

STIPULATION TO AMEND - EXHIBIT A

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

15 **ProtectMarriage.com - Yes on 8, a Project of California**
Renewal; National Organization for Marriage
California - Yes on 8, Sponsored by National
 16 **Organization for Marriage; John Doe #1, an individual,**
 17 **and as a representative of the Class of Major Donors; and**
 18 **National Organization for Marriage California PAC,**
Plaintiffs,

19 *v.*

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

Case No. 2:09-CV-00058-
 MCE-DAD

**Third Amended
 Complaint**

Judge Morrison C. England, Jr.

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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**”), John Doe #1, an individual, and as
4 a representative of the Class of Major Donors, and National Organization for Marriage
5 California PAC (“**NOM-California PAC**”) complain as follows:

6 **Introduction**

7 **1.** This is a pre-enforcement, facial and as-applied constitutional challenge to
8 California’s Political Reform Act of 1974, Cal. Gov’t Code (“CGC”) § 81000 *et seq.*, as
9 amended (the “PRA”). Plaintiffs, ProtectMarriage.com, NOM-California, John Doe #1, on
10 behalf of the proposed Class of Major Donors, and NOM-California PAC seek declaratory and
11 injunctive relief with respect to portions of the PRA because they violate the First Amendment to
12 the United States Constitution, as incorporated to the states by virtue of the Fourteenth
13 Amendment to the United States Constitution. Consequently, each is unconstitutional on its face
14 and as applied to Plaintiffs ProtectMarriage.com, NOM-California, the Class of Major Donors,
15 NOM-California PAC, and all other similarly situated persons.

16 **2.** Specifically, Plaintiffs ProtectMarriage.com, NOM-California, the Class of Major
17 Donors, and NOM-California PAC challenge all of the PRA’s compelled disclosure
18 requirements as-applied to them and all similarly situated persons on the ground that there is a
19 reasonable probability that the PRA’s compelled disclosure requirements will result in threats,
20 harassment, and reprisals similar to those already suffered by supporters of Proposition 8 and a
21 traditional definition of marriage.

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

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1 **11.** Plaintiff NOM-California PAC is a general purpose committee under California
2 law. CGC §§ 82013 and 82027.5. Plaintiff NOM-California PAC's principal place of business is
3 Santa Ana, California.

4 **12.** Together, Plaintiffs **ProtectMarriage.com, NOM-California, and NOM-**
5 **California PAC** are collectively referred to "**Committee Plaintiffs.**"

6 **13.** Plaintiff John Doe #1, an individual, and as a representative of the proposed Class
7 of Major Donors, contributed more than \$10,000 to a committee in support of Proposition 8 (the
8 "**Class of Major Donors**" or "**Major Donors**"). John Doe #1 is a resident of Ventura County,
9 California. Pursuant to CGC § 82013, Major Donors are committees under the PRA.

10 **14.** Together, Plaintiffs **ProtectMarriage.com, NOM-California, the Class of**
11 **Major Donors and NOM-California PAC** are simply referred to as "**Plaintiffs.**"

12 **15.** Defendant Debra Bowen is the Secretary of State of California. She is sued in her
13 official capacity. Pursuant to CGC § 84215, ProtectMarriage.com NOM-California, and NOM-
14 California PAC are required to file all campaign reports with Defendant Bowen. All reports filed
15 by Plaintiffs are public records and are open to the public for inspection pursuant to CGC §
16 81008. Furthermore, the Secretary of State is charged with developing a system for electronic
17 filing of campaign statements, and with making said system available to the public via the World
18 Wide Web. CGC § 84602. *See* <http://cal-access.sos.ca.gov/campaign/> ("Cal-Access").

19 **16.** Defendant Edmund Brown, Jr. is the Attorney General of California. He is sued in
20 his official capacity. Pursuant to CGC § 91001, Defendant Brown may bring criminal and civil
21 actions against individuals or organizations that fail to comply with the provisions of the PRA at
22 issue herein.

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

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1 **18.** Defendant Department of Elections - City and County of San Francisco is one of
2 the governmental offices with whom the Plaintiffs are required to file copies of all reports. CGC
3 § 84215. All reports filed by Plaintiffs are public records and are open to the public for
4 inspection at the office of Defendant Department of Elections - City and County of San
5 Francisco pursuant to CGC § 81008.

