

EXHIBIT 27

Exhibit A

No. 08-205

IN THE
Supreme Court of the United States

CITIZENS UNITED,

Appellant,

v.

FEDERAL ELECTION COMMISSION,

Appellee.

**On Appeal
From The United States District Court
For The District Of Columbia**

REPLY BRIEF FOR APPELLANT

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RULE 29.6 STATEMENT

The corporate disclosure statement included in the Brief for Appellant remains accurate.

TABLE OF CONTENTS

	Page
RULE 29.6 STATEMENT	i
TABLE OF AUTHORITIES.....	iv
REPLY BRIEF FOR APPELLANT	1
I. THE GOVERNMENT’S SUPPRESSION OF <i>HILLARY: THE MOVIE</i> CANNOT BE RECONCILED WITH THE FIRST AMENDMENT	4
A. The Government’s Brief Confirms That It Has No Compelling Interest In Suppressing Video On Demand Distribution Of Feature- Length Films	5
B. The Government’s Brief Identifies No Compelling Basis For Suppressing Corporate Speech That Is Funded Almost Entirely By Individuals.....	13
C. The Government’s Brief Confirms That <i>Hillary: The Movie</i> Is Open To Interpretations Other Than As An Appeal To Vote	17
II. THE BURDENS THE GOVERNMENT WOULD IMPOSE ON ADVERTISEMENTS FOR <i>HILLARY: THE MOVIE</i> VIOLATE THE FIRST AMENDMENT	20
A. BCRA’s Disclaimer, Disclosure, And Reporting Requirements Cannot Survive Strict Scrutiny.....	21
B. BCRA’s Disclaimer, Disclosure, And Reporting Requirements Cannot Survive Exacting Scrutiny.....	22

1. The Government's Informational Interest Is Inapplicable To Citizens United's Advertisements.....	22
2. The Government's Enforcement Interest Is Inapplicable To Citizens United's Advertisements.....	27
3. The Burdens Imposed By BCRA §§ 201 And 311 Outweigh Any Government Interest In Applying Those Speech Restrictions To Citizens United.....	28
CONCLUSION.....	30

rate-funded electioneering communications. And, as applied to Citizens United, not even the reporting requirement could further the government's enforcement interest (or its purported informational interest, for that matter) because, as the government concedes, Citizens United "already discloses its identity at the website referred to in the advertisements." FEC Br. 51. In this case, then, the government's supposed enforcement interest is pure fiction.

3. The Burdens Imposed By BCRA §§ 201 And 311 Outweigh Any Government Interest In Applying Those Speech Restrictions To Citizens United.

Even if the government did have an informational or enforcement interest in applying BCRA's disclaimer, disclosure, and reporting requirements to Citizens United, those interests would be outweighed by the extraordinary burdens that those requirements impose on First Amendment freedoms—including the risk of harassment and retaliation faced by Citizens United's financial supporters, and the substantial compliance costs borne by Citizens United.

The government dismisses the risk of reprisal against Citizens United's supporters because the record does not document previous acts of retaliation. But the risk of reprisal against contributors to Citizens United—and other groups that espouse controversial ideological messages—has vastly increased in recent years as a result of the same "technological advances" that the government touts in BCRA's defense, which "make it possible . . . for the public to review and even search the [contribution] data with ease." FEC Br. 40-41. The widespread economic re-

prisals against financial supporters of California's Proposition 8 dramatically illustrate the unsettling consequences of disseminating contributors' names and addresses to the public through searchable websites (*see, e.g.*, CCP Br. 13; IJ Br. 13)—some of which even helpfully provide those intent upon retribution with a map to each donor's residence. *See* Brad Stone, *Prop 8 Donor Web Site Shows Disclosure Is 2-Edged Sword*, N.Y. Times, Feb. 8, 2009.

The chilling effect on First Amendment expression generated by the specter of retribution is substantiated by empirical studies, which have found that “[e]ven those who strongly support forced disclosure laws will be less likely to contribute” where their personal information will be disclosed. IJ Br. 10 (quoting Dick Carpenter, *Disclosure Costs: Unintended Consequences of Campaign Finance Reform 8* (2007)). And this chilling effect on First Amendment freedoms is compounded by the extreme administrative burdens generated by BCRA's disclosure requirements, which are notoriously difficult to implement for even the lawyers and accountants who advocacy groups are inevitably required to retain to monitor their disclosure obligations. *See id.* at 19 (discussing an empirical study in which none of the 255 participants was able to comply successfully with campaign disclosure requirements).

The fact that the record does not explicitly document the burdens that BCRA's disclaimer, disclosure, and reporting requirements impose on Citizens United's First Amendment rights is not a sufficient basis for discounting these very real impositions on Citizens United's freedom of expression. In this as-applied challenge, it is the *government* that bears the burden of establishing that BCRA's speech restrictions are compatible with the First Amendment

(*WRTL II*, 127 S. Ct. at 2664 (opinion of Roberts, C.J.))—and it therefore falls to the government to demonstrate that BCRA does not intolerably restrict Citizens United’s First Amendment freedoms. The government has not met that burden.

CONCLUSION

The judgment of the district court should be reversed.

Respectfully submitted.

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March 17, 2009

Ex. A-1

(Brief of Amicus Curiae Center for
Competitive Politics in Support of
Appellant, No. 08-205, Cited in Reply
Brief for Appellants)

No. 08-205

IN THE
Supreme Court of the United States

CITIZENS UNITED,
Appellant,

v.

FEDERAL ELECTION COMMISSION,
Appellee.

