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10 *Pro Hac Vice Application Filed Concurrently
 11 **Designated Counsel for Service

12 **United States District Court**
 13 **Eastern District of California**
 14 **Sacramento Division**

15 **ProtectMarriage.com - Yes on 8, a Project of California**
Renewal; National Organization for Marriage California
 16 **- Yes on 8, Sponsored by National Organization for**
Marriage,

17 *Plaintiffs,*

18 *v.*

19 **Debra Bowen**, Secretary of State for the State of California,
 in her official capacity; **Edmund G. Brown, Jr.**, Attorney
 20 General for the State of California, in his official capacity;
Dean C. Logan, Registrar-Recorder of Los Angeles County,
 21 California, in his official capacity; **Department of Elections**
- City and County of San Francisco; Jan Scully, District
 22 Attorney for Sacramento County, California, in her official
 capacity and as a representative of the Class of District
 23 Attorneys in the State of California; **Eileen M. Teichert**,
 City Attorney for the City of Sacramento, California, in her
 24 official capacity and as a representative of the Class of City
 Attorneys in the State of California; **Ross Johnson**,
 25 **Timothy Hodson, Eugene Huguenin, Jr., Robert Leidigh**,
 and **Ray Remy**, members of the California Fair Political
 26 Practices Commission, in their official capacities,
Defendants.

Case No. _____

Complaint

1 ProtectMarriage.com - Yes on 8, a Project of California Renewal
2 (“ProtectMarriage.com”), National Organization for Marriage California - Yes on 8, Sponsored
3 by National Organization for Marriage (“NOM-California”) complain as follows:

4 **Introduction**

5 **1.** This is a pre-enforcement, facial and as-applied constitutional challenge to
6 California’s Political Reform Act of 1974, California Government Code (“CGC”) § 81000 *et*
7 *seq.*, as amended (“the Act”). Plaintiffs, ProtectMarriage.com - Yes on 8, a Project of California
8 Renewal and National Organization for Marriage California - Yes on 8, Sponsored by National
9 Organization for Marriage, seek declaratory and injunctive relief with respect to portions of the
10 Act because they violate the First Amendment to the United States Constitution, as incorporated
11 to the states by virtue of the Fourteenth Amendment to the United States Constitution.
12 Consequently, each is unconstitutional on its face and as applied to Plaintiffs
13 ProtectMarriage.com and NOM-California, and all other similarly situated persons.

14 **2.** Specifically, Plaintiffs ProtectMarriage.com and NOM-California challenge all of
15 the Act’s compelled disclosure requirements as-applied to them and all similarly situated persons
16 on the ground that there is a reasonable probability that the Act’s compelled disclosure
17 requirements will result in threats, harassment, and reprisals, similar to those already suffered by
18 supporters of Proposition 8.

19 **3.** Furthermore, Plaintiffs ProtectMarriage.com and NOM-California challenge the
20 Act’s threshold for reporting contributors, CGC § 84211, both facially and as-applied to them,
21 on the grounds that the extremely low limit is not narrowly tailored to serve a compelling
22 government interest, in violation of the First Amendment to the United States Constitution, as
23 incorporated to the State of California by the Fourteenth Amendment.

24 **4.** Finally, Plaintiffs ProtectMarriage.com and NOM-California challenge the Act’s
25 compelled disclosure requirements, both facially and as-applied, to the extent that the Act
26 requires Plaintiffs to file reports *after* the election and to the extent that California continues to
27 make said reports available to the public after the election, because post-election reporting with
28

1 respect to ballot measures is not narrowly tailored to serve a compelling government interest in
2 violation of the First Amendment to the United States Constitution, as incorporated by the
3 Fourteenth Amendment.

4 **I.**

5 **Jurisdiction and Venue**

6 **5.** This action arises under 42 U.S.C. § 1983 and the First and Fourteenth
7 Amendments to the United States Constitution.

8 **6.** This court has subject matter jurisdiction to adjudicate all claims in this complaint
9 by reason of 28 U.S.C. §§ 1331 and 1343(a).

10 **7.** The Eastern District of California is the proper venue for this case under 28
11 U.S.C. § 1391(b) because Defendants Bowen, Brown, Scully, and Teichert perform their official
12 duties in the Eastern District of California, and Plaintiffs have their principal place of business in
13 California.

14 **II.**

15 **Parties**

16 **8.** Plaintiff ProtectMarriage.com is a primarily formed ballot committee under
17 California law. CGC §§ 82013 and 82047.5. Plaintiff ProtectMarriage.com’s principal place of
18 business is in Sacramento, California. Plaintiff ProtectMarriage.com’s primary purpose is to
19 support Proposition 8, and to that end, it raised and spent over \$20 million.

20 **9.** Plaintiff NOM-California is a primarily formed ballot committee under California
21 law. CGC §§ 82013 and 82047.5. Plaintiff NOM-California’s principal place of business is
22 Santa Ana, California. Plaintiff NOM-California’s primary purpose is to support Proposition 8,
23 and to that end, it raised and spent nearly \$2 million.

24 **10.** Together, Plaintiffs **ProtectMarriage.com** and **NOM-California** are collectively
25 referred to as “**Committee Plaintiffs**” or simply “**Plaintiffs**.”

26 **11.** Defendant Debra Bowen is the Secretary of State of California. She is sued in her
27 official capacity. Pursuant to CGC § 84215, ProtectMarriage.com and NOM-California are
28 required to file all campaign reports with Defendant Bowen. All reports filed by Plaintiffs are

1 public records and are open to the public for inspection pursuant to CGC § 81008. Furthermore,
2 the Secretary of State is charged with developing a system for electronic filing of campaign
3 statements, and with making said system available to the public via the World Wide Web. CGC
4 § 84602. See <http://cal-access.sos.ca.gov/campaign/> (“Cal-Access”).

5 **12.** Defendant Edmund Brown, Jr. is the Attorney General of California. He is sued
6 in his official capacity. Pursuant to CGC § 91001, Defendant Brown may bring criminal and
7 civil actions against individuals or organizations that fail to comply with the provisions of the
8 Act at issue herein.