6 **19.** Defendant Jan Scully is the District Attorney for Sacramento County, California,
7 the county in which Plaintiff ProtectMarriage.com has its principal offices. She is sued in her
8 official capacity and as a representative of the class of District Attorneys in the State of
9 California. Pursuant to CGC § 91001, Defendant Scully and all other District Attorneys in the
10 State of California may bring criminal and civil actions against individuals or organizations that
11 fail to comply with the provisions of the PRA at issue herein.

12 **20.** Defendant Dennis J. Herrera is the City Attorney for the City and County of San
13 Francisco, California. He is sued in his official capacity and as a representative of the class of
14 Elected City Attorneys in the State of California. Pursuant to CGC § 91001.5, Defendant Herrera
15 and all other Elected City Attorneys may bring criminal and civil actions against individuals or
16 organizations that fail to comply with the provisions of the PRA at issue herein.

17 **21.** Defendant Ross Johnson is the Chairman of the Fair Political Practices
18 Commission (“FPPC”). He is sued in his official capacity and is subject to the jurisdiction of this
19 court. Defendants Timothy Hodson, Eugene Huguenin, Jr., Robert Leidigh, and Ray Remy are
20 members of the FPPC. They are sued in their official capacity. The FPPC has the “primary
21 responsibility for the impartial, effective administration and implementation of [the PRA].” CGC
22 § 83111. The FPPC has the authority to investigate possible violations of the PRA based upon
23 sworn complaints of any person or upon its own initiative. CGC § 83115. Pursuant to CGC §
24 83116, the FPPC has the authority to order Plaintiffs to comply with the provisions of the PRA
25 and to impose civil fines up to five thousand dollars. Under CGC § 91001, the FPPC may bring
26 any civil action that could be brought by a voter or resident of the jurisdiction. Finally, under
27 CGC § 91005.5, the FPPC may bring a civil action for violations of the provisions at issue herein
28 in which a civil penalty of up to \$5,000 per violation may be imposed.

III. Class Action Allegations

22. In paragraph eleven (11), Plaintiff John Doe #1 is named as a representative of the **Class of Major Donors**, persons that have contributed \$10,000 or more to Ballot Committee Plaintiffs or similar organizations¹. This class action may be maintained under Federal Rule of Civil Procedure (“FRCP”) 23(a) because: the class of all individuals that have contributed \$10,000 or more to Ballot Committee Plaintiffs are so numerous – three hundred eighty-two (382) such persons contributed to Plaintiff ProtectMarriage.com and twenty-seven (27) such individuals contributed to Plaintiff NOM-California – that joinder of all members is impracticable; the questions of law and fact are common to the members of the class, to wit, whether the PRA’s registration and reporting requirements are unconstitutional as-applied to individuals that have been subjected to threats, harassment, and reprisals as an inevitable consequence of California’s compelled disclosure laws, whether said individuals may be required to file reports *after* the election for the ballot measure has occurred, and whether the state may continue to make reports available to the public *after* the election for the ballot measure has occurred; John Doe #1’s claims are typical of the claim of all members of the class; and John Doe #1, as the class representative, will fairly and adequately protect the interests of the class because all members of the class share the same interests in this matter, to wit, obtaining an exemption from the PRA’s registration and reporting requirements and having all previously filed reports expunged. This class action may be maintained under FRCP 23(b)(1) because the prosecution of separate actions by all members of the class would establish incompatible standards of conduct for the Plaintiffs and Defendants, or it would create a risk of adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests. These class actions may be

¹ Pursuant to CGC § 82013, the term “committee” includes any person who “makes contributions totaling ten thousand dollars (\$10,000) or more in a calendar year to or at the behest of candidates or committees.” Like PFCs, these persons have registration and reporting requirements. *See* CGC § 84200(b).

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1 maintained under FRCP 23(b)(2) because the Defendants have acted on grounds generally
2 applicable to the class, thereby making appropriate final injunctive or corresponding declaratory
3 relief with respect to the class as a whole. Finally, these class actions may be maintained under
4 FRCP 23(b)(3) because there are questions of law and fact common to the members of the class
5 which predominate over any questions affecting only individual members; and a class action is
6 superior to other available methods for the fair and efficient adjudication of this controversy, to
7 wit, separate actions by each and every person that contributed \$10,000 or more to Ballot
8 Committee Plaintiffs.