**On Appeal from the United States
District Court for the District of Columbia**

**BRIEF OF *AMICUS CURIAE*
CENTER FOR COMPETITIVE POLITICS
IN SUPPORT OF APPELLANT**

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January 15, 2009

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.....	iii
INTEREST OF <i>AMICUS CURIAE</i>	1
SUMMARY OF THE ARGUMENT.....	2
ARGUMENT.....	4
I. INTRODUCTION.....	4
II. LIKE DISCLOSURE IN CANDIDATE ELECTIONS, ANONYMITY BEYOND ELECTIONS PROTECTS CITIZENS FROM CORRUPT AND ABUSIVE OFFICEHOLDERS.....	6
III. THE DANGER OF RETRIBUTION IS REAL.....	9
IV. CONGRESS HAS NO AUTHORITY TO REGULATE POLITICAL SPEECH BEYOND ELECTIONS, AND FURTHERS NO IMPORTANT OR COMPELLING GOVERNMENT INTEREST BY DOING SO.....	20
A. Congress Has No Authority to Regulate Political Speech Beyond Elections.....	20
B. The Interests Recognized In <i>Buckley</i> , and by Extension <i>McConnell</i> , Are Inapplicable To The Disclosure Of Issue Advocacy.....	22
C. This Case is Not About Electoral Speech, and, Therefore, Not About The Right to Engage in Anonymous Electioneering.....	24

TABLE OF CONTENTS—Continued

	Page
V. THIS COURT HAS ALREADY INVALIDATED CONGRESSIONAL ATTEMPTS TO COMPEL THE DISCLOSURE OF ISSUE ADVOCACY ON CONSTITUTIONAL GROUNDS	28
VI. CITIZENS UNITED NEED NOT DEMONSTRATE THAT IT WILL BE SUBJECT TO THREATS, HARASSMENT, OR REPRISALS BECAUSE THE DISCLOSURE PROVISIONS ARE UNCONSTITUTIONAL AS-APPLIED TO ANY ORGANIZATION ENGAGED IN ISSUE ADVOCACY	30
VII. THE ENFORCEMENT OF OTHER PROVISIONS CAN BE ADDRESSED BY EXISTING MEANS MORE NARROWLY TAILORED THAN MANDATORY PUBLIC DISCLOSURE..	32
CONCLUSION	36

Mandatory disclosure in ballot-initiative and referenda campaigns also carries heavy burdens for citizens that would participate, but unlike candidate races, doesn't even further the ability of citizens to monitor the performance of their elected officials. "[T]he invasion of privacy of belief may be as great when the information sought concerns the giving and spending of money as when it concerns the joining of organizations, for '[f]inancial transactions can reveal much about a person's activities, associations, and beliefs.'" *Buckley*, 424 U.S. at 66 (internal citations omitted).

For example, in the wake of voting on California's controversial Proposition 8 to prohibit same sex marriage, Scott Eckern, formerly the artistic director of the California Musical Theatre was forced to resign "amid controversy over a donation he made to the Proposition 8 campaign." Niesha Lofing, *CMT artistic director quits in fallout from Prop. 8 support*, SACRAMENTO BEE, Nov. 12, 2008 (available at <<http://www.sacbee.com/1089/story/1391705.html>>). The theatre board "thanked Eckern for '25 years of invaluable service to the organization and the advancement of musical theatre as an art form.'" *Id.* Eckern gave \$1,000 to support Proposition 8, "a donation that sparked criticism from theater workers and the gay, lesbian, bisexual and transgender community." *Id.* Eckern "'honestly had no idea' that the contribution would spark such outrage and made the donation ... on his belief [that] the traditional definition of marriage be preserved." *Id.* Eckern said he is "disappointed that my personal convictions have cost me the opportunity to do what I love most ... to

prohibit same-sex marriage. These are the people who donated in order to pass it."

continue enriching the Sacramento arts and theatre community.” *Id.*

In another example, after Proposition 8 passed, dozens of “activists descended on the El Coyote restaurant with signs and placards. They chanted ‘Shame on you,’ cussed at patrons and began a boycott of the cafe.” Jim Carlton, *Gay Activists Boycott Backers of Proposition 8*, WALL ST. J., Dec. 27, 2008, at A3. “The restaurant’s crime: A daughter of the owner donated \$100 to support Prop 8.” *Id.*

Richard Raddon, former director of the Los Angeles Film Festival, resigned after “being at the center of controversy” for giving “\$1500 to Proposition 8.” Rachel Abramowitz, *Film fest director resigns; Richard Raddon steps down over reaction to his support of Prop. 8.*, L.A. TIMES, Nov. 26, 2008, at E1. Raddon, a Mormon, gave for religious reasons. *Id.* After Raddon’s contribution was “made public online,” Film Independent was “swamped with criticism from No on 8 supporters,” and “in the blogosphere.” *Id.* One fellow board member noted, “Someone has lost his job and possibly his livelihood because of privately held religious beliefs.” *Id.* Since Proposition 8 has passed, “Hollywood has been debating whether and how to publicly punish those who supported the ... amendment,” including boycotts of the “Cinemark theater chain, whose chief executive, Alan Stock, donated \$9,999 to ‘Yes on 8.’” *Id.*

These are not isolated examples. In the aftermath of Proposition 8, numerous blacklists are now being established, and those establishing them note that the existence of reliable data over the internet makes such lists easier to compile. “Years ago we would never have been able to get a blacklist that fast and quickly,” said one opponent of Proposition 8. Richard

Abowitz, *Where's the Outrage? Online.*, LAS VEGAS WEEKLY, Jan. 8, 2009 (available at <<http://www.lasvegasweekly.com/news/2009/jan/08/wheres-outrage-online/>>). While citizens have a right to organize boycotts that do not violate anti-trust or non-discrimination laws, the government does not have a compelling interest in making political preferences public so that citizens who support the “wrong” side can be subjected to harassment and blacklisting. This harassment emphasizes *Amicus*' point, see Section II, *supra*, that, unlike information on donations to candidates, once a ballot initiative has been enacted, mandatory public disclosure of financial donors serves no anti-corruption purpose because it does not allow citizens to evaluate the performance and character of their elected officials. But it does allow for efforts to chill and intimidate speakers in the future.

