

JAMES BOPP, JR.¹
Senior Associates
 RICHARD E. COLESON¹
 BARRY A. BOSTROM¹

Associates
 RANDY ELF²
 JEFFREY P. GALLANT³
 ANITA Y. WOUDEBERG¹
 JOSIAH S. NEELEY⁴
 JOSEPH E. LA RUE⁵
 SARAH E. TROUPIS⁶
 KAYLAN L. PHILLIPS⁷
 JOSEPH A. VANDERHULST¹
 SCOTT F. BIENIEK⁸
 ZACHARY S. KESTER¹
 JARED M. HAYNIE^{3,9}

¹admitted in Ind
²admitted in NY and Penn
³admitted in Va
⁴admitted in Tex
⁵admitted in Oh
⁶admitted in Wis
⁷admitted in Okla
⁸admitted in Ill
⁹admitted in Col

BOPP, COLESON & BOSTROM
 ATTORNEYS AT LAW
 (not a partnership)

THE NATIONAL BUILDING
 1 South Sixth Street
 TERRE HAUTE, INDIANA 47807-3510

Telephone 812/232-2434 Facsimile 812/235-3685

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THOMAS J. MARZEN
 (1946-2007)

E-MAIL ADDRESSES
 jboppjr@aol.com
 rcoleson@bopplaw.com
 bbostrom@bopplaw.com
 relf@bopplaw.com
 jgallant@bopplaw.com
 awoudeberg@bopplaw.com
 jneeley@bopplaw.com
 jlarue@bopplaw.com
 stroupis@bopplaw.com
 kphillips@bopplaw.com
 jvanderhulst@bopplaw.com
 sbieniek@bopplaw.com
 zkester@bopplaw.com
 jhaynie@bopplaw.com

The Honorable Morrison C. England, Jr.
 United States District Judge
 United States District Court
 Eastern District of California
 501 I Street, 4th Floor
 Sacramento, CA 95814

Re: *ProtectMarriage.com v. Bowen*, No. 2:09-cv-00058

Plaintiffs' Objections to the Second Amended Pretrial Scheduling Order

Dear Judge England:

Plaintiffs ProtectMarriage.com—Yes on 8, a Project of California Renewal (“**ProtectMarriage.com**”), National Organization for Marriage—Yes on 8, Sponsored by National Organization for Marriage (“**NOM-California**”), John Doe #1, an individual, and representative of the Class of Major Donors (“**Major Donors**”), and National Organization for Marriage California PAC (“**NOM-California PAC**”) respectfully submit the following objections to the Second Amended Pretrial Scheduling Order. (Dkt. 225.)

The Court filed an amended scheduling order on June 3, 2010, in response to Defendants’ request to extend the discovery deadlines set forth in the Court’s original pretrial scheduling order. (Dkt. 210.) Defendants requested a sixty-day extension. (Dkt. 210) However, the amended scheduling order extends all deadlines by one year. (*See* Dkt. 96.) An extension beyond the sixty days requested by Defendants is unwarranted and violates the Supreme Court’s mandate that First Amendment as-applied challenges must “allow parties to resolve disputes quickly without chilling speech through the threat of burdensome litigation.” *FEC v. Wisconsin Right to Life* (“*WRTL-IP*”), 551 U.S. 449, 469 (2007); *see also Citizens United v. FEC*, 130 S. Ct. 876, 896 (2010) (same).

Plaintiffs filed their Complaint on January 7, 2009, alleging, *inter alia*, that the Political Reform Act of 1974, Cal. Gov't Code § 81000 *et seq.*, as applied, violates the First Amendment because it subjects Plaintiffs and their members to a reasonable probability of threats, harassment, and reprisals. (Dkt. 1.) Plaintiffs have now submitted fifty-eight declarations in support of this claim setting forth specific incidents of threats, harassment, and reprisals directed at supporters of Proposition 8 and a traditional definition of marriage.¹ (Dkt. 32-40, 45, 113-162.) The threats, harassment, and reprisals have included death threats, property damage, threatening phone calls, and threatening emails. (*Id.*) Plaintiffs have also submitted copies of newspaper articles describing the serious and substantial threats, harassment, and reprisals directed at supporters of Proposition 8 and a traditional definition of marriage. (Dkt. 19 & 30.) The Supreme Court has twice cited this evidence in recent opinions, and even called it “cause for concern.”² *Citizens United*, 130 S. Ct. at 916 (2010); *Hollingsworth v. Perry*, 130 S. Ct. 705, 707 (2010).

On January 9, 2009, Plaintiffs filed a motion for preliminary injunction, seeking, *inter alia*, an exception from the January 31, 2009,³ and subsequent reporting deadlines. (Dkt. 16.) The Court denied Plaintiffs’ motion on January 29, considering only the first nine declarations.⁴ (Dkt. 87 & 88.)