9 **13.** Defendant Dean C. Logan is the Registrar-Recorder of Los Angeles County,
10 California. He is sued in his official capacity. Defendant Logan is one of the State officials with
11 whom the Plaintiffs are required to file copies of all reports. CGC § 84215. All reports filed by
12 Plaintiffs are public records and are open to the public for inspection at the office of Defendant
13 Logan pursuant to CGC § 81008.

14 **14.** Defendant Department of Elections - City and County of San Francisco is one of
15 the governmental offices with whom the Plaintiffs are required to file copies of all reports. CGC
16 § 84215. All reports filed by Plaintiffs are public records and are open to the public for
17 inspection at the office of Defendant Department of Elections - City and County of San
18 Francisco pursuant to CGC § 81008.

19 **15.** Defendant Jan Scully is the District Attorney for Sacramento County, California,
20 the county in which Plaintiffs, ProtectMarriage.com has its principal offices. She is sued in her
21 official capacity and as a representative of the class of District Attorneys in the State of
22 California. Pursuant to CGC § 91001, Defendant Scully and all other District Attorneys in the
23 State of California may bring criminal and civil actions against individuals or organizations that
24 fail to comply with the provisions of the Act at issue herein.

25 **16.** Defendant Eileen M. Teichert is the City Attorney for the City of Sacramento,
26 California, the city in which ProtectMarriage.com has its principal offices. She is sued in her
27 official capacity and as a representative of the class of City Attorneys in the State of California.
28

1 Pursuant to CGC § 91001.5, Defendant Teichert and all other City Attorneys may bring criminal
2 and civil actions against individuals or organizations that fail to comply with the provisions of
3 the Act at issue herein.

4 **17.** Defendant Ross Johnson is the Chairman of the Fair Political Practices
5 Commission (“FPPC”). He is sued in his official capacity and is subject to the jurisdiction of
6 this court. Defendants Timothy Hodson, Eugene Huguenin, Jr., Robert Leidigh, and Ray Remy
7 are members of the FPPC. They are sued in their official capacity. The FPPC has the “primary
8 responsibility for the impartial, effective administration and implementation of [the Act].” CGC
9 § 83111. The FPPC has the authority to investigate possible violations of the Act based upon
10 sworn complaints of any person or upon its own initiative. CGC § 83115. Pursuant to CGC §
11 83116, the FPPC has the authority to order Committee Plaintiffs to comply with the provisions
12 of the Act and to impose civil fines up to five thousand dollars. Under CGC § 91001, the FPPC
13 may bring any civil action that could be brought by a voter or resident of the jurisdiction.
14 Finally, under CGC § 91005.5, the FPPC may bring a civil action for violations of the provisions
15 at issue herein in which a civil penalty of up to \$5,000 per violation may be imposed.

16 **III.**

17 **Class Action Allegations¹**

18 **18.** In paragraphs fifteen (15) and sixteen (16), respectively, Defendant Jan Scully is
19 named as a representative of the class of all the District Attorneys for the State of California, and
20 Defendant Eileen M. Teichert is named as a representative of the class of City Attorneys for the
21 State of California. These class actions may be maintained under FRCP 23(a) because: the
22 classes of all District and City Attorneys for the State of California are so numerous that joinder
23 of all members is impracticable – there are over fifty-eight (58) district attorneys in California,
24 and there are over four hundred (400) cities in California that are authorized to retain city
25 attorneys; the questions of law and fact are common to the members of the classes, to wit,

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27 ¹Plaintiffs will file a separate motion for class certification under Rule 23 but wanted to
28 notify the Court and opposing counsel of their intent to do so at this early stage of the litigation.

1 whether the Act's registration and reporting requirements at issue herein are unconstitutional,
2 both facially and as-applied, under *Buckley* and its progeny; the defenses of the representative
3 parties are typical of the defenses of the classes; and the representative parties will fairly and
4 adequately protect the interests of the classes because all members of the classes share the same
5 interests in this matter, to wit, defending and enforcing the laws of the State of California. These
6 class actions may be maintained under FRCP 23(b)(1) because the prosecution of separate
7 actions against individual members of the classes would establish incompatible standards of
8 conduct for the Plaintiffs, or it would create a risk of adjudications with respect to individual
9 members of the classes that would as a practical matter be dispositive of the interests of the other
10 members not parties to the adjudications or substantially impair or impede their ability to protect
11 their interests. These class actions may be maintained under FRCP 23(b)(2) because the
12 Plaintiffs have acted on grounds generally applicable to the classes, thereby making appropriate
13 final injunctive or corresponding declaratory relief with respect to the classes as a whole.
14 Finally, these class actions may be maintained under FRCP 23(b)(3) because there are questions
15 of law and fact common to the members of the classes that predominate over any questions
16 affecting only individual members; and a class action is superior to other available methods for
17 the fair and efficient adjudication of this controversy, to wit, separate actions against each and
18 every District and City Attorney in California.

19 IV.

20 Facts

21 **Brief Overview of Events Leading to Proposition 8**

22 19. The story behind Proposition 8 began in large part on March 7, 2000, when
23 61.4% of California citizens voted in favor of Proposition 22. Proposition 22, entitled the
24 "California Defense of Marriage Act," added California Family Code section 308.5, which
25 provided that, "Only marriage between a man and a woman is valid or recognized in California."
26 *A History of California Initiatives*, California Secretary of State, *available at*
27 http://www.sos.ca.gov/elections/init_history.pdf (last visited Dec. 10, 2008).

1 **20.** Nevertheless, on February 10, 2004, contrary to the definition of marriage
2 contained in section 308.5, the Mayor of the City and County of San Francisco directed the San
3 Francisco county clerk to begin issuing marriage licenses to same-sex couples. *In re Marriage*
4 *Cases*, 43 Cal. 4th 757, 785 (2008). On March 11, 2004, in response to a challenge regarding the
5 authority of the City and County of San Francisco to issue same-sex marriage licenses in light of
6 section 308.5, the California Supreme Court issued a stay, pending the final resolution of the
7 case, and ordered City officials to refrain from issuing any further licenses. *Id.* at 785-86. On
8 August 12, 2004, the California Supreme Court rendered its final decision in the case, ruling that
9 the City and County of San Francisco had exceeded its authority by issuing marriage licenses to
10 same-sex couples in violation of section 308.5 and voided all same-sex marriage licenses issued
11 by the City. *Id.* at 787.