Even worse, mandatory disclosure for issue advocacy has the danger of intimidating funding and supporters away from issues, not just candidates and campaigns.

For example, in a letter⁶ to ExxonMobil CEO Rex Tillerson, Senators Olympia Snowe and Jay Rockefeller “urge[d]” the company to end its support of what the Senators called “climate change denial front groups” like the Competitive Enterprise Institute, and said the company “should repudiate its climate change denial campaign and make public its funding history.” Editorial, *Nobles and Knaves*, WASH. TIMES, Nov. 11, 2006, at A12; Editorial, *Political Science*,

⁶ The letter is available at <http://snowe.senate.gov/public/index.cfm?FuseAction=PressRoom.PressReleases&ContentRecord_id=92cba744-802a-23ad-47be-2683985c724e>.

Ex. A-2

(Brief of The Institute for Justice as
Amicus Curiae in Support of Appellant,
Citizens United, No. 08-205, Cited in
Reply Brief for Appellants)

No. 08-205

In The
Supreme Court of the United States

—◆—
CITIZENS UNITED,

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—◆—
**On Appeal From
The United States District Court
For The District Of Columbia**

—◆—
**BRIEF OF THE INSTITUTE FOR JUSTICE
AS AMICUS CURIAE IN SUPPORT OF
APPELLANT, CITIZENS UNITED**

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TABLE OF CONTENTS

	Page
TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	ii
INTEREST OF THE AMICUS.....	1
SUMMARY OF ARGUMENT	2
ARGUMENT.....	3
I. DISCLOSURE REGULATIONS CHILL SPEECH BY BURDENING CITIZENS' RIGHT TO ENGAGE IN ANONYMOUS SPEECH AND BY ENABLING PER- SONAL AND ECONOMIC REPRISALS.....	6
A. Disclosure Creates A Disincentive To Engage in Political Activity.....	8
B. Fear Of Political Reprisal Is Both Real and Reasonable	13
C. The FEC's Regulations Violate the First Amendment	16
II. BURDENSOME REPORTING REQUIRE- MENTS CHILL SPEECH	18
III. THE GOVERNMENT SHOULD CARRY THE BURDEN TO DEMONSTRATE THE NEED FOR DISCLOSURE IN- STEAD OF SPEAKERS BEARING THE BURDEN TO PROVE THE NEED TO REMAIN ANONYMOUS	26
CONCLUSION.....	30

B. Fear Of Political Reprisal Is Both Real and Reasonable

In the most recent election cycle, supporters of California's Proposition 8, relating to same-sex marriage, found themselves subject to reprisals in a variety of forms following the proposition's success. See Steve Lopez, *A Life Thrown in Turmoil by \$100 Donation for Prop. 8*, Los Angeles Times, December 14, 2008 (describing the experience of a restaurant manager who made a personal donation in support of Proposition 8, ultimately resulting in the boycott of her restaurant); John R. Lott, Jr. and Bradley Smith, *Donor Disclosure Has Its Downsides: Supporters of California's Prop. 8 Have Faced a Backlash*, Wall St. J., Dec. 26, 2008 (summarizing examples of individuals who faced economic retaliation for donations in support of Proposition 8); Amy Bounds, *Gay rights advocates picket Boulder Cineplex*, Rocky Mountain News, November 30, 2008 (business picketed and boycotted based on CEO's personal donation). In fact, a website recently appeared providing an interactive map with pinpoint locations, names, addresses, and donation amounts for individuals and entities that supported Proposition 8 – in this circumstance, access to this personal information regarding political activities is even easier. See www.eightmaps.com (last visited January 12, 2009).

The experience of Proposition 8 supporters in 2008 is by no means unique. Exacting political retribution for individuals' support or opposition of particular candidates or causes specifically based on data

gleaned from campaign finance reports is becoming a new field of battle in politics. See Michael Luo, *Group Plans Campaign Against G.O.P. Donors*, N.Y. Times, August 8, 2008 (describing the planned campaign of liberal nonprofit group Accountable America, which planned “to confront donors to conservative groups, hoping to create a chilling effect that will dry up contributions”); see also Associated Press, *John Kerry Grills Belgium Ambassador Nominee Over Swift Boat Donation*, FoxNews.com, February 28, 2007 (“A Senate hearing that began with glowing tributes to a St. Louis businessman and his qualifications to become ambassador to Belgium turned bitterly divisive Tuesday after he was criticized for supporting a controversial conservative group.”).

The rising acceptance of this type of political retribution is already generating anecdotal evidence of a chilling effect on political speech and association. For instance, in West Virginia’s most recent race for state attorney general, a newcomer challenged the incumbent, a man described by the Wall Street Journal as “a case study of abuse in office.” Kimberley A Strassel, *Challenging Spitzerism at the Polls*, Wall St. J., August 1, 2008. Because of the effect of mandatory reporting requirements, the challenger alleged he faced a significant uphill battle in fundraising:

[Incumbent Attorney General Darrell McGraw’s] other main asset is fear. [Challenger] Mr. Gear admits a big hurdle is fund

raising, even among a business community that is desperate to throw out Mr. McGraw. “I go to so many people and hear the same thing: ‘I sure hope you beat him, but I can’t afford to have my name on your records. He might come after me next.’” This is a frightening example of how the power of an attorney general can corrupt even the electoral process.

