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Attorney General

State of California
DEPARTMENT OF JUSTICE



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March 30, 2010

Sarah E. Troupis
Bopp, Coleson & Bostrom
1 South Sixth Street
Terre Haute, IN 47807-3510

VIA ELECTRONIC & U.S. MAIL

RE: ProtectMarriage.com - Yes on 8, et al. v. Debra Bowen, et al.
United States District Court, Eastern District of California, Case No. 2:09-cv-00058-
MCE-DAD

Dear Ms. Troupis:

I am writing once again to follow-up regarding your clients' partial response to the discovery requests propounded by my clients. It appears your clients have produced nothing more than mailers sent out for fundraising purposes. As you can probably imagine, this production falls well short of what we have properly requested and what we are entitled to receive from your clients. As specified below, many responsive documents have not been produced and many responses to the interrogatories are incomplete or entirely inadequate. Given that our discovery was propounded on your clients five months ago on October 30, 2009, your immediate attention to this matter is requested.

First of all, your clients have not produced all documents responsive to the Requests for Production of Documents (RPDs). Even documents published on the internet reveal that Plaintiffs have withheld at least two types of documents. Initially, your clients have produced no fundraising letters sent by Plaintiffs to No on 8 supporters, although we are aware that Plaintiffs have disseminated such letters. For instance, I am attaching a letter dated October 8, 2008 sent from ProtectMarriage.com to Abbott and Associates. This letter is plainly responsive to RPD Nos. 1 and 12. I cannot imagine how your clients omitted this from their production. Second, your clients have not produced fundraising letters endorsed by ProtectMarriage.com and issued by other entities, even though we are aware of the existence of such letters. For example, see the June 2008 letter from Dr. James Dobson available at <http://www2.focusonthefamily.com/docestudy/newsletters/A000001176.cfm>. Please produce these letters and all other communications responsive to the RPDs, including any other fundraising letters sent to No on 8 supporters.

Second, your clients have failed to produce any financial statements responsive to RPD No. 15. We specifically discussed this Request during our meet and confer telephone conference

last month wherein we discussed that this Request plainly covered records beyond those publicly filed by your clients.

Third, your clients have not produced any documents related to collection, storing, and sharing of contributor information, which are called for by RPD No. 11.

Fourth, your clients have not produced any information corroborating your allegations that individuals experienced threats, harassment or reprisals as a result of their support for Plaintiffs' political cause, even though we requested such documents in RPD Nos. 3, 4, 6 and 8. If Plaintiffs have had any written communications with any of the declarants in this matter or with any other individual who has allegedly experienced threats, harassment or reprisals, their production is plainly called for. Additionally, if Plaintiffs received any response to the February 3, 2009 letter (Bate # 1781) that you produced, such responses are also covered by my requests.

Additionally, in Protectmarriage.com's Interrogatory Response No. 1, you state: "ProtectMarriage has heard from approximately 500 individuals who, in confidence, told ProtectMarriage.com about the various forms of threats, harassment, and reprisals to which they were subject because of their support for Proposition 8 and a traditional definition of marriage. Almost all of these individuals contacted ProtectMarriage.com via e-mail." The response also states that: "I [Ron Prentice] have heard from approximately fifty individuals who, in confidence told me about the various forms of threats, harassment, and reprisals to which they were subject because of their support for Proposition 8 and a traditional definition of marriage. The majority of these individuals contacted me via e-mail..." NOM California's Interrogatory Response No. 1 makes similar claims of hundreds of communications regarding threats, harassment and reprisals made "in confidence." Both sets of interrogatory responses repeatedly reference Interrogatory Response No. 1 and make similar assertions again and again. Yet you have not produced these e-mails or any documentation about allegations of threats, harassment and reprisals.

You assert that ProtectMarriage.com considers this information confidential and will not produce information about those individuals who do not want to be publicly identified, but self-serving confidentiality assertions are not a proper basis for refusing to respond to discovery requests. These documents were not noted on your privilege log, and I therefore understand that you do not claim they are privileged. To the extent that confidentiality is warranted, the Protective Order offers a means by which you may designate the documents as confidential. But you have chosen not to pursue this mechanism, and there is no basis for simply refusing to provide non-privileged documents.