12 **21.** While the above challenge was pending, the City and County of San Francisco
13 filed suit, alleging that section 308.5 violated the California Constitution. *Id.* at 786. On April
14 13, 2005, the California superior court ruled that section 308.5 violated the Equal Protection
15 Clause of the California Constitution. *Id.* at 787. While the superior court's decision was
16 reversed by the California appellate court, that victory was short-lived, because on May 15,
17 2008, the California Supreme Court ruled that section 308.5 of the California Family Code
18 violated the California Constitution. *Id.* at 857.

19 **22.** Shortly after the California superior court announced its ruling that section 308.5
20 violated the California Constitution, ProtectMarriage.com announced its intentions to seek an
21 amendment to the California Constitution that would solve the alleged infirmities of section
22 308.5 of the Family Code. John M. Hubbell, *Coalition Seeks Male-Female Marriage Definition:*
23 *New Ballot Push for Constitutional Amendment*, San Francisco Chronicle, Apr. 28, 2005,
24 *available at*
25 <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2005/04/28/BAGM6CGHTT1.DTL&type=print>
26 *able* (last visited Dec. 10, 2008). ProtectMarriage.com ultimately failed to obtain the necessary
27 number of signatures to place a constitutional amendment on the June 2006 ballot.
28

1 **Proposition 8 – The Campaign and the Aftermath**

2 **23.** On June 2, 2008, Debra Bowen, the California Secretary of State, certified
3 Proposition 8, indicating that ProtectMarriage.com had obtained the requisite number of
4 signatures to place the proposed Constitutional Amendment on the November 4, 2008 ballot.

5 **24.** Proposition 8, entitled the “California Marriage Protection Act,” provides for the
6 addition of section 7.5 to Article I of the California Constitution, which reads in its entirety,
7 “Only marriage between a man and a woman is valid or recognized in California.”² 2008
8 California Voter Information Guide, *available at*
9 <http://www.voterguide.sos.ca.gov/title-sum/prop8-title-sum.htm> (last visited Dec. 12, 2008).

10 **25.** Plaintiff ProtectMarriage.com is a “committee” under California law because it
11 received contributions of one thousand dollars (\$1,000) or more in support of Proposition 8.
12 CGC § 82013(a).

13 **26.** Plaintiff ProtectMarriage.com is a “primarily formed committee” because it was
14 formed to support one or more statewide ballot measures in the same election. CGC §
15 82047.5(c).

16 **27.** Plaintiff NOM-California is a “committee” under California law because it
17 received contributions of one thousand dollars (\$1,000) or more in support of Proposition 8.
18 CGC § 82013(a).

19 **28.** Plaintiff NOM-California is a “primarily formed committee” because it was
20 formed to support one or more statewide ballot measures in the same election. CGC §
21 82047.5(c).

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26 ² Even the name of Proposition 8 proved controversial. The Secretary of State changed
27 the official name of Proposition 8 as placed on the ballot to “Eliminates Right of Same-Sex
28 Couples to Marry. Initiative Constitutional Amendment.” 2008 California Voter Information
Guide, *available at* <http://www.voterguide.sos.ca.gov/title-sum/prop8-title-sum.htm> (last visited
Dec. 12, 2008).

1 **29.** As set forth in more detail below, the Act places numerous administrative burdens
2 on committees including, but not limited to, the filing of registration and public disclosure
3 statements. *See* Paragraphs 43-58

4 **30.** Plaintiffs and other supporters of Proposition 8 have been subjected to threats,
5 harassment, and reprisals as a result of their support for Proposition 8. *See generally*, Decl. of
6 Sarah E. Troupis (consisting of a number of exhibits, mostly news stories, highlighting the
7 animosity directed at supporters of Proposition 8);³ <http://www.californiansagainsthate.com>
8 (“Help us identify and take action against those who want to deny us our equal rights;” stating
9 that the purpose of the organization is not to provide a meaningful debate about Proposition 8,
10 but instead, simply to identify those individuals and businesses that supported Proposition 8 so
11 that the organization can “fight back.”).

12 **31.** The threats and harassment have included threatening phone calls, emails, and
13 postcards. *See, e.g.*, Decl. of John Doe #4 (received multiple threatening emails including one
14 that read “hello propagators & litigators [sic] burn in hell” and another that read
15 “congratulations. for your support of prop 8, you have won our tampon of the year award.”);
16 Decl. of John Doe #6 (postcard chastising her for her financial support of Proposition 8). In
17 some instances, such phone calls and e-mails were accompanied by death threats, a threat made
18 all the more plausible by the compelled disclosure of the addresses of the donors. *See, e.g.*,
19 Decl. of Sarah E. Troupis, Ex. E (“Consider yourself lucky. If I had a gun I would have gunned
20 you down along with each and every other supporter. . . . I’ve also got a little surprise for Pasor
21 [sic] Franklin and his congregation of lowlife’s [sic] in the coming future. . . . He will be
22 meeting his maker sooner than expected. . . . If you thought 9/11 was bad, you haven’t seen
23 anything yet.”); Ex. P (listing the supporter’s home and business contact information, including
24 address and stating: “Hi [REDACTED], I just wanted to call and let you know what a great
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26 ³ All declarations referenced herein will be filed once the Court rules on Plaintiffs’ *Ex*
27 *Parte Motion for Leave to File Documents Under Seal*. Plaintiffs have used pseudonyms to refer
28 to the individual declarants to protect their identities and to protect them from further
harassment.

1 picture that was of you and the other Nazi's [sic] in the newspaper. It's nice to see you getting
2 out and supporting discrimination. Don't worry though, we have plans for you and your friends.
3 When you have one of your basic rights taken away from you, you'll [sic] know how it feels to
4 be discriminated against. I hope you rot in hell, you fckuing [sic] c**t.")