Id.

Reprisals for political contributions can also come in forms unrelated to the donation itself. Gigi Brienza discovered this when her name and address appeared on the website of an animal-rights organization, which had culled FEC records for donors whose employers perform animal testing. *See* Gigi Brienza, *I Got Inspired. I Gave. Then I Got Scared.*, Wash. Post, July 1, 2007 at B03.

Quite simply, the easy accessibility of information about one’s political leanings, address, employer, and occupation suggests that it is time for this Court to reexamine its conclusions about the cost of mandatory disclosure rules. In 2009, a person wishing to harass citizens with a different viewpoint no longer needs to visit a government office to sift by hand through published data to access political information. Now, data regarding one’s political leanings, address, employer, and occupation are searchable from any computer, day or night. In such an environment, it is perfectly understandable that

reasonable individuals fear the implications of publicizing their political positions.

C. The FEC's Regulations Violate the First Amendment

In *McIntyre v. Ohio Elections Commission*, this Court struck down a law that required the disclosure of one's identity on written election communications. 514 U.S. 334, 357 (1995). This Court held that individuals have a right to anonymous speech and that a law requiring them to disclose their views on controversial issues did so in violation of that right. *Id.* “[A]n author’s decision to remain anonymous, like other decisions concerning omissions or additions to the content of a publication, is an aspect of the freedom of speech protected by the First Amendment.” *Id.* This Court also emphasized the importance of anonymity in protecting rights to speech and association. “Anonymity is a shield from the tyranny of the majority” which “exemplifies the purpose behind the Bill of Rights, and of the First Amendment in particular: to protect unpopular individuals from retaliation – and their ideas from suppression – at the hand of an intolerant society.” *Id.*

Disclosure Costs (supra), the first study to question the general presumption that mandatory disclosures are cost-free, demonstrates that this Court’s conclusions in *McIntyre* were not only correct, they

Ex. A-3

*(Prop 8 Donor Web Site Shows
Disclosure Law is 2-Edged Sword, NY
Times, Cited in Reply Brief for
Appellants)*

The New York Times

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SPONSORED BY**February 8, 2009****SLIPSTREAM**

Prop 8 Donor Web Site Shows Disclosure Law Is 2-Edged Sword

By BRAD STONE

FOR the backers of Proposition 8, the state ballot measure to stop single-sex couples from marrying in [California](#), victory has been soured by the ugly specter of intimidation.

Some donors to groups supporting the measure have received death threats and envelopes containing a powdery white substance, and their businesses have been boycotted.

The targets of this harassment blame a controversial and provocative Web site, eightmaps.com.

The site takes the names and ZIP codes of people who donated to the ballot measure — information that California collects and makes public under state campaign finance disclosure laws — and overlays the data on a [Google](#) map.

Visitors can see markers indicating a contributor's name, approximate location, amount donated and, if the donor listed it, employer. That is often enough information for interested parties to find the rest — like an e-mail or home address. The identity of the site's creators, meanwhile, is unknown; they have maintained their anonymity.

Eightmaps.com is the latest, most striking example of how information collected through disclosure laws intended to increase the transparency of the political process, magnified by the powerful lens of the Web, may be undermining the same democratic values that the regulations were to promote.

With tools like eightmaps — and there are bound to be more of them — strident political partisans can challenge their opponents directly, one voter at a time. The results, some activists fear, could discourage people from participating in the political process altogether.

That is why the soundtrack to eightmaps.com is a loud gnashing of teeth among civil libertarians, privacy advocates and people supporting open government. The site pits their cherished values against each other: political transparency and untarnished democracy versus privacy and freedom of speech.

“When I see those maps, it does leave me with a bit of a sick feeling in my stomach,” said Kim Alexander, president of the California Voter Foundation, which has advocated for open democracy. “This is not really the intention of voter disclosure laws. But that’s the thing about technology. You don’t really know where it is going to take you.”

Ms. Alexander and many Internet activists have good reason to be queasy. California’s Political Reform Act of 1974, and laws like it across the country, sought to cast disinfecting sunlight on the political process by requiring contributions of more than \$100 to be made public.

Eightmaps takes that data, formerly of interest mainly to social scientists, pollsters and journalists, and publishes it in a way not foreseen when the open-government laws were passed. As a result, donors are exposed to a wide audience and, in some cases, to harassment or worse.

A college professor from the University of California, San Francisco, wrote a \$100 check in support of Proposition 8 in August, because he said he supported civil unions for gay couples but did not want to change the traditional definition of marriage. He has received many confrontational e-mail messages, some anonymous, since eightmaps listed his donation and employer. One signed message blasted him for supporting the measure and was copied to a dozen of his colleagues and supervisors at the university, he said.

“I thought what the eightmaps creators did with the information was actually sort of neat,” the professor said, who asked that his name not be used to avoid becoming more of a target. “But people who use that site to send out intimidating or harassing messages cross the line.”

Joseph Clare, a San Francisco accountant who donated \$500 to supporters of Proposition 8, said he had received several e-mail messages accusing him of “donating to hate.” Mr. Clare said the site perverts the meaning of disclosure laws that were originally intended to expose large corporate donors who might be seeking to influence big state projects.

“I don’t think the law was designed to identify people for direct feedback to them from others on the other side,” Mr. Clare said. “I think it’s been misused.”

Many civil liberties advocates, including those who disagree with his views on marriage, say he has a point. They wonder if open-government rules intended to protect political influence of the individual voter, combined with the power of the Internet, might be having the opposite effect on citizens.