9 **23.** In paragraphs seventeen (17) and eighteen (18), respectively, Defendant Jan
10 Scully is named as a representative of the Class of all the District Attorneys for the State of
11 California, and Defendant Dennis J. Herrera is named as a representative of the Class of Elected
12 City Attorneys for the State of California. These class actions may be maintained under FRCP
13 23(a) because: the classes of all District and Elected City Attorneys for the State of California
14 are so numerous that joinder of all members is impracticable – there are over fifty-eight (58)
15 district attorneys in California, and there are over ten (10) cities in California that have elected
16 city attorneys; the questions of law and fact are common to the members of the classes, to wit,
17 whether the PRA’s registration and reporting requirements at issue herein are unconstitutional,
18 both facially and as-applied, under *Buckley*, 424 U.S. 1 (1976), and its progeny; the defenses of
19 the representative parties are typical of the defenses of the classes; and the representative parties
20 will fairly and adequately protect the interests of the classes because all members of the classes
21 share the same interests in this matter, to wit, defending and enforcing the laws of the State of
22 California. These class actions may be maintained under FRCP 23(b)(1) because the prosecution
23 of separate actions against individual members of the classes would establish incompatible
24 standards of conduct for the Plaintiffs, or it would create a risk of adjudications with respect to
25 individual members of the classes that would as a practical matter be dispositive of the interests
26 of the other members not parties to the adjudications or substantially impair or impede their
27 ability to protect their interests. These class actions may be maintained under FRCP 23(b)(2)
28 because the Plaintiffs have acted on grounds generally applicable to the classes, thereby making

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1 appropriate final injunctive or corresponding declaratory relief with respect to the classes as a
2 whole. Finally, these class actions may be maintained under FRCP 23(b)(3) because there are
3 questions of law and fact common to the members of the classes that predominate over any
4 questions affecting only individual members; and a class action is superior to other available
5 methods for the fair and efficient adjudication of this controversy, to wit, separate actions against
6 each and every District and Elected City Attorney in California.

7 IV. Facts

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

9 **24.** The story behind Proposition 8 began in large part on March 7, 2000, when
10 61.4% of California citizens voted in favor of Proposition 22. Proposition 22, entitled the
11 “California Defense of Marriage Act,” added California Family Code section 308.5, which
12 provided that, “Only marriage between a man and a woman is valid or recognized in California.”
13 California Secretary of State, *A History of California Initiatives*, available at
14 [http://www.sos.ca.gov/](http://www.sos.ca.gov/elections/init_history.pdf)
15 [elections/init_history.pdf](http://www.sos.ca.gov/elections/init_history.pdf).

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

27 **26.** While the above challenge was pending, the City and County of San Francisco
28 filed suit, alleging that section 308.5 violated the California Constitution. *Id.* at 786. On April 13,

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1 2005, the California superior court ruled that section 308.5 violated the Equal Protection Clause
2 of the California Constitution. *Id.* at 787. While the superior court’s decision was reversed by the
3 California appellate court, that victory was short-lived, because on May 15, 2008, the California
4 Supreme Court ruled that section 308.5 of the California Family Code violated the California
5 Constitution. *Id.* at 857.

6 **27.** Shortly after the California superior court announced its ruling that section 308.5
7 violated the California Constitution, ProtectMarriage.com announced its intentions to seek an
8 amendment to the California Constitution that would solve the alleged infirmities of section
9 308.5 of the Family Code. John M. Hubbell, *Coalition Seeks Male-Female Marriage Definition:
10 New Ballot Push for Constitutional Amendment*, San Francisco Chronicle, Apr. 28, 2005,
11 available at [http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2005/04/28/BAGM6CGHTT1.DTL](http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2005/04/28/BAGM6CGHTT1.DTL&type=printable)
12 &type=printable (last visited Dec. 10, 2008). ProtectMarriage.com ultimately failed to obtain the
13 necessary number of signatures to place a constitutional amendment on the June 2006 ballot.

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

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

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

23
24
25
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).

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1 **30.** Plaintiff ProtectMarriage.com is a “primarily formed committee” under California
2 law because it was formed to support one or more statewide ballot measures in the same election.
3 CGC § 82047.5(c). Plaintiff ProtectMarriage.com is a “committee” under California law because
4 it received contributions of one thousand dollars (\$1,000) or more in support of Proposition 8.
5 CGC § 82013.

6 **31.** Plaintiff NOM-California is a “primarily formed committee” under California law
7 because it was formed to support one or more statewide ballot measures in the same election.
8 CGC § 82047.5(c)

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

12 **33.** Plaintiff NOM-California PAC organized on February 6, 2009, as a “general
13 purpose committee.” CGC § 82027.5(b). Specifically, NOM-California PAC intends to support
14 candidates that share its view of marriage as between one man and one woman. NOM-California
15 PAC also intends to support any ballot measure similar to Proposition 8 and oppose any measure
16 that would overturn Proposition 8.

