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16 IN THE UNITED STATES DISTRICT COURT
17 FOR THE EASTERN DISTRICT OF CALIFORNIA

19 **PROTECTMARRIAGE.COM, et al.,**

20 Plaintiff,

21 v.

22 **DEBRA BOWEN, SECRETARY OF**
23 **STATE FOR THE STATE OF**
24 **CALIFORNIA, et al.,**

25 Defendants.

2:09-cv-00058-MCE-DAD

**STATE DEFENDANTS' OBJECTIONS
TO PLAINTIFFS' EVIDENCE**

Date: January 29, 2009

Time: 11:00 a.m.

Courtroom: 7, 14th Floor

Judge Morrison C. England, Jr.

Trial Date: None Set

Action Filed: January 7, 2009

1 To supplement their anonymous declarations that primarily allege harm based on
2 protected First Amendment activity, Plaintiff submit dozens of newspaper articles and television
3 news video clips to support their argument that the disclosure of contributors will lead to threats
4 and harassment. All of these exhibits are inadmissible hearsay or double hearsay. Moreover, the
5 articles and video clips are needlessly cumulative, with numerous exhibits discussing the same
6 general allegations.
7

8 “‘Hearsay’ is a statement, other than one made by the declarant while testifying at the trial
9 or hearing, offered in evidence to prove the truth of the matter asserted.” Fed. R. Evid. 801(c).
10 Hearsay is inadmissible unless it satisfies an exception to the hearsay rule, Fed R. Evid. 802,
11 which these exhibits do not. And, each layer of hearsay included within hearsay must satisfy an
12 exception to the hearsay rule. Fed. R. Evid. 805; see also *Larez v. City of Los Angeles*, 946 F.2d
13 630, 642 (9th Cir.1991) (statement by declarant reiterated in newspaper article constitutes double
14 hearsay.)
15

16 Notably, in a case very similar to this one, the plaintiffs attempted to use newspaper
17 articles as evidence of harassment to get an exemption from disclosure requirements pursuant to
18 *Buckley v. Valeo*, 424 U.S. 1, 74 (1976), but the state’s hearsay objection was sustained. *Oregon*
19 *Socialist Workers 1974 Campaign Committee v. Paulus*, 432 F. Supp. 1255, 1262 (D.Or. 1977).
20 The Ninth Circuit Court of Appeals has itself found newspaper articles to be inadmissible hearsay
21 and not the best evidence. *Larez*, 946 F.2d at 642.
22

23 Although safety and security concerns are undeniably present in any legitimate claim for
24 an exemption from disclosure requirements, it is worth noting that Plaintiffs’ attempt to obtain
25 relief primarily based on media reports appears to be unique. Typically, plaintiffs have shown
26 harassment based on affidavits or declarations, official government reports, or an examination of
27 laws governing unpopular minor parties. See, e.g., *Brown v. Socialist Workers '74 Campaign*
28

1 *Committee (Ohio)* 459 U.S. 87, 100 n. 17 (examining Special Master’s report), *Federal Election*
2 *Com'n v. Hall-Tyner Election Campaign Committee*, 678 F.2d 416, 419, 422 (2d Cir. 1982)
3 (relying on state and federal laws, Senate reports, and affidavits of party members), *Wisconsin*
4 *Socialist Workers 1976 Campaign Committee v. McCann*, 433 F.Supp. 540, 547-48 (E.D.Wis.
5 1977) (relying on affidavits of experts and party members), *Doe v. Martin*, 404 F.Supp. 753, 755-
6 56 (D.C. 1975) (relying on affidavits and Minnesota Ethics Commission report). Also, although
7 Plaintiffs state that some witnesses are unwilling to come forward because of safety concerns
8 (Troupis Decl., 8:15-16), it is difficult to see what additional dangers witnesses would have were
9 they called on to give testimony, as the media reports which use real names and current campaign
10 disclosure lists are already in the public sphere as Plaintiffs contend.

11
12 The inadmissible hearsay exhibits are also needlessly cumulative. Although Plaintiffs
13 have compiled multiple media reports, they mostly relate to the same few events. For example,
14 twenty-eight of the fifty-eight exhibits discuss the same set of events concerning mostly the same
15 businesses alleging boycotting or blacklisting.¹ And, Exhibits C, D, E, O, Q, R and three video
16 clips all discuss purported threats to the mayor and a religious leader in Fresno, while Exhibits F,
17 G, and O all relate to an alleged incident involving a group trying to conduct a prayer service in
18 San Francisco’s Castro District.

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¹ See Troupe Decl., Exs. A, B, N, O, P, AD, AE, AG, AH, AI, AK, AL, AM, AN, AO, AP, AQ, AR, AS, AT, AU, AV, BA, BB, BC, BD, BE, BF.

1 Because Plaintiffs' newspaper articles and television news clips are all inadmissible
2 hearsay or double hearsay, they are inadmissible and cannot be used to prove the threats and
3 harassment that Plaintiff have alleged.
4

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6 Dated: January 22, 2009

Respectfully submitted,

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