“These are very small donations given by individuals, and now they are subject to harassment that ultimately makes them less able to engage in democratic decision making,” said Chris Jay Hoofnagle, senior fellow at the Berkeley Center for Law and Technology at the University of California.

THANKS to eightmaps.com, the Internet is abuzz with bloggers, academics and other pundits

offering potential ways to resolve the tension between these competing principles. One idea is to raise the minimum donation that must be reported publicly from \$100, to protect the anonymity of small donors.

Another idea, proposed by a Georgetown professor, is for the state Web sites that make donor information available to ask people who want to download and repurpose the data to provide some form of identification, like a name and credit card number.

“The key here is developing a process that balances the sometimes competing goals of transparency and privacy,” said the professor, Ned Moran, whose undergraduate class on information privacy spent a day discussing the eightmaps site last month.

“Both goals are essential for a healthy democracy,” he said, “and I think we are currently witnessing, as demonstrated by eightmaps, how the increased accessibility of personal information is disrupting the delicate balance between them.”

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EXHIBIT 28

Exhibit B

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PROJECT OF CALIFORNIA RENEWAL

18 * Admitted *pro hac vice*

19
20 **UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

21 KRISTIN M. PERRY, SANDRA B. STIER,
22 PAUL T. KATAMI, and JEFFREY J.
ZARRILLO,

23 Plaintiffs,

24 v.

25 ARNOLD SCHWARZENEGGER, in his offi-
26 cial capacity as Governor of California; ED-
27 MUND G. BROWN, JR., in his official capacity
as Attorney General of California; MARK B.

CASE NO. 09-CV-2292 VRW

**DECLARATION OF RONALD
PRENTICE IN SUPPORT OF DE-
FENDANT-INTERVENORS' MO-
TION FOR A PROTECTIVE ORDER**

Date: September 25, 2009
Time: 10:00AM
Judge: Chief Judge Vaughn R. Walker
Location: Courtroom 6, 17th Floor

1 HORTON, in his official capacity as Director of
2 the California Department of Public Health and
3 State Registrar of Vital Statistics; LINETTE
4 SCOTT, in her official capacity as Deputy Di-
5 rector of Health Information & Strategic Plan-
6 ning for the California Department of Public
7 Health; PATRICK O'CONNELL, in his official
8 capacity as Clerk-Recorder for the County of
9 Alameda; and DEAN C. LOGAN, in his official
10 capacity as Registrar-Recorder/County Clerk for
11 the County of Los Angeles,

12 Defendants,

13 and

14 PROPOSITION 8 OFFICIAL PROPONENTS
15 DENNIS HOLLINGSWORTH, GAIL J.
16 KNIGHT, MARTIN F. GUTIERREZ, HAK-
17 SHING WILLIAM TAM, and MARK A.
18 JANSSON; and PROTECTMARRIAGE.COM
19 – YES ON 8, A PROJECT OF CALIFORNIA
20 RENEWAL,

21 Defendant-Intervenors.

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I, Ronald Prentice, make the following declaration pursuant to 28 U.S.C. § 1746:

1. I am a resident of California over 18 years of age, and my statements herein are based on personal knowledge.

1 2. The California ballot measure in 2008 known as Proposition 8 had five “Official Pro-
2 ponents” pursuant to California law, Cal. Elec. Code §342. Those five Proponents are Defendant-
3 Intervenors in this case: Dennis Hollingsworth, Gail J. Knight, Martin F. Gutierrez, Hak-Shing
4 William Tam, and Mark A. Jansson (“the Proponents”).

5 3. The Proponents endorsed ProtectMarriage.com – Yes on 8, a Project of California Re-
6 newal (“Protect Marriage”), a “primarily formed committee” under the California Political Reform
7 Act, Cal. Gov. Code § 82047.5, as the official Proposition 8 campaign committee. Protect Mar-
8 riage was designated to receive all contributions and to disburse expenditures for the Proposition 8
9 campaign.
10

11 4. For purposes of state law, Protect Marriage has a single officer responsible for filing
12 required disclosures. David Bauer serves as that officer.

13 5. Unofficially, Protect Marriage was and is supported by many volunteers with varying
14 levels of involvement and input, including an ad hoc “executive committee” consisting of several
15 individuals. Some of those individuals served as agents for other organizations with an interest in
16 the qualification and passage of Proposition 8, and the marriage debate generally. I serve as
17 chairman of the ad hoc executive committee.
18

19 6. The ad hoc executive committee was often advised by an attorney, who was retained to
20 serve as Protect Marriage’s general counsel.

21 7. Protect Marriage employed a public relations firm to serve as the Proposition 8 cam-
22 paign manager.
23

24 8. Volunteers of Protect Marriage corresponded with each other, with the public relations
25 firm, with various vendors and independent contractors, and with other third parties about political
26 beliefs, campaign strategy, personal beliefs, and much else relating to Proposition 8.
27
28

1 9. As chairman of the ad hoc executive committee, I had extensive dealings with Protect
2 Marriage's donors and volunteers. Many of the donors were quite concerned that publicly-
3 disclosed affiliation with Protect Marriage would lead to retaliation against them. They were
4 specifically concerned with the scope of information that would be revealed, and for some donors
5 the determining factor in favor of donating was that the only information that would be publicly
6 disclosed was the amount of their contribution and their name, address, occupation and employer.
7