17 **34.** Major Donors are committees pursuant to CGC § 82013(c) because they
18 contributed ten thousand dollars (\$10,000) or more in a calendar year to a primarily formed
19 committee.

20 **35.** As set forth in more detail below, the PRA places numerous administrative
21 burdens on committees including, but not limited to, the filing of registration and public
22 disclosure statements. *See* ¶¶ 49 - 65.

23 **36.** Plaintiffs and other supporters of Proposition 8 have been subjected to threats,
24 harassment, and reprisals as a result of their support for Proposition 8 and a traditional definition
25 of marriage. *See generally*, Decl. of Sarah E. Troupis (consisting of a number of exhibits, mostly
26 news stories, highlighting the animosity directed at supporters of Proposition 8); [http://www.](http://www.californiansagainsthate.com)
27 [californiansagainsthate.com](http://www.californiansagainsthate.com) (“Help us identify and take action against those who want to deny us
28 our equal rights;” stating that the purpose of the organization is not to provide a meaningful

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1 debate about Proposition 8, but instead, simply to identify those individuals and businesses that
2 supported Proposition 8 so that the organization can “fight back.”).

3 **37.** The threats and harassment have included threatening phone calls, emails, and
4 postcards. *See, e.g.*, Decl. of John Doe #1 (received harassing phone calls that referenced his
5 support of Proposition 8); Decl. of John Doe #4 (received multiple threatening emails including
6 one that read “hello propagators & litigators [sic] burn in hell” and another that read
7 “congratulations. for your support of prop 8, you have won our tampon of the year award.”);
8 Decl. of John Doe #6 (postcard chastising her for her financial support of Proposition 8). In some
9 instances, such phone calls and e-mails were accompanied by death threats, a threat made all the
10 more plausible by the compelled disclosure of the addresses of the donors. *See, e.g.*, Decl. of
11 Sarah E. Troupis, Ex. E (“Consider yourself lucky. If I had a gun I would have gunned you down
12 along with each and every other supporter. . . . I’ve also got a little surprise for Pasor [sic]
13 Franklin and his congregation of lowlife’s [sic] in the coming future. . . . He will be meeting his
14 maker sooner than expected. . . . If you thought 9/11 was bad, you haven’t seen anything yet.”);
15 Ex. P (listing the supporter’s home and business contact information, including address and
16 stating: “Hi [REDACTED], I just wanted to call and let you know what a great picture that was
17 of you and the other Nazi’s [sic] in the newspaper. It’s nice to see you getting out and supporting
18 discrimination. Don’t worry though, we have plans for you and your friends. When you have one
19 of your basic rights taken away from you, you’ll [sic] know how it feels to be discriminated
20 against. I hope you rot in hell, you fckuing [sic] c**t.”).

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

25 **39.** Supporters of Proposition 8 have also received envelopes containing a suspicious
26 white powdery substance. *See* Decl. of Sarah E. Troupis, Ex. J (reporting that two Church of
27 Latter Day Saints temples and a Knights of Columbus facility received envelopes containing a
28 white powdery substance).

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

11 **41.** Businesses, whether or not they have contributed to either side of the Proposition
12 8 campaign, have been blacklisted because people who worked at those businesses supported
13 Proposition 8. *See generally* Decl. of Sarah E. Troupis, Ex. AD - BE (discussing pattern of
14 blacklisting and boycotting of business that contributed to Proposition 8). *See, e.g.*, Decl. of John
15 Doe #1 (numerous protests and his business, and reports of several organized boycotts). Indeed,
16 several individuals have been forced to resign from their positions at work because their support
17 of Proposition 8 was made public through the compelled disclosure system. Decl. of Sarah E.
18 Troupis, Ex. AD (forced to resign over one hundred dollar donation); Ex. AH (forced to resign
19 over \$1,500 donation); Ex. AI (forced to resign over \$1,000 donation).

20 **42.** Several donors have indicated that they will not contribute to Ballot Committee
21 Plaintiffs or similar organizations in the future because of the threats and harassment directed at
22 them as a result of their contributions to Ballot Committee Plaintiffs and the public disclosure of
23 that fact. Indeed, there is significant evidence that, because of the disclosure of their names,
24 donations to groups supporting the passage of Proposition 8 led directly to those donors being
25 singled out for threats, harassment, and reprisals. *See, e.g.*, Decl. of John Doe #1 (indicating that
26 he would not contribute again if it meant that he, and his employees, would be harassed as a
27 result of his support); Decl. of John Doe #2 (unlikely to contribute in future because a flyer was
28 circulated calling him a “bigot” for supporting Proposition 8 and referencing the amount of his

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1 donation); Decl. of John Doe #5 (stating that he feels “threatened and uneasy knowing that [his]
2 company and [he] could be targeted simply for participating in the democratic process” because
3 he received an email referencing the amount of his donation).