5 **32.** Supporters of Proposition 8 have also had their personal property vandalized or
6 destroyed. *See, e.g.,* Decl. of John Doe #3 (window broken using "Yes on 8" sign); *see*
7 *generally* Decl. of Sarah E. Troupis, Ex. Q - AC (containing news reports of widespread
8 vandalism, including graffiti, property damage, and sign theft).

9 **33.** Supporters of Proposition 8 have also received envelopes containing a suspicious
10 white powdery substance. *See* Decl. of Sarah E. Troupis, Ex. J (reporting that two Church of
11 Latter Day Saints temples and a Knights of Columbus facility received envelopes containing a
12 white powdery substance).

13 **34.** The threats and harassment have extended into the work lives of the supporters of
14 Proposition 8. *See, e.g.,* Decl. of John Doe #2 (flyer distributed in his hometown calling him a
15 "Bigot," indicating that he gave \$X,XXX in support of Proposition 8, and that he is a Deacon at
16 a Catholic Church); Decl. of John Doe #5 (donor gave one hundred dollars and received email
17 that read "It will be interesting to see if your firms' [sic] decision to support the 'Yes on
18 Proposition 8' campaign will prove true the axiom - any PR is good PR. I doubt it."); Decl. of
19 John Doe #4 (received email that read "I AM BOYCOTTING YOUR ORGANIZATION AS A
20 RESULT OF YOUR SUPPORT OF PROP 8" and another that read "I will tell all my friends not
21 to use your business. I will not give you my hard earned money knowing that you think I don't
22 deserver [sic] the same rights as you do. This is a consequence of your hatred.").

23 **35.** Businesses, whether or not they have contributed to either side of the Proposition
24 8 campaign, have been blacklisted because people who worked at those businesses supported
25 Proposition 8. *See generally* Decl. of Sarah E. Troupis, Ex. AD - BE (discussing pattern of
26 blacklisting and boycotting of business that contributed to Proposition 8). Indeed, several
27 individuals have been forced to resign from their positions at work because their support of
28 Proposition 8 was made public through the compelled disclosure system. Decl. of Sarah E.

1 Troupis, Ex. AD (forced to resign over one hundred dollar donation); Ex. AH (forced to resign
2 over \$1,500 donation); Ex. AI (forced to resign over \$1,000 donation).

3 **36.** Several donors have indicated that they will not contribute to Committee
4 Plaintiffs or similar organizations in the future because of the threats and harassment directed at
5 them as a result of their contributions to Committee Plaintiffs and the public disclosure of that
6 fact. Indeed, there is significant evidence that, because of the disclosure of their names,
7 donations to groups supporting the passage of Proposition 8 led directly to those donors being
8 singled out for threats, harassment, and reprisals. *See, e.g.*, Decl. of John Doe #2 (unlikely to
9 contribute in future because a flyer was circulated calling him a “bigot” for supporting
10 Proposition 8 and referencing the amount of his donation); Decl. of John Doe #5 (stating that he
11 feels “threatened and uneasy knowing that [his] company and [he] could be targeted simply for
12 participating in the democratic process” because he received an email referencing the amount of
13 his donation).

14 **37.** The threats and harassment directed at supporters of Proposition 8 have been
15 enabled in part by the Act’s compelled disclosure requirements.

16 **38.** Committee Plaintiffs and Major Donors have filed, or will file unless appropriate
17 relief is granted, reports in accordance with the various provisions set forth below.

18 **39.** Committee Plaintiffs believe potential contributors were discouraged from
19 contributing to their committees as a result of the threats and harassment directed at supporters
20 of Proposition 8.

21 **40.** The continued availability of Plaintiffs’ previously filed reports creates the
22 reasonable probability that supporters of Proposition 8 will be subjected to continued harassment
23 for exercising their First Amendment rights.

24 **41.** Compliance with the Act’s post-election reporting requirements creates a
25 reasonable probability that those individuals and organizations that made contributions or
26 received expenditures in support of Proposition 8 will be subject to the same level of threats,
27 harassment, and reprisals as set forth above.

1 **42.** Plaintiffs have suffered, or will suffer, irreparable harm if the requested relief is
2 not granted.

3 **The California Campaign Finance System**

4 **43.** The Act defines a “committee” in relevant part as follows:

5 “Committee” means any person or combination of persons who directly or
6 indirectly does any of the following: (a) receives contributions totaling one
7 thousand dollars (\$1,000) or more in a calendar year; (b) makes independent
8 expenditures totaling one thousand dollars (\$1,000) or more in a calendar year;
9 (c) makes contributions totaling ten thousand dollars (\$10,000) or more in a
10 calendar year to or at the behest of candidates or committees

11 CGC § 82013.

12 **44.** A “person” is defined by CGC § 82047 as:

13 [A]n individual, proprietorship, firm, partnership, joint venture, syndicate,
14 business, trust, company, corporation, limited liability company, association,
15 committee, and any other organization or group of persons acting in concert.

16 **45.** A “primarily formed committee” (“PFC”) is defined as:

17 [A] committee pursuant to subdivision (a) of Section 82013 which is formed or
18 exists primarily to support or oppose any of the following: (a) a single candidate;
19 (b) a single measure; (c) a group of specific candidates being voted upon in the
20 same city, county, or multicounty election; two or more measures being voted
21 upon in the same city, county, multicounty, or state election.

22 CGC § 82047.5.

23 **46.** The Act imposes numerous record keeping and reporting requirements on PFCs,
24 including, but not limited to: registration statements, campaign statements, the identification of
25 committee sponsors in the committee name, the identification of major donors in advertisements,
26 and termination statements (collectively, the “Reports”). *See* CGC § 84100 *et seq.*

27 **47.** A PFC is required to file campaign statements at various points throughout the
28 year, including: quarterly, CGC § 84202.3; semi-annually, CGC § 84200; pre-election, CGC §
84200.7; and late contribution, CGC § 84203. Specifically at issue in this case are the semi-
annual campaign statements due on January 31, 2009 and all previously filed reports. CGC §
84200.

1 **48.** Donors to Committee Plaintiffs that contribute ten thousand dollars (\$10,000) or
2 more to Committee Plaintiffs (“**Major Donors**”) have independent filing requirements pursuant
3 to CGC § 84200(b).

