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9th Circuit Backs Church on Disclosure of Donors to Campaign Against Gay Marriage

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Attorneys trying to shield the names of donors to the Yes on Proposition 8 campaign say a 9th Circuit ruling breathes new life into their so-far unsuccessful efforts.

A three-judge panel in Seattle on Wednesday held that the state of Montana went too far in requiring an East Helena church to publicly disclose its financial involvement in a 2004 initiative campaign to ban same-sex marriage.

The church's in-kind contributions were so small -- initiative petitions were placed in the church foyer; petition copies were made on a church machine -- that forcing its leaders to file campaign disclosure forms amounted to an unfair abridgement of the assembly's First Amendment rights, Judge William Canby Jr. wrote in *Canyon Ferry Road Baptist Church of East Helena Inc. v. Unsworth*, 09 C.D.O.S. 2287.

The panel did not suggest what level of contribution should trigger a campaign filing requirement.

"The fixing of any such level is for the Montana authorities in the first instance," Canby wrote. "We are satisfied, however, that the application of Montana's disclosure requirements to the Church because of its de minimis activities in this case impermissibly infringes on the Church's free speech rights."

James Bopp Jr., the Indiana attorney representing Yes on 8 donors, said the ruling has major implications for *ProtectMarriage.com v. Bowen*. In that case, now before an Eastern District judge, Bopp argues that the public disclosure of pro-Prop 8 donor names has subjected them to ridicule, harassment and physical threats.

On Jan. 30, U.S. District Judge Morrison England Jr. denied the donors' request for a preliminary injunction that would have shielded their identities.

Bopp said Thursday that he's preparing new pleadings in the case based on the 9th Circuit's ruling.

"The cavalry just came over the hillside," Bopp said.

Roman Porter, executive director of the Fair Political Practices Commission, said his agency's lawyers were still



reviewing the *Canyon* ruling, and he declined to comment on Bopp's assertions. The FPPC, along with the attorney general's office, is defending the state in the donors' lawsuit.

The FPPC is reviewing a complaint filed by retired political consultant Fred Karger that accuses the Church of Jesus Christ of Latter-day Saints of failing to disclose its financial backing of Prop 8 in a timely or complete manner.

The Montana case "sounds like a very different situation than what we have here," Karger said. The Mormon Church "wasn't exactly just putting initiative petitions in their lobby."

The LDS church reported spending \$189,904 on travel, lodging and other expenses associated with the Yes on 8 campaign, according to filings with the secretary of state's office. Church leaders have said they are cooperating with the FPPC review of their practices.

Thousands of donors poured more than \$40 million into the successful campaign to ban same-sex marriage in California. The contributors' lawsuit argues, among other things, that the state's \$100 threshold for filing a campaign disclosure is too low. The amount could subject a donor to public scorn and potentially discourage contributions to a cause, but it's too small to have a big impact on a campaign, Bopp said.

"What voter in their right mind would care that Joe Blow gave \$105 to an initiative?" Bopp said.

The attorney said he didn't know what an acceptable trigger amount would be. Perhaps the state could poll Californians for their opinions, he said.

In the case of a multimillion-dollar campaign like Prop 8, "It would seem like it would have to be five figures, maybe six figures," he said.

The donors' lawsuit appears moot in many respects. Their names have already been made public in documents filed on paper and online with the secretary of state's office.

But their challenge is part of a larger effort nationwide to shield the identities of some donors, particularly those to socially conservative causes. After a [lengthy legal battle](#), Bopp was successful in 2007 in forcing the FPPC to ease reporting requirements for so-called multipurpose groups, or organizations whose main mission is not political activity.

Bopp appears to have a strong ally in Judge John Noonan Jr., who wrote a passionate concurrence to Canby's lead opinion. Noonan said "unregulated unregistered churches" are as important to American democracy as a free press. Strict disclosure laws like Montana's threaten churches' ability to confront society's "greatest issues," Noonan wrote, noting religious leaders' historic work in ending slavery and fighting for civil rights.

"The memory of the memorable battles grows cold," Noonan wrote. "The liberals who applaud their outcomes and live in their light forget the motivation that drove the champions of freedom. They approve religious intervention in the political process selectively: It's great when it's on their side.

"In a secular age, freedom of speech is more talismanic than freedom of religion. But the latter is the first freedom in our Bill of Rights. It is in terms of this first freedom that this case should be decided."