4 **43.** The threats and harassment directed at supporters of Proposition 8 have been
5 enabled in part by the PRA’s compelled disclosure requirements.

6 **44.** Plaintiffs have filed, or will file, unless appropriate relief is granted, reports in
7 accordance with the various provisions set forth below.

8 **45.** Committee Plaintiffs believe potential contributors have been and will continue to
9 be discouraged from contributing to their committees as a result of the threats and harassment
10 directed at any individual supporting a traditional definition of marriage.

11 **46.** The continued availability of Ballot Committee Plaintiffs’ and Major Donors’
12 previously filed reports creates the reasonable probability that supporters of Proposition 8 and
13 other individuals or organizations supporting a traditional definition of marriage will be
14 subjected to continued harassment for exercising their First Amendment rights.

15 **47.** Compliance with the PRA’s post-election reporting requirements creates a
16 reasonable probability that those individuals and organizations that made contributions or
17 received expenditures in support of Proposition 8 or to organizations that support a traditional
18 definition of marriage will be subject to the same level of threats, harassment, and reprisals as set
19 forth above.

20 **48.** Plaintiffs have suffered, or will suffer, irreparable harm if the requested relief is
21 not granted.

22 **The California Campaign Finance System**

23 **49.** The PRA defines a “committee” in relevant part as follows:

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

CGC § 82013.

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1 **50.** A “person” is defined by CGC § 82047 as:

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

4 **51.** A “primarily formed committee” (“PFC”) is defined as:

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

8 CGC § 82047.5.

9 **52.** A “general purpose committee” (“GPC”) is defined as:

10 [A] committee pursuant to subdivision (b) or (c) of Section 82013, and any committee
11 pursuant to subdivision (a) of Section 82013 which is formed or exists primarily to
12 support or oppose more than one candidate or ballot measure, except as provided in
13 Section 82047.5.

12 CGC § 82027.5.

13 **53.** The PRA imposes numerous record keeping and reporting requirements on PFCs
14 and GPCs, including, but not limited to: registration statements, campaign statements, the
15 identification of committee sponsors in the committee name, the identification of major donors
16 in advertisements, and termination statements (collectively, the “Reports”). *See* CGC § 84100 *et*
17 *seq.*

18 **54.** PFCs and GPCs are required to file campaign statements at various points
19 throughout the year, including: quarterly, CGC § 84202.3; semi-annually, CGC § 84200; pre-
20 election, CGC § 84200.7; and late contribution, CGC § 84203.

21 **55.** Members of the Class of Major Donors are required to file campaign statements
22 pursuant to CGC § 84200(b).

23 **56.** Plaintiffs are required to file copies of all Reports, including campaign
24 statements, with the Secretary of State, the Registrar-Recorder of Los Angeles County
25 (Defendant Logan), and the Registrar of Voters of the City and County of San Francisco
26 (Defendant Department of Elections - City and County of San Francisco). CGC § 84215.

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

4 **58.** Furthermore, once a committee has received contributions, made expenditures,
5 made loans, or received loans, of \$50,000 or more it must file all Reports electronically with the
6 Secretary of State. CGC § 84605(a). A committee that files electronically is not required to file
7 paper copies with local filing officers. CGC § 84606.³

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

16 **60.** Furthermore, pursuant to CGC § 84602, all Reports, including campaign
17 statements, are published by the Secretary of State on the World Wide Web via Cal-Access.. As
18 of January 7, 2008, Cal-Access contained information regarding ballot measure contributions as
19 far back as the March 7, 2000 election. *See* CGC § 84600 *et seq.* (the “Online Disclosure Act”).

20 **61.** CGC § 84211 provides, in relevant part, that each campaign statement shall
21 include:

22 (f) if the cumulative amount of contributions (including loans) received from a
23 person is *one hundred dollars (\$100)* or more and a contribution or loan has been
24 received from that person during the period covered by the campaign statement,

25 ³ 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 of Proposition 8 supporters which include
the information omitted from Cal-Access, as well as additional contact information. *See*
<http://www.californiansagainsthate.com/>.