The parties submitted a joint status report on March 6, 2010. (Dkt. 95.) The stipulated schedule agreed to by the parties allowed for the resolution of all claims before the 2010 election cycle. (*Id.*) On May 18, 2009, the Court entered its pretrial scheduling order. (Dkt. 96.) The order significantly extended the deadlines contained in the joint status report. Most notably, the discovery deadline was extended from October 2009 until May 2010 and the dispositive motion deadline was extended from November 2009 until September 2010. (Dkt. 96 at 2, 4.)

¹ The Court considered only the first nine declarations when it ruled on Plaintiffs’ motion for a preliminary injunction. (Dkt. 88 at 5-9.)

² In *Citizens United*, the Supreme Court rejected a facial challenge to a compelled disclosure statute, required disclosure of \$1,000 donors, and noted that an as-applied challenge is available if a party can demonstrate a reasonable probability of threats, harassment, and reprisals. 130 S. Ct. at 913-17. In discussing the as-applied exception, the Supreme Court cited the evidence submitted in the current proceedings as the type of evidence that a party must introduce to obtain a reporting exception. *Id.* at 916

³ The January 31, 2009 report was actually due on February 2, 2009. *See* CGC § 84200.

⁴ On February 2, 2009, a supporter of traditional marriage received an email referencing the Court’s denial of the preliminary injunction and the supporter’s donation. (Decl. of John Doe #54, Ex. A, Dkt. 157-2.) The donation was first reported on the February 2, 2009, report. The email was followed by a handwritten note delivered to the donor’s home. (Decl. of John Doe #54, Dkt. 157.)

On June 3, 2009, Plaintiffs filed a motion for summary judgment. (Dkt. 110.) On June 10, State Defendants filed a motion pursuant to rule 56(f) of the Federal Rules of Civil Procedure, alleging, *inter alia*, that State Defendants did not have sufficient time to conduct discovery or obtain and present facts essential to justify their opposition. (Dkt. 169.) State Defendants proposed a continuance until December 18, 2009. (Dkt. 169 at 2, 6.) On June 24, 2009, the Court granted State Defendants' Rule 56(f) Motion and denied Plaintiffs' motion for summary judgment without prejudice. (Dkt. 189 at 10-11.) Furthermore, the Court extended the requested continuance an additional five months, stating that no party shall file a motion for summary judgment without leave of court before the close of non-expert discovery, scheduled to terminate on May 14, 2010. (*Id.*)

On April 27, 2010, San Francisco Defendants filed a motion to extend the discovery and subsequent deadlines by sixty days. (Dkt. 210.) Defendants stated:

Defendants seeks to modify the scheduling order for two reasons: (1) an ongoing dispute regarding Plaintiffs' inadequate responses to Defendants' past discovery requests, and (2) Plaintiffs' professed inability to make critical witnesses available before non-expert discovery closes.

(*Id.* at 3.) On May 13, the Court entered an Order granting a sixty day extension and stated that an amended pretrial scheduling order would follow. (Dkt. 221.)

Subsequent events have made delay beyond the requested sixty-day extension unnecessary. First, Defendants conducted their depositions on May 27 and 28. Second, the parties entered into a stipulation that resolved significant portions of the discovery dispute that resulted in the motion to compel. (Dkt. 218 & 226.) Discovery is now on pace to be completed in advance of the Defendants' proposed deadline of July 13, 2010, subject to the stipulation agreed on by the parties and the order entered by the Honorable Judge Drozd. (Dkt. 227.)

Plaintiffs respectfully object to the dates set forth in the amended scheduling order. The order extends the deadlines far beyond Defendants' requested sixty-day extension. As set forth above, the additional time is both unwarranted and unnecessary, as it appears that discovery is on pace to be completed by Defendants' proposed deadline of July 13, 2010.

Plaintiffs propose deadlines consistent with those suggested by Defendants in the proposed order accompanying their motion to extend discovery deadlines. (Dkt. 212.) The amended dates proposed by Defendants are:

- Non-expert discovery – July 13, 2010
- Expert witness disclosure – September 13, 2010
 - Supplemental expert disclosure twenty days thereafter
- Dispositive motions – No later than November 15, 2010

The Honorable Morrison C. England, Jr.

June 10, 2010

Page 4

- Joint pretrial conference – March 7, 2011
- Evidentiary or procedural motions – March 7, 2011
 - Opposition to those motions – March 14, 2011
 - Replies to those motions – March 21, 2011
- Trial briefs – March 14, 2011
- Final pretrial hearing – March 28, 2011
- Trial – May 9, 2011

The deadlines set forth in Defendants' proposed order are consistent with the Supreme Court's mandate that First Amendment as-applied challenges should be resolved quickly to avoid chilling speech through burdensome litigation. *Citizens United*, 130 S. Ct. at 896; *WRTL-II*, 551 U.S. at 469. A shorter extension, more consistent with Defendants' requested sixty-day extension, also serves judicial economy by allowing the parties to advance towards dispositive motions without undue delay.

Respectfully submitted,

BOPP, COLESON & BOSTROM



Scott F. Bieniek*
Counsel for Plaintiffs

**Admitted Pro Hac Vice*