4 **49.** Plaintiffs are required to file copies of all Reports, including campaign
5 statements, with the Secretary of State, the Registrar-Recorder of Los Angeles County
6 (Defendant Logan), and the Registrar of Voters of the City and County of San Francisco
7 (Defendant Department of Elections - City and County of San Francisco). CGC § 84215.

8 **50.** Pursuant to CGC § 81009, “[s]tatements of organization, registration statements,
9 and original campaign statements of . . . committees supporting or opposing statewide measures,
10 shall be retained by filing officers *indefinitely*.” (emphasis added).

11 **51.** Furthermore, once a committee has received contributions, made expenditures,
12 made loans, or received loans, of \$50,000 or more it must file all Reports electronically with the
13 Secretary of State. CGC § 84605(a). A committee that files electronically is not required to file
14 paper copies with local filing officers. CGC § 84606.⁴

15 **52.** All Reports, including campaign statements, are public records and are open to
16 the public for inspection pursuant to CGC § 81008. “No conditions whatsoever shall be imposed
17 upon persons desiring to inspect or reproduce reports and statements filed under this title, nor
18 shall any information or identification be required from these persons.” CGC § 81008(a). The
19 literal language of section 81008(a) suggests that the public may access any reports or statements
20 filed pursuant to the Act indefinitely. CGC § 81008(a) (“[T]he filing officer may charge a
21 retrieval fee not to exceed five dollars (\$5) per request for copies of reports and statements which
22 are five or more years old.”); *see also*, CGC § 81009 (reports retained indefinitely).

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25 ⁴ The Online Disclosure Act, CGC § 84600 *et seq.*, provides that a committee may omit
26 the street name, street number, and bank account information from electronically filed forms.
27 CGC § 84602(d). A number of private web sites, presumably beginning with the information
28 available on Cal-Access, have created their own lists or Proposition 8 supporters which include
the information omitted from Cal-Access, as well as additional contact information. *See*
<http://www.californiansagainsthate.com/>.

1 **53.** Furthermore, pursuant to CGC § 84602, all Reports, including campaign
2 statements, are published by the Secretary of State on the World Wide Web via Cal-Access. The
3 Act contains no provision as to when such data is to be removed. As of January 7, 2008, Cal-
4 Access contained information regarding ballot measure contributions as far back as the March 7,
5 2000 election. *See* CGC § 84600 *et seq.* (the “Online Disclosure Act”).

6 **54.** CGC § 84211 provides, in relevant part, that each campaign statement shall
7 include:

8 (f) if the cumulative amount of contributions (including loans) received from a
9 person is *one hundred dollars (\$100)* or more and a contribution or loan has been
10 received from that person during the period covered by the campaign statement,
11 all of the following: (1) *his or her full name*; (2) *his or her street address*; (3) *his*
12 *or her occupation*; (4) *the name of his or her employer, or if self-employed, the*
13 *name of the business*; (5) the date and amount received for each contribution
14 received during the period covered by the campaign statement and if the
15 contribution is a loan, the interest rate for the loan;

16 . . .

17 (k) for each person to whom an expenditure of *one hundred dollars (\$100)* or
18 more has been made during the period covered by the campaign statement, all of
19 the following: (1) *his or her full name*; (2) *his or her street address*; (3) the
20 amount of each expenditure; (4) a brief description of the consideration for which
21 each expenditure was made; . . . (6) the information required in paragraphs (1) to
22 (4), inclusive, for each person, if different from the payee, who has provided
23 consideration for an expenditure of five hundred dollars (\$500) or more during
24 the period covered by the campaign statement.

25 (emphasis added).

26 **55.** Furthermore, a committee is required to keep detailed records of *all* contributors
27 of twenty-five dollars (\$25.00) or more, and all recipients of expenditures of twenty-five dollars
28 (\$25.00) or more, for a period of four years from the date the campaign statement to which they
relate is filed. CGC § 84104; Cal. Code Regs. tit. 2, § 18401.

56. Moreover, pursuant to CGC § 84105 and Cal. Code Regs. tit. 2, § 18427.1, a
committee which receives contributions of five thousand dollars (\$5,000) or more from any
person shall inform the contributor, within two weeks of receiving such contributions, that he or
she may be required to file campaign reports. Pursuant to Cal. Code Regs. § 18427.1, the notice
shall contain the following or substantially similar language:

1 If your contributions . . . to any state and local candidates or committees total
2 \$10,000 or more in a calendar year you are required by the Political Reform Act
3 of 1974 to file campaign statements. For more information, contact your city or
4 county clerk or call the Fair Political Practices Commission at (916) 322-5660.

5 **57.** Any person who knowingly or willfully violates any of the above provisions is
6 guilty of a misdemeanor. CGC § 91000(a). In addition, “a fine of up to the greater of ten
7 thousand dollars (\$10,000) or three times the amount the person failed to report properly or
8 unlawfully contributed, expended, gave or received may be imposed upon conviction for each
9 violation.” CGC § 91000(b).

10 **58.** Finally, any person who violates any of the above provisions for which no
11 specific civil penalty is provided shall be liable in a civil action brought by the commission or
12 the district attorney for an amount of up to five thousand dollars (\$5,000). CGC § 91005.5.
13 Additionally, any person who intentionally or negligently violates any of the reporting
14 requirements of the act shall be liable in a civil action brought by the civil prosecutor or by a
15 person residing in the jurisdiction. CGC § 91004.

16 V.

17 **Count 1 – The Act is unconstitutional as-applied to Plaintiffs because 18 Plaintiffs’ rights to exercise their First Amendment rights free from threats, 19 harassment, and reprisals outweigh the State’s interest in compelled 20 disclosure.**

21 **59.** Plaintiffs reallege and incorporate by reference all allegations made in all the
22 previous paragraphs.

23 **60.** “The First Amendment is the pillar of a profound national commitment to the
24 principle that debate on public issues should be uninhibited, robust and wide-open” *Mont.
25 Right to Life v. Eddlemann*, 999 F. Supp. 1380, 1384 (D. Mont. 1998).