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1 all of the following: (1) *his or her full name*; (2) *his or her street address*; (3) *his*
2 *or her occupation*; (4) *the name of his or her employer, or if self-employed, the*
3 *name of the business*; (5) the date and amount received for each contribution
4 received during the period covered by the campaign statement and if the
5 contribution is a loan, the interest rate for the loan;

6 . . .

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

15 (emphasis added).

16 **62.** Furthermore, a committee is required to keep detailed records of *all* contributors
17 of twenty-five dollars (\$25.00) or more, and all recipients of expenditures of twenty-five dollars
18 (\$25.00) or more, for a period of four years from the date the campaign statement to which they
19 relate is filed. CGC § 84104; Cal. Code Regs. tit. 2, § 18401.

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

25 If your contributions . . . to any state and local candidates or committees total
26 \$10,000 or more in a calendar year you are required by the Political Reform Act
27 of 1974 to file campaign statements. For more information, contact your city or
28 county clerk or call the Fair Political Practices Commission at (916) 322-5660.

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

65. Finally, any person who violates any of the above provisions for which no
specific civil penalty is provided shall be liable in a civil action brought by the commission or

STIPULATION TO AMEND - EXHIBIT A

1 the district attorney for an amount of up to five thousand dollars (\$5,000). CGC § 91005.5.
2 Additionally, any person who intentionally or negligently violates any of the reporting
3 requirements of the act shall be liable in a civil action brought by the civil prosecutor or by a
4 person residing in the jurisdiction. CGC § 91004.

5 **Count 1 – The PRA is unconstitutional as-applied to Plaintiffs because**
6 **Plaintiffs’ rights to exercise their First Amendment rights free from threats,**
7 **harassment, and reprisals outweigh the State’s interest in compelled**
8 **disclosure.**

9 **66.** Plaintiffs reallege and incorporate by reference all allegations made in all the
10 previous paragraphs.

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

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

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

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

25 **71.** Nevertheless, the Supreme Court has held that three governmental interests may
26 justify campaign disclosure laws if the regulations are narrowly tailored to serve those interests.
27 *See Buckley*, 424 U.S. at 66-68. First, “disclosure provides the electorate with information as to
28 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

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1 candidate is most likely to be responsive.” *Id.* at 67. Second, disclosure can deter actual
2 corruption and avoid the appearance thereof. *Id.* (the “Corruption Interest”). Lastly, disclosure
3 requirements are an essential “means of gathering the data necessary to detect violations of
4 [contribution limits].” *Id.* at 68. (the “Enforcement Interest”).⁴

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

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

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

18 **75.** In *Brown v. Socialist Workers ‘74 Campaign Committee (Ohio)*, 459 U.S. 87
19 (1982), the Supreme Court considered such a case and held that the organization had
20 demonstrated a “reasonable probability” that compelled disclosure would subject those identified
21 to “threats, harassment, or reprisals.” *Id.* at 88. The organization presented evidence of
22 threatening phone calls, hate mail, the burning of organization literature, destruction of
23 members’ property, police harassment, and the firing of shots at an organizational office. *Id.* at
24 99.

25
26
27 ⁴ 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*”).

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1 **76.** Even if the Class of Major Donors did not join this suit, Committee Plaintiffs may
2 assert the rights of the Major Donors pursuant to *Powers v. Ohio*, 499 U.S. 400, 411-16 (1991)
3 (discussing the doctrine of third-party standing). “If petitioner’s rank-and-file members are
4 constitutionally entitled to withhold their connection with the Association . . . it is manifest that
5 this right is properly assertable by the Association. To require that it be claimed by the members
6 themselves would result in nullification of the right at the very moment of its assertion.” *NAACP*
7 *v. Alabama*, 357 U.S. at 459.

8 **77.** Ballot Committee Plaintiffs are required to file a semi-annual report on or before
9 January 31, 2009. CGC § 84200.

10 **78.** Major Donors that exceeded the ten thousand dollar (\$10,000) reporting threshold
11 after June 30, 2008, must also file a campaign statement on or before January 31, 2009. CGC
12 §84200(b).

13 **79.** Furthermore, Ballot Committee Plaintiffs and some Major Donors have already
14 filed reports in compliance with the PRA.

15 **80.** The January 31st report will include donors that have not been previously
16 disclosed in any of Ballot Committee Plaintiffs’ prior Reports – namely, those donors who have
17 given in excess of one hundred dollars (\$100) but less than one thousand dollars (\$1,000) and
18 that have not been disclosed on prior Reports. The January 31st report will be made available to
19 the public and on Cal-Access. CGC §§ 81008 and 84602.