8 10. I am aware of many instances of harassment and retaliation against Protect Marriage's
9 donors and volunteers that occurred after their affiliation with Protect Marriage became public.
10 The names of donors to Proposition 8 were widely distributed on the Internet, and many donors
11 experienced boycotts of their businesses. I am aware of several individuals who chose to resign
12 from their employment in order to escape the harassment and intimidation brought upon them and
13 their employers. Volunteers who made a public stand in support of Proposition 8 by holding signs
14 or distributing materials were victims of physical assaults such as being spat upon and having hot
15 coffee thrown on them by passengers in passing automobiles. Several reports of vandalism to
16 property came from volunteers who placed Yes on 8 bumper strips on their cars.
17

18 11. Widespread retaliation and harassment against donors and volunteers had a negative ef-
19 fect on participation in the campaign in favor of Proposition 8. As acts of harassment against
20 Proposition 8 donors and volunteers became public, donors expressed concern over being publicly
21 identified and placing themselves, their family members, and their employees at possible risk.
22 Potential donors contacted me to ask how donations could be made without publicly disclosing
23 their identity, and when campaign finance disclosure laws were explained to those donors, many
24 declined to make any contribution. After receiving significant media attention and public protests,
25 several major donors to the Proposition 8 campaign refused to make further contributions.
26
27
28

1 12. I personally experienced harassment and retaliation due to my affiliation with Protect
 2 Marriage. While the physical addresses of my residence and office locations were not public , I
 3 received harassment on a regular basis via E-mails, letters, and phone calls. Derisive name-calling
 4 and statements of hatred toward me became commonplace. Attacks on my character and integrity
 5 were also attempted, with bogus claims regarding the fiscal management of the organization I
 6 direct.

7
 8 13. Some donors to Protect Marriage conditioned their donation on being privy to the polit-
 9 ical strategy, polling, opinion research, and internal workings of the campaign in favor of Proposi-
 10 tion 8. Some donors communicated to Protect Marriage their thoughts about the election, about the
 11 marriage debate generally, and/or ideas for campaign strategy.

12
 13 14. If I had known that the non-public communications of Protect Marriage, its donors and
 14 volunteers would be subject to disclosure, I would have communicated differently with other
 15 volunteers of Protect Marriage, with its donors, and with others associated with the campaign
 16 and/or the marriage debate. I would have been more guarded, and fearful that my communications
 17 could later be distorted, utilized for purposes of intimidation, or utilized to learn my personal
 18 beliefs of the political strategies I thought advisable. Also, I would have warned donors, volun-
 19 teers, and affiliates that by nature of participation in the political campaign, anything they commu-
 20 nicate to any party regarding Proposition 8 or the marriage debate generally could be subject to
 21 compelled disclosure in a lawsuit.

22
 23 I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE
 24 AND CORRECT.

25 Executed on: September 15, 2009

26 
 27 Ronald Prentice

EXHIBIT 29

Exhibit I

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16 ATTORNEYS FOR DEFENDANT-INTERVENORS DENNIS HOLLINGSWORTH,
 GAIL J. KNIGHT, MARTIN F. GUTIERREZ, HAK-SHING WILLIAM TAM,
 17 MARK A. JANSSON, and PROTECTMARRIAGE.COM – YES ON 8, A
 PROJECT OF CALIFORNIA RENEWAL

18 * Admitted *pro hac vice*

19
 20 **UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA**

21 KRISTIN M. PERRY, SANDRA B. STIER,
 22 PAUL T. KATAMI, and JEFFREY J.
 ZARRILLO,

23 Plaintiffs,

24 v.

25 ARNOLD SCHWARZENEGGER, in his offi-
 26 cial capacity as Governor of California; ED-
 27 MUND G. BROWN, JR., in his official capacity
 as Attorney General of California; MARK B.

CASE NO. 09-CV-2292 VRW

**DECLARATION OF FRANK SCHU-
 BERT IN SUPPORT OF DEFEN-
 DANT-INTERVENORS' MOTION
 FOR A PROTECTIVE ORDER**

Date: September 25, 2009
 Time: 10:00 a.m.
 Judge: Chief Judge Vaughn R. Walker
 Location: Courtroom 6, 17th Floor

1 HORTON, in his official capacity as Director of
2 the California Department of Public Health and
3 State Registrar of Vital Statistics; LINETTE
4 SCOTT, in her official capacity as Deputy Di-
5 rector of Health Information & Strategic Plan-
6 ning for the California Department of Public
7 Health; PATRICK O'CONNELL, in his official
8 capacity as Clerk-Recorder for the County of
9 Alameda; and DEAN C. LOGAN, in his official
10 capacity as Registrar-Recorder/County Clerk for
11 the County of Los Angeles,

12 Defendants,

13 and

14 PROPOSITION 8 OFFICIAL PROPONENTS
15 DENNIS HOLLINGSWORTH, GAIL J.
16 KNIGHT, MARTIN F. GUTIERREZ, HAK-
17 SHING WILLIAM TAM, and MARK A.
18 JANSSON; and PROTECTMARRIAGE.COM
19 – YES ON 8, A PROJECT OF CALIFORNIA
20 RENEWAL,

21 Defendant-Intervenors.

22 Additional Counsel for Defendant-Intervenors

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* Admitted *pro hac vice*

1 I, Frank Schubert, make the following declaration pursuant to 28 U.S.C. § 1746:

2 1. I am a resident of the State of California over 18 years of age, and my statements here-
3 in are based upon personal knowledge and experience and upon my personal review of the docu-
4 ment requests served by Plaintiffs on Defendant-Intervenors in this case.

5 2. This declaration is made in support of Defendant-Intervenors' motion for a protective
6 order.