26 **61.** “In the free society ordained by our Constitution it is not the government, but the
27 people – individually as citizens and candidates and collectively as associations and political
28 committees – who must retain control over the quantity and range of debate on public issues in a
political campaign.” *Buckley v. Valeo*, 424 U.S. 1, 57 (1976). “The First Amendment, in
particular, serves significant societal interests.” *First Nat’l Bank of Boston v. Bellotti*, 435 U.S.
765, 776 (1978).

1 **62.** In *Buckley*, the Supreme Court held that any significant encroachment on First
2 Amendment rights must survive exacting scrutiny, which requires the government to craft a
3 narrowly tailored law to serve a compelling government interest. *See Buckley*, 424 U.S. at 64.

4 **63.** The Supreme Court recently reaffirmed that “compelled disclosure, in itself, can
5 seriously infringe on privacy of association and belief guaranteed by the First Amendment.”
6 *Davis v. F.E.C.*, 128 S. Ct. 2759, 2774-75 (2008) (*quoting Buckley*, 424 U.S. at 64).

7 **64.** Nevertheless, the Supreme Court has held that three governmental interests may
8 justify campaign disclosure laws if the regulations are narrowly tailored to serve those interests.
9 *See Buckley*, 424 U.S. at 66-68. First, “disclosure provides the electorate with information as to
10 where the political campaign money comes from and how it is spent by the candidate.” *Id.* at 66.
11 (the “Informational Interest”). This information alerts voters to the “interests to which a
12 candidate is most likely to be responsive.” *Id.* at 67. Second, disclosure can deter actual
13 corruption and avoid the appearance thereof. *Id.* (the “Corruption Interest”). Lastly, disclosure
14 requirements are an essential “means of gathering the data necessary to detect violations of
15 [contribution limits].” *Id.* at 68. (the “Enforcement Interest”).⁵

16 **65.** However, in *Buckley*, the Supreme Court noted that even a statute narrowly
17 tailored to serve these compelling interests may have to yield if the infringement on First
18 Amendment rights is severe. *Id.* at 69.

19 **66.** Thus, if an organization can make “an uncontroverted showing that on past
20 occasions revelation of the identity of its rank-and-file members had exposed [those] members to
21 economic reprisal, loss of employment, threat of physical coercion, and other manifestations of
22 public hostility,” the state’s interests furthered by disclosure may be outweighed by greater First
23 Amendment concerns. *Id.* at 69-71 (*citing NAACP v. Alabama*, 357 U.S. 449, 462 (1958);
24 internal citations omitted).

25
26
27 ⁵ The Corruption Interest is inapplicable in the context of ballot measure elections.
28 *Bellotti*, 435 U.S. at 790. The Enforcement Interest is also inapplicable to ballot measures. *Cal.*
Pro-Life Council, Inc. v. Getman, 328 F.3d 1088, 1105, n. 23 (9th Cir. 2003) (“*CPLC I*”).

1 **67.** In making the requisite factual showing, the organization must be “allowed
2 sufficient flexibility in the proof of injury,” and the organization need show only a “reasonable
3 probability” that compelled disclosure will subject contributors to “threats, harassment, or
4 reprisals from *either* Government officials or private parties.” *Id.* at 74 (emphasis added).

5 **68.** In *Brown v. Socialist Workers ‘74 Campaign Committee (Ohio)*, 459 U.S. 87
6 (1982), the Supreme Court considered such a case and held that the organization had
7 demonstrated a “reasonable probability” that compelled disclosure would subject those identified
8 to “threats, harassment, or reprisals.” *Id.* at 88. The organization presented evidence of
9 threatening phone calls, hate mail, the burning of organization literature, destruction of
10 members’ property, police harassment, and the firing of shots at an organizational office. *Id.* at
11 99.

12 **69.** Committee Plaintiffs may assert the rights of the Major Donors pursuant to
13 *Powers v. Ohio*, 499 U.S. 400, 411-16 (1991) (discussing the doctrine of third-party standing).
14 “If petitioner’s rank-and-file members are constitutionally entitled to withhold their connection
15 with the Association . . . it is manifest that this right is properly assertable by the Association.
16 To require that it be claimed by the members themselves would result in nullification of the right
17 at the very moment of its assertion.” *NAACP v. Alabama*, 357 U.S. at 459.

18 **70.** Committee Plaintiffs are required to file a semi-annual report on or before
19 January 31, 2009. CGC § 84200.

20 **71.** Major Donors to Committee Plaintiffs that exceeded the ten thousand dollar
21 (\$10,000) reporting threshold after June 30, 2008, must also file a campaign statement on or
22 before January 31, 2009. CGC §84200(b).

23 **72.** Furthermore, Committee Plaintiffs and some Major Donors have already filed
24 reports in compliance with the Act.

25 **73.** The January 31st report will include donors that have not been previously
26 disclosed in any of Committee Plaintiffs’ prior Reports – namely, those donors who have given
27 in excess of one hundred dollars (\$100) but less than one thousand dollars (\$1,000) and that have
28

1 not been disclosed on prior Reports. The January 31st report will be made available to the public
2 and on Cal-Access. CGC §§ 81008 and 84602.

3 **74.** The January 31st report will also be the first and only report filed by Major
4 Donors who gave after June 30, 2008. CGC § 84200. The January 31st report will be made
5 available to the public and on Cal-Access. CGC §§ 81008 and 84602.

6 **75.** The threats, harassment, and reprisals directed at Plaintiffs and their contributors,
7 including the Major Donors, are an inevitable result of the Act’s disclosure requirements, which
8 are facilitated by the level of personal information required to be included in the campaign
9 statements. For example, the Act requires all PFC’s to file a “statement of organization,” which
10 includes not only the name, address, and phone number of the organization, but also the name,
11 address, and phone number of the treasurer and other principal officers of the committee. CGC
12 §§ 82013, 84100, 84101 and 84102(c). Similar reporting requirements apply to: contributors
13 (name, address, occupation, and employer), CGC § 84211; expenditures (name and address of
14 recipient), CGC § 84211; sponsors (name, address and telephone number, and inclusion of
15 sponsor’s name in the name of the committee), CGC §§ 82048, 84102(a) and 84102(b); and
16 major donors (identified in advertisements), Cal. Code Regs. tit. 2, § 18450.4.

