8. Citing to this Court's Order Denying Preliminary  
4 Injunction, Defendants contend the informational interest  
5 continues because, inter alia, legislation is not "carved in  
6 stone", disclosure aids future campaigns, scholars rely on  
7 disclosure information to understand the influences of campaign  
8 contributions, post-election disclosure prevents ballot measure  
9 committees from evading disclosure by accepting contributions in  
10 the final days of an election, and complete and accurate  
11 reporting requires a sufficient amount of time such that final  
12 reporting cannot be finalized on or before an election.  
13 Defendants reject Plaintiffs' assertion that non-public  
14 disclosure would serve the State's needs, arguing that non-public  
15 disclosure only would deny voters, future campaigns and scholars  
16 useful information. Id., 34:14-15.

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

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

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

16 Indeed, it is unclear how “uninhibited, robust, and  
17 wide-open” speech can occur when organizations hide  
18 themselves from scrutiny of the voting  
19 public...Plaintiffs’ argument for striking down [the]  
20 disclosure provisions does not reinforce the precious  
21 First Amendment values that Plaintiffs argue are  
22 trampled..., but ignores the competing First Amendment  
23 interests individual citizens seeking to make informed  
24 choices in the political marketplace.” McConnell, 540  
25 U.S. at 198, affirming in part and reversing in part  
26 McConnell v. Federal Election Com’n, F. Supp. 2d 176,  
27 237 (D.D.C. 2003).

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

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

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

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

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

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

25 Plaintiffs raise no new legal arguments and present no  
26 material facts not already addressed by this Court. Because  
27 Plaintiffs remaining arguments are based on their unsupported  
28 assertion that California's informational interest cannot be  
served by post-election reporting, Plaintiffs' arguments are  
rejected and their Motion for Summary Judgment is DENIED.  
Defendants' Motion for Summary Judgment, therefore, is GRANTED.

///

///

///

///

///

///

///

**CONCLUSION**

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

IT IS SO ORDERED.

Dated: November 4, 2011



---

MORRISON C. ENGLAND, JR.  
UNITED STATES DISTRICT JUDGE