In Protectmarriage.com and NOM-California's Interrogatory Response No. 2, you assert that specific individuals outside of ProtectMarriage and NOM-California may have knowledge of threats, harassment and reprisals, which suggests that you have corresponded with these individuals about this topic. But you have not produced any documentation of this correspondence. Please produce all e-mails, letters, meeting notes on this topic, as plainly called for by RPD Nos. 3 and 5, among others.

In Protectmarriage.com's Interrogatory Response No. 13, you state that many donors or potential donors asked "what amount of money they could give to ProtectMarriage.com before their personal information and donation information would be subject to public disclosure." You also assert that other donors "refused to donate because of the inability to keep their personal information and donation information from being publically disclosed." NOM-California's Interrogatory Response Nos. 13 and 17 contain similar content. You have not produced any e-mails, notes, database entries or other records of these communications with donors and potential donors.

In Protectmarriage.com's Interrogatory Response No. 19, you assert that "about once a week, we continue to hear about threats, harassment, and reprisals directed at individuals who supported Proposition 8 and whose names remain available on the internet as campaign donors." Interrogatory Response No. 19 contains similar content. You have not produced any e-mails, notes, database entries or other records of these communications.

You claim a First Amendment privilege over many campaign communications, but you have not identified a core group of individuals whose communications may be subject to this privilege. Please provide a list of individuals you claim are in this core group, and a description of each named individuals' role in the campaign. Without this information, we cannot assess your numerous claims of First Amendment privilege.

In many instances, your privilege log does not describe documents with enough specificity to evaluate the assertion of the privilege. For instance, you describe numerous documents as "Internal campaign communication(s) among the core group of persons engaged in the formulation of campaign strategy and messages regarding fundraising." Yet you do not specify whether these documents are communications about the formulation of strategy and messages, or whether they are communications among the core group about other topics. Absent such information, your claims of privilege cannot be evaluated.

Almost all the documents you produced in discovery have been distributed publicly by Plaintiffs, yet you have designated them all as attorneys-eyes only. Please explain this designation or withdraw it.

In sum, you have not provided:

- any financial statements;
- many communications concerning fundraising, including communications with No on 8 supporters;
- any personal communications with individual donors or potential donors related to fundraising;
- any records or documentation concerning responses to fundraising efforts;

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- any communications with individuals concerning allegations of threats, harassment or reprisals, including responses to the February 2009 letter you produced;
- any communications with Doe declarants concerning allegations of threats, harassment or reprisals;
- any records or documentation counting, tracking, summarizing, or concerning allegations of threats, harassment or reprisals.

My office has been more than cooperative in giving your clients ample time to produce documents responsive to our straight-forward requests. However, given your clients' complete lack of good-faith in producing, I must insist that you produce, and my office receive, all of the records and information discussed above by no later than **COB April 2, 2010**. The scope of this production is unquestionably included within our discovery demands. If my office is not in receipt of this production by April 2, I will proceed with a motion to compel.

I look forward to your anticipated cooperation in this matter.

Sincerely,



ZACKERY P. MORAZZINI
Supervising Deputy Attorney General

For EDMUND G. BROWN JR.
Attorney General

ZPM:sd

cc: Lawrence T. Woodlock, counsel for FPPC
Judy W. Whitehurst, counsel for Dean C. Logan
Terence J. Cassidy, counsel for Jan Scully
Mollie M. Lee, counsel for Dennis J. Herrera

SA2009307359
Document in ProLaw



ProtectMarriage.com

October, 20, 2008

Certified Mail
Return Receipt Requested

Jim Abbott
Managing Partner
Abbott & Associates/Abbott Realty Group
435 4th Avenue
San Diego, CA 92101

Dear Mr. Abbott,

We write as the Executive Committee of ProtectMarriage.com, the coalition of churches, organizations and individuals who qualified Proposition 8 for the November ballot. We represent the 61 percent of California voters who affirmed in 2000 that, "Only marriage between a man and a woman is valid or recognized in California." Proposition 8 will restore what four judges took away from the citizenry— this same definition of marriage. As you know, the majority of citizens of California and the United States agree with us that marriage should be between a man and a woman.

Equality California is advertising on its website that it has received a contribution of at least \$10,000 from you. Equality California opposes traditional marriage and is working to defeat Proposition 8. We are sure that you would want to review the way that they are using Abbott & Associates' name, since many more of your clients support traditional marriage than support same sex marriage. A copy of an advertising page from Equality California's website is enclosed for your information.