17 **76.** The allegations set forth above establish a pattern of hostility directed at persons
18 because of their support for Proposition 8.

19 **77.** There is a reasonable probability that the disclosure of the identities of Plaintiffs’
20 contributors and recipients of expenditures, including the Major Donors, not yet disclosed will
21 subject those persons to the same threats, harassment, and reprisals set forth above.

22 **78.** Furthermore, the continued availability of the Reports already filed creates a
23 reasonable probability that Plaintiffs’ contributors and recipients of expenditures, as well as
24 Major Donors, will be subjected to ongoing and continued threats, harassment, and reprisals.

25 **Prayer for Relief**

26 **79.** WHEREFORE, Plaintiffs request the following relief:

- 27 **a.** Declare all registration, reporting, and disclaimer requirements
28 unconstitutional as applied to Committee Plaintiffs, Major Donors, and all

1 other individuals and organizations holding similar views;

2 **b.** Enjoin Defendants from enforcing all registration, reporting, and
3 disclaimer requirements against Committee Plaintiffs, Major Donors, and
4 all other individuals and organizations holding similar views;

5 **c.** Expunge all records of Reports filed by Committee Plaintiffs, Major
6 Donors, and all of their contents, together with all records of Committee
7 Plaintiffs, Major Donors, and all other individuals and organizations
8 holding similar views on California’s campaign and reporting disclosure
9 system;

10 **d.** Grant Committee Plaintiffs their costs and attorneys fees under 42 U.S.C.
11 § 1988 and any other applicable authority, and;

12 **e.** Any and all other such relief as may be just and equitable.

13 **VI.**

14 **Count 2 – The Act’s requirement that committees report all contributors of**
15 **\$100 or more is unconstitutionally overbroad in violation of the First**
16 **Amendment because it is not narrowly tailored to serve a compelling**
17 **government interest.**

18 **80.** Committee Plaintiffs reallege and incorporate by reference all allegations made in
19 all the previous paragraphs.

20 **81.** “The First Amendment is the pillar of a profound national commitment to the
21 principle that debate on public issues should be uninhibited, robust and wide-open” *Mont.*
22 *Right to Life*, 999 F. Supp. at 1384.

23 **82.** “In the free society ordained by our Constitution it is not the government, but the
24 people – individually as citizens and candidates and collectively as associations and political
25 committees – who must retain control over the quantity and range of debate on public issues in a
26 political campaign.” *Buckley*, 424 U.S. at 57. “The First Amendment, in particular, serves
27 significant societal interests.” *Bellotti*, 435 U.S. at 776.

1 **83.** In *Buckley*, the Supreme Court held that any significant encroachment on First
2 Amendment rights must survive exacting scrutiny, which requires the government to craft a
3 narrowly tailored law to serve a compelling government interest. *See Buckley*, 424 U.S. at 64.

4 **84.** The Supreme Court recently reaffirmed that “compelled disclosure, in itself, can
5 seriously infringe on privacy of association and belief guaranteed by the First Amendment.”
6 *Davis*, 128 S. Ct. at 2774-75 (quoting *Buckley*, 424 U.S. at 64).

7 **85.** Nevertheless, the Supreme Court has held that three governmental interests may
8 justify campaign disclosure laws if the regulations are narrowly tailored to serve those interests.
9 *See Buckley*, 424 U.S. at 66-68. First, “disclosure provides the electorate with information as to
10 where the political campaign money comes from and how it is spent by the candidate.” *Id.* at 66.
11 (the “Informational Interest”). This information alerts voters to the “interests to which a
12 candidate is most likely to be responsive.” *Id.* at 67. Second, disclosure can deter actual
13 corruption and avoid the appearance thereof. *Id.* (the “Corruption Interest”). Lastly, disclosure
14 requirements are an essential “means of gathering the data necessary to detect violations of
15 [contribution limits].” *Id.* at 68. (the “Enforcement Interest”).

16 **86.** However, *Buckley* involved candidate elections, and the Supreme Court has since
17 clarified that the Corruption Interest is simply not present in the context of ballot measure
18 elections. *Bellotti*, 435 U.S. at 790 (“The risk of corruption perceived in cases involving
19 candidate elections simply is not present in a popular vote on a public issue.”). The Ninth
20 Circuit has also held that the Enforcement Interest is not applicable in the context of ballot
21 measure elections because the Supreme Court has invalidated contribution limits with respect to
22 ballot measures. *Cal. Pro-Life Council, Inc. v. Getman*, 328 F.3d 1088, 1105, n. 23 (“*CPLC I*”)
23 (“The interest in collecting data to detect violations also does not apply since there is no cap on
24 ballot-measure contributions . . .”).

25 **87.** Moreover, the *Buckley* court held that “contributors of relatively small amounts
26 are likely to be especially sensitive to recording or disclosure of their political preferences.”
27 *Buckley*, 424 U.S. at 83.

VII.

Count 3 – The Act’s requirement that committees file any reports after the election on a ballot measure is unconstitutional under the First Amendment, both facially and as-applied, because it is not narrowly tailored to serve a compelling government interest.

93. Plaintiffs reallege and incorporate by reference all allegations made in all the previous paragraphs.

94. “The First Amendment is the pillar of a profound national commitment to the principle that debate on public issues should be uninhibited, robust and wide-open” *Mont. Right to Life*, 999 F. Supp. at 1384.

95. “In the free society ordained by our Constitution it is not the government, but the people – individually as citizens and candidates and collectively as associations and political committees – who must retain control over the quantity and range of debate on public issues in a political campaign.” *Buckley*, 424 U.S. at 57. “The First Amendment, in particular, serves significant societal interests.” *Bellotti*, 435 U.S. at 776.

96. In *Buckley*, the Supreme Court held that any significant encroachment on First Amendment rights must survive exacting scrutiny, which requires the government to craft a narrowly tailored law to serve a compelling government interest. *See Buckley*, 424 U.S. at 64.