7 3. I am the President of Schubert Flint Public Affairs, a full-service, public affairs and
8 communications consulting firm based in Sacramento, California, with clients across the United
9 States. I have twice been named the country's most valuable public affairs professional by the
10 American Association of Political Consultants (AAPC). I am the only person in the association's
11 history to have won this prestigious award twice. I have served on the AAPC Board of Directors
12 for over ten years. On three occasions, the AAPC has honored me for assembling and managing
13 the Pubic Affairs Team of the Year, including last year for my management of the Yes on Proposi-
14 tion 8 campaign. I have received the Lifetime Achievement Award from the International Associ-
15 ation of Business Communicators (Sacramento Chapter). I have over 30 years of experience in
16 this field. I have managed 34 statewide ballot initiative campaigns in nine states including acting
17 as Campaign Manager for Protect Marriage.com in the Proposition 8 campaign in 2008.

18 4. I and my firm were hired by Protect Marriage.com in June 2008 to serve as Campaign
19 Manager. I worked with the volunteer chairman of Protect Marriage.com, Ron Prentice, and with
20 an ad hoc executive committee. My responsibilities included, subject to approval of the executive
21 committee, developing the campaign's strategy, selecting vendors to work on the campaign,
22 developing messages for delivery to voters, overseeing voter and issue research, developing and
23 overseeing a grassroots plan, developing advertisements and other communications to voters, and
24 working with donors, volunteers, supporters, and the press, among other duties.

1 5. I am submitting this Declaration in Support of the Proposition 8 Proponents' Motion
2 for a Protective Order because I know, based on personal experience, the harm that will result if
3 Protect Marriage.com's, its volunteers', donors', members', vendors', consultants', etc., and/or the
4 Proposition 8 official proponents', personal, non-public communications are found to be an appro-
5 priate subject of discovery in this matter. It is my professional opinion that if the Protective Order
6 is not granted, the Court will thrust not a dagger, but a sword, into the People's precious right of
7 initiative and referendum. The harms that would flow from requiring these communications—
8 which reflect political views and opinions, moral views and opinions, religious beliefs, legislative
9 and political strategy, political speech, and associational activity—to be produced in discovery are
10 several-fold.

12 6. First, a significant and real threat exists that individuals identified in these communica-
13 tions, their families and associates, and/or their businesses will be targeted for retaliation by
14 groups and persons who disagree with the views being expressed therein. Throughout the Proposi-
15 tion 8 campaign, I and my company were personally subject to severe harassment and attempts at
16 intimidation because of our involvement in the Yes on 8 Campaign. For example:

- 18 • I received hundreds of hate emails and telephone calls, many with threatening overtones—
19 including suggestions that the world would be better off if I were dead.
- 20 • Activists descended upon my office with camera crews in tow in an effort to publicly con-
21 front me over my position on Proposition 8.
- 22 • A distant gay relative posted on Facebook an “apology” to the homosexual community that
23 her relative was managing the Proposition 8 campaign, and offered to provide my home
24 address to anyone who wanted it. One No-on-Prop-8 supporter publicly asked for the in-
25 formation.
26 • I was the subject of continuous taunting, insults, and harassment on countless blogs.
27
28

- 1 • My address and those of thousands of other supporters of Prop 8 were posted on the Inter-
2 net through a “Google map” that allowed people to type in an address and see all the con-
3 tributors to ProtectMarriage in their area (including a contributor’s name, address, profes-
4 sion, employer, and donation level). A sampling of the maps available on that website
5 (<http://www.eightmaps.com>) is attached as an exhibit to this declaration. That website is
6 still functional and publically accessible as of today. The message is unmistakable: “here’s
7 where they live. Go get them.”
- 8
- 9 • The open house for our office in southern California became a cause célèbre for activists
10 who organized an elaborate attempt to infiltrate the reception and not only confront me, but
11 also our clients to inform them that our firm was allegedly bigoted and discriminatory.
- 12
- 13 • Because of this harassment, the campaign was forced to provide security at our offices for
14 several weeks in order to protect our staff and ensure that activists were not allowed to en-
15 ter the office and cause harm to me or my staff. Protect Marriage was also forced to pay
16 for private security for a two-week bus tour throughout California. The committee contin-
17 ues to provide security for me and members of the legal team in high profile appearances,
18 including when they appear before this Court.
- 19
- 20 • To this day, I continue to receive hate email and threats because of the positions I advo-
21 cated.

22 7. I am also aware of many other instances of harassment, retaliation, and threats against
23 supporters of the Yes on 8 Campaign. I know from both experience and interaction with these
24 supporters that they will be much less willing to contribute to and/or participate in a campaign in
25 the future. During the campaign there was a noticeable decline in some donors’ willingness to
26 donate to, and some volunteers’ willingness to continue participating in, the campaign after they
27 were subjected to threats and harassment. Certain vendors would no longer work on the campaign
28

1 because of the retaliation against them by activists. Even now, some of our larger contributors
2 continue to face calls for boycotts and economic sanctions. I know of several donors who had
3 their businesses boycotted and protested, their employees harassed, and who received hundreds of
4 threatening emails and phone calls. I am personally aware of at least two supporters who were
5 physically assaulted because of their position on Proposition 8. I have witnessed video footage of
6 roaming bands of thieves stealing hundreds of our signs and then displaying them as if they were a
7 trophy. I have seen photos of our supporters' homes and automobiles defaced. One supporter had
8 his automobile keyed with a swastika and the words, "gay sex is love," scratched into the paint
9 down to the raw metal. Another supporter had a van parked in front of his home painted with the
10 words, "bigots live here." I know of many churches that were defaced. Several of our supporters
11 were forced from their jobs when demonstrators decided to target their place of employment. I
12 know of donors to Protect Marriage whose employers were called to ask about the employer's
13 non-discrimination policy and to inform them that they had an alleged bigot in their employ.