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

23 **82.** The threats, harassment, and reprisals directed at Committee Plaintiffs and their
24 contributors, including the Class of Major Donors, are an inevitable result of the PRA’s
25 disclosure requirements, which are facilitated by the level of personal information required to be
26 included in the campaign statements. For example, the PRA requires all PFCs and GPCs to file a
27 “statement of organization,” which includes not only the name, address, and phone number of
28 the organization, but also the name, address, and phone number of the treasurer and other

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1 principal officers of the committee. CGC §§ 82013, 84100, 84101 and 84102(c). Similar
2 reporting requirements apply to: contributors (name, address, occupation, and employer), CGC §
3 84211; expenditures (name and address of recipient), CGC § 84211; sponsors (name, address
4 and telephone number, and inclusion of sponsor's name in the name of the committee), CGC §§
5 82048, 84102(a) and 84102(b); and Major Donors (identified in advertisements), Cal. Code
6 Regs. tit. 2, § 18450.4.

7 **83.** The allegations set forth above establish a pattern of hostility directed at persons
8 because of their support for Proposition 8 and a traditional definition of marriage.

9 **84.** There is a reasonable probability that the disclosure of the identities of Committee
10 Plaintiffs' contributors and recipients of expenditures, including the Class of Major Donors not
11 yet disclosed, will subject those persons to the same sort of threats, harassment, and reprisals set
12 forth above.

13 **85.** Furthermore, the continued availability of the Reports already filed creates a
14 reasonable probability that Committee Plaintiffs' contributors and recipients of expenditures,
15 including the class of Major Donors, will be subjected to ongoing and continued threats,
16 harassment, and reprisals.

Prayer for Relief

17
18 **86.** WHEREFORE, Plaintiffs request the following relief:

- 19 **a.** Declare all registration, reporting, and disclaimer requirements
20 unconstitutional as applied to Plaintiffs and all other individuals and
21 organizations holding similar views;
- 22 **b.** Enjoin Defendants from enforcing all registration, reporting, and
23 disclaimer requirements against Plaintiffs and all other individuals and
24 organizations holding similar views;
- 25 **c.** Expunge all records of Reports filed by Plaintiffs, and all of their contents,
26 together with all records of Plaintiffs and all other individuals and
27 organizations holding similar views on California's campaign and
28 reporting disclosure system;

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- 1 d. Grant Plaintiffs ProtectMarriage.com, NOM-California, NOM-California
2 PAC and the Class of Major Donors their costs and attorneys fees under
3 42 U.S.C. § 1988 and any other applicable authority, and;
4 e. Any and all other such relief as may be just and equitable.

5 **Count 2 – The PRA’s requirement that committees report all contributors of**
6 **\$100 or more is unconstitutionally overbroad in violation of the First**
7 **Amendment because it is not narrowly tailored to serve a compelling**
8 **government interest.**

9 **87.** Committee Plaintiffs reallege and incorporate by reference all allegations made in
10 all the previous paragraphs.

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

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

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

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

25 **92.** Nevertheless, the Supreme Court has held that three governmental interests may
26 justify campaign disclosure laws if the regulations are narrowly tailored to serve those interests.
27 *See Buckley*, 424 U.S. at 66-68. First, “disclosure provides the electorate with information as to
28 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

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1 candidate is most likely to be responsive.” *Id.* at 67. Second, disclosure can deter actual
2 corruption and avoid the appearance thereof. *Id.* (the “Corruption Interest”). Lastly, disclosure
3 requirements are an essential “means of gathering the data necessary to detect violations of
4 [contribution limits].” *Id.* at 68. (the “Enforcement Interest”).

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

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

17 **95.** “[S]trict [reporting] requirements may well discourage participation by some
18 citizens in the political process, a result that Congress hardly could have intended.” *Id.*

19 **96.** Furthermore, the Supreme Court has said that limits, such as the one hundred
20 dollar (\$100) reporting threshold at issue in this case, which are not indexed for inflation “will
21 almost inevitably become too low over time.” *Randall v. Sorrell*, 548 U.S. 230, 261 (2006)
22 (regarding contribution limits not indexed for inflation).

23 **97.** To the extent that the State of California has an interest in providing the general
24 public with information as to who is supporting or opposing a particular ballot measure, that
25 interest is adequately served by more narrowly tailored provisions of the PRA.