Be assured that this is not about lifestyle or rights for they are already codified and protected in California. It is about a meaningful tradition – marriage, which is ageless, key to the well-being of our society and the rearing of children. It is too important to be left to four unelected jurists.

Mr. Jim Abbott
Abbott & Associates
October 20, 2008

We respectfully request that Abbott & Associates withdraw its support of Equality California. Make a donation of a like amount to ProtectMarriage.com which will help us correct this error and restore Traditional Marriage. A donation form is enclosed. We will be most grateful and will advertise on our website Abbott & Associates' generous contribution.

Were you to elect not to donate comparably, it would be a clear indication that you are in opposition to traditional marriage. You would leave us no other reasonable assumption. The names of any companies and organizations that choose not to donate in like manner to ProtectMarriage.com but have given to Equality California will be published. It is only fair for Proposition 8 supporters to know which companies and organizations oppose traditional marriage.

We will contact you shortly to discuss your contribution sincerely hoping to receive your positive response.

The Executive Committee of ProtectMarriage.com and the millions of Californians supporting Proposition 8 thank you for your thoughtful consideration of this request.

ProtectMarriage.com

By:



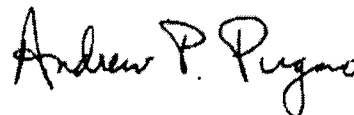
Ron Prentice
Yes on Prop 8,
Campaign Chairman



Edward Dolejsi
Executive Director, California
Catholic Conference



Mark A. Jansson
Executive Committee Member



Andrew Pugno
General Counsel

Enclosures

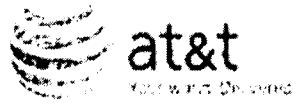
Sponsors

Corporate and individual sponsors make a significant investment, providing EQCA with critically-needed resources to achieve equality.

If you are interested in learning more about sponsorship benefits, including Equality Awards sponsorships, email Michelle Ortiz or call her at 415.581.0005 x307.

EQCA's Sponsors Include:

\$250,000 and above



\$50,000 and above



david lee MARK NICHOLS



\$10,000 and above



Abbott and Associates



California Association of Club Executives



Donation Form

Yes! I'll help! Enclosed is my gift of:

\$1,000 \$500 \$250 \$100 \$50 \$25 Other \$ _____

(Note: There is no limit on the amount of individual contributions to this Campaign)

Check Donations (WBMAIL)
 Please make your check payable to *ProtectMarriage.com - Yes on 8* and mail this form and your check to:

ProtectMarriage.com - Yes on 8
 PO Box 162657
 Sacramento, CA 95816

Credit Card Donations
 (Please note there is a \$10.00 minimum donation)

Type of credit card: Visa MasterCard American Express

Card Number: _____ Expiration Date: ____/____ (Month) ____/____ (Year)

Name as it appears on the card: _____

Address as it appears on billing statements: _____

City: _____ State: _____ Zip: _____

Your signature: _____ Date: _____

Thank you! Please provide the following information so we may accept your gift.
 All fields marked with an asterisk (*) are required by California Law.

*Full name of Individual, Company or Organization _____

*Mailing address _____

*City _____ *State _____ *Zip _____ County _____

Phone number _____ Fax number _____ E-mail Address _____

*Your Occupation _____ *Your Employer (If self-employed, enter name of business) _____

- I will also help by:**
- Volunteering/speaking at events
 - Placing a newsletter article
 - Posting a link on our Web site
 - Displaying a yard sign/bumper sticker
 - Distributing materials
 - Writing a letter to the editor

Thank you for your donation!

Contributions to ProtectMarriage.com - Yes on 8 are not tax deductible. Corporate, PAC and personal checks are acceptable. There is no limit on the amount of individual contributions. State election law requires us to publicly report cumulative contributions of \$100 or more. Foreign nationals are prohibited by law from making contributions to this committee, unless they have permanent residency status in the United States of America (a Green Card). Contributors who give a total of \$10,000 or more in a calendar year to this campaign and to other California state or local campaigns will trigger their own campaign disclosure obligations. Campaign Staff is available to assist contributors if requested. Questions? Call (916) 446-2956.

Paid for by ProtectMarriage.com - Yes on 8, a Project of California Renewal
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