97. The Supreme Court recently reaffirmed that “compelled disclosure, in itself, can seriously infringe on privacy of association and belief guaranteed by the First Amendment.” *Davis*, 128 S. Ct. at 2774-75 (quoting *Buckley*, 424 U.S. at 64).

98. Nevertheless, the Supreme Court has held that three governmental interests may justify campaign disclosure laws if the regulations are narrowly tailored to serve those interests. *See Buckley*, 424 U.S. at 66-68. First, “disclosure provides the electorate with information as to where the political campaign money comes from and how it is spent by the candidate.” *Id.* at 66. (the “Informational Interest”). This information alerts voters to the “interests to which a candidate is most likely to be responsive.” *Id.* at 67. Second, disclosure can deter actual corruption and avoid the appearance thereof. *Id.* (the “Corruption Interest”). Lastly, disclosure

1 requirements are an essential “means of gathering the data necessary to detect violations of
2 [contribution limits].” *Id.* at 68. (the “Enforcement Interest”).

3 **99.** However, *Buckley* involved candidate elections, and the Supreme Court has since
4 clarified that the Corruption Interest is simply not present in the context of ballot measure
5 elections. *Bellotti*, 435 U.S. at 790 (“The risk of corruption perceived in cases involving
6 candidate elections simply is not present in a popular vote on a public issue.”). The Ninth
7 Circuit has also held that the Enforcement Interest is not applicable in the context of ballot
8 measure elections because the Supreme Court has invalidated contribution limits with respect to
9 ballot measures. *CPCL I*, 328 F.3d at 1105, n. 23 (“The interest in collecting data to detect
10 violations also does not apply since there is no cap on ballot-measure contributions . . .”).

11 **100.** Furthermore, the Informational Interest is directed at “helping [citizens] make up
12 their mind [sic] on how to vote on ballot measures.” *Cal. Pro-Life Council, Inc. v. Randolph*,
13 507 F.3d 1172, 1179 (9th Cir. 2007) (“*CPLC II*”).

14 **101.** To the extent that the state’s Informational Interest is a valid compelling interest
15 justifying compelled disclosure, that interest ceases to exist the moment the last ballot is cast for
16 the measure.

17 **102.** Thus, the Act is unconstitutional, both facially and as-applied, to the extent that it
18 requires reports *after* a ballot measure election because such reports are not narrowly tailored to
19 serve a compelling government interests in violation of the First Amendment to the United States
20 Constitution.

21 **Prayer for Relief**

22 **103.** WHEREFORE, Plaintiffs request the following relief:

- 23 **a.** Declare CGC §§ 84200, 84203, and 84203.3 unconstitutional both facially
24 and as-applied to Committee Plaintiffs, Major Donors, and all other
25 individuals and organizations;
- 26 **b.** Enjoin Defendants from enforcing any reporting requirements after the
27 election on a ballot measure has occurred against Committee Plaintiffs,
28 Major Donors, and all other similar individuals and organizations;

1 *See Buckley*, 424 U.S. at 66-68. First, “disclosure provides the electorate with information as to
2 where the political campaign money comes from and how it is spent by the candidate.” *Id.* at 66.
3 (the “Informational Interest”). This information alerts voters to the “interests to which a
4 candidate is most likely to be responsive.” *Id.* at 67. Second, disclosure can deter actual
5 corruption and avoid the appearance thereof. *Id.* (the “Corruption Interest”). Lastly, disclosure
6 requirements are an essential “means of gathering the data necessary to detect violations of
7 [contribution limits].” *Id.* at 68. (the “Enforcement Interest”).

8 **110.** However, *Buckley* involved candidate elections, and the Supreme Court has since
9 clarified that the Corruption Interest is simply not present in the context of ballot measure
10 elections. *Bellotti*, 435 U.S. at 790 (“The risk of corruption perceived in cases involving
11 candidate elections simply is not present in a popular vote on a public issue.”). The Ninth
12 Circuit has also held that the Enforcement Interest is not applicable in the context of ballot
13 measure elections because the Supreme Court has invalidated contribution limits with respect to
14 ballot measures. *CPLC I*, 328 F.3d at 1105, n. 23 (“The interest in collecting data to detect
15 violations also does not apply since there is no cap on ballot-measure contributions . . .”).

16 **111.** Furthermore, the Informational Interest is directed at “helping [citizens] make up
17 their mind [sic] on how to vote on ballot measures.” *CPLC II*, 507 F.3d at 1179.

18 **112.** To the extent that the state’s Informational Interest is a valid compelling interest
19 justifying compelled disclosure and the publication of said disclosure, that interest ceases to exist
20 the moment the last ballot is cast for the measure.

21 **113.** Nevertheless, California continues to make ballot measure campaign finance
22 reports available to the public on Cal-Access and at government offices, long after the election
23 has occurred. *See*, Cal-Access, <http://cal-access.sos.ca.gov/Campaign/> (making campaign
24 finance reports available from the March 2000 primary through the present).

25 **114.** Thus, the Act is unconstitutional, both facially and as-applied, to the extent that it
26 permits public access to the reports filed in compliance with the Act after the election on the
27 ballot measure has occurred, and therefore, is not narrowly tailored to serve a compelling
28 government interest in violation of the First Amendment to the United States Constitution.

1 **Prayer for Relief**

2 **115.** WHEREFORE, Plaintiffs request the following relief:

- 3 **a.** Declare CGC §§ 81008 and 84600-84612 unconstitutional both facially
4 and as-applied to Committee Plaintiffs, Major Donors, and all and all
5 other individuals and organizations;
- 6 **b.** Expunge all records of Reports filed by the Committee Plaintiffs and
7 Major Donors and all of their contents, together with all records of
8 Committee Plaintiffs and Major Donors on California’s campaign and
9 reporting disclosure system;
- 10 **c.** Grant Committee Plaintiffs their costs and attorneys fees under 42 U.S.C.
11 § 1988 and any other applicable authority, and;
- 12 **d.** Any and all other such relief as may be just and equitable.

13
14 Respectfully submitted,

15
16 /S/ Timothy D. Chandler

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