26 **98.** Thus, CGC § 84211, and Cal. Code Regs. tit. 2, § 18110, are unconstitutionally
27 overbroad in violation of the First Amendment because they are not narrowly tailored to serve a
28 compelling government interest in that they require committees to report the full name and street

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1 address for all persons who have contributed a cumulative amount of one hundred dollars (\$100)
2 or more to the committee.

3 PRAYER FOR RELIEF

4 **99.** WHEREFORE, Committee Plaintiffs request the following relief:

- 5 **a.** Declare CGC § 84211 and Cal. Code Regs. tit. 2, § 18110 unconstitutional
6 both facially and as-applied to Committee Plaintiffs and all other similar
7 individuals and organizations;
- 8 **b.** Enjoin Defendants from enforcing the registration, reporting, and
9 disclaimer requirements against Committee Plaintiffs and all other similar
10 individuals and organizations;
- 11 **c.** Expunge all records of Reports filed by the Committee Plaintiffs and all of
12 their contents, together with all records of the Committee Plaintiffs on
13 California’s campaign and reporting disclosure system;
- 14 **d.** Grant Plaintiffs ProtectMarriage.com, NOM-California, and NOM-
15 California PAC their costs and attorneys fees under 42 U.S.C. § 1988 and
16 any other applicable authority, and;
- 17 **e.** Any and all other such relief as may be just and equitable.

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

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

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

27 **102.** “In the free society ordained by our Constitution it is not the government, but the
28 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

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1 political campaign.” *Buckley*, 424 U.S. at 57. “The First Amendment, in particular, serves
2 significant societal interests.” *Bellotti*, 435 U.S. at 776.

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

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

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

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

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

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1 **108.** To the extent that the state’s Informational Interest is a valid compelling interest
2 justifying compelled disclosure, that interest ceases to exist the moment the last ballot is cast for
3 the measure.

4 **109.** Furthermore, any other possible interest of the state is served by more narrowly
5 tailored provisions of the PRA—provisions that do not require the public disclosure of donors to a
6 ballot measure *after* an election.

7 **110.** Thus, the PRA is unconstitutional, both facially and as-applied, to the extent that
8 it requires reports *after* a ballot measure election because such reports are not narrowly tailored
9 to serve a compelling government interests in violation of the First Amendment to the United
10 States Constitution.

Prayer for Relief

11
12 **111.** WHEREFORE, Plaintiffs request the following relief:

- 13 **a.** Declare CGC §§ 84200, 84203, and 84203.3 unconstitutional both facially
14 and as-applied to Plaintiffs and all other similar individuals and
15 organizations;
- 16 **b.** Enjoin Defendants from enforcing any reporting requirements after the
17 election on a ballot measure has occurred against Plaintiffs and all other
18 similar individuals and organizations;
- 19 **c.** Expunge all records of Reports filed by Plaintiffs and all of their contents,
20 together with all records of Plaintiffs on California’s campaign and
21 reporting disclosure system;
- 22 **d.** Grant Plaintiffs ProtectMarriage.com, NOM-California, NOM-California
23 PAC, and the Class of Major Donors their costs and attorneys fees under
24 42 U.S.C. § 1988 and any other applicable authority, and;
- 25 **e.** Any and all other such relief as may be just and equitable.
26
27
28

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1 **Count 4 – The PRA is unconstitutional under the First Amendment, both**
2 **facially and as-applied, because it does not contain a mechanism for purging**
3 **all Reports related to a ballot measure after the election has occurred.**

4 **112.** Plaintiffs reallege and incorporate by reference all allegations made in all the
5 previous paragraphs.

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

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

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

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

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

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

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

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

14 **121.** Furthermore, any other possible interest of the state is served by more narrowly
15 tailored provisions of the PRA—provisions that do not require the public disclosure of donors to a
16 ballot measure *after* an election.

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

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

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Prayer for Relief

124. WHEREFORE, Plaintiffs request the following relief:

- a. Declare CGC §§ 81008 and 84600-84612 unconstitutional both facially and as-applied, to Plaintiffs and all other similar individuals and organizations;
- b. Expunge all records of Reports filed by Plaintiffs and all other similar individuals and organizations, and all of their contents, together with all records of Plaintiffs on California’s campaign and reporting disclosure system;
- c. Grant Plaintiffs ProtectMarriage.com, NOM-California, NOM-California PAC and the Class of Major Donors their costs and attorneys fees under 42 U.S.C. § 1988 and any other applicable authority, and;
- d. Any and all other such relief as may be just and equitable.

Dated this ____ day of May, 2009.

Respectfully submitted,

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