14
15
16 8. These are not isolated incidents. The harassment of supporters of Proposition 8 was in-
17 cessant, continuous, and organized. To this day, several websites exist specifically for the purpose
18 of harassing supporters of traditional marriage, including the so-called "Californians Against
19 Hate," which continues to promote boycotts and reprisals against supporters of Proposition 8 and
20 traditional marriage. The harassment is also not limited to fringe groups or over-zealous suppor-
21 ters of same-sex marriage. One major national group that petitioned the Court for permission to
22 intervene in this case (National Center for Lesbian Rights), recently issued a press statement
23 condemning the California Bar Association's decision to host a meeting at a business associated
24 with one of Proposition 8's supporters.

25
26 9. Second, an equally serious and real threat exists that the disclosure of the non-public
27 communications of the Yes on 8 campaign—whether those communications are between volun-
28

1 teers of Protect Marriage and their consultants, contractors, and vendors (such as Schubert Flint),
2 or between Schubert Flint as campaign manager and donors, supporters, vendors, etc.—will
3 significantly suppress the future participation in, and course of, initiative and referendum cam-
4 paigns. Personally, speaking on behalf of Schubert Flint, I can state with certainty that I and my
5 firm will change the way we engage in political speech and campaigning if the broad discovery
6 demanded in this case is permitted. Further, based on my experience working on 34 statewide
7 ballot initiative campaigns like the Proposition 8 campaign, I believe that if involvement with a
8 contentious ballot initiative causes supporters, donors, volunteers, vendors, consultants, etc., to run
9 the risk that not only their identities, but also their personal, non-public communications, might be
10 subject to discovery, it will be significantly harder to recruit supporters, volunteers, donors, etc. It
11 will be significantly harder to get vendors to agree to work on the campaign for fear that their
12 involvement will hurt them professionally. As importantly, the risk that internal communications
13 regarding such things as political strategy and political or religious views might be disclosed will
14 mean there will be significantly less of this type of speech and activity in the future. Campaign
15 strategists, volunteers, and voters will avoid candid associational speech, as well as candid speech
16 about political views and strategy, in an effort to avoid later exposure or mischaracterization in a
17 lawsuit over which they have no control.

20 10. Third, the scope of the discovery requests in this case opens the floodgates for Plain-
21 tiffs and their allies to learn not only the identity of donors, but also the identity of individual
22 volunteers and supporters, as well as the private reasons some such individuals might have for
23 getting involved in a campaign. Protect Marriage and Schubert Flint possess information on many
24 individual volunteers, including their names, addresses, and contact information. Protect Marriage
25 and Schubert Flint also possess communications to and from some of these volunteers about the
26 Proposition 8 campaign and the marriage issue generally. Based on my experience in this and
27
28

1 other campaigns, I know that individuals often have very private and personal reasons for getting
2 involved in an initiative campaign. They may feel passionately about an issue. They may fear the
3 consequences for themselves, their family, or society as a whole if an initiative passes or fails.
4 They may have an economic interest in the outcome of an initiative election. They may have
5 spiritual, political, personal, or familial reasons for their point of view. Whatever their personal,
6 subjective reasons for taking a position on an initiative, my experience demonstrates that if those
7 reasons are put on trial and/or exposed through compelled discovery there will be a very real risk
8 that future political participation will thereby be severely curbed.
9

10 11. The types of communications at issue in this case include all of the types of communi-
11 cations the exposure of which would lead to the types of chilling referenced above. For example,
12 one activity conducted by the campaign—for the purpose of planning and implementing a cam-
13 paign to petition the government and engaging in political speech—was to compile a database that
14 collected information on how voters in California intended to vote on Proposition 8. Plaintiffs’
15 broad discovery requests would seemingly require Protect Marriage to turn over this information
16 and thereby violate one of the most highly protected and deeply cherished First Amendment
17 rights—the right to a secret ballot. Protect Marriage and Schubert Flint also possess information
18 on the privately expressed position of over one million voters. If the Plaintiffs’ discovery requests
19 are allowed to proceed, the privately expressed opinions of over one million voters will become
20 public.
21
22

23 12. Another specific example of communications that are implicated by Plaintiffs’ discov-
24 ery requests are all of the communications I or others at Schubert Flint have had with either offi-
25 cial Proponents or volunteers of Protect Marriage involving political and religious viewpoints.
26 Even to the extent that it is public information, for example, that major backing for the Yes on 8
27 campaign came from certain religiously affiliated groups, the private religious views expressed by
28

1 those groups or their members in communications with the campaign is not publically known and
2 would be revealed if the Motion for Protective Order is not granted.

3 13. As noted above, the harm from disclosure has not subsided simply because the election
4 on Proposition 8 is over. For one thing, prior disclosed affiliation with or support for the Yes on 8
5 campaign is still resulting in harassment, reprisal, and other repercussions. Moreover, the debate
6 over the marriage issue is far from settled. Multiple groups have attempted or are attempting to
7 place another ballot initiative on this issue before the electorate of California. If sweeping discov-
8 ery into the private communications of participants in the last such ballot effort is allowed here, I
9 believe, based on my professional experience and my experience specifically in the Proposition 8
10 campaign, that participants in future such efforts will alter their associational and political behav-
11 ior to account for the likelihood of disclosure in later lawsuits.

12
13
14 14. Additionally, the harm that would come from revealing the types of communications at
15 issue here would not fall on supporters of Prop. 8 alone, or even on participants in the marriage
16 debate generally. Ballot initiatives have a long history in California and they occur during nearly
17 every election. If—in the absence of an allegation of fraud or other illegal tactic by a campaign—
18 sweeping discovery into the campaigns surrounding such ballot measures is permitted, such
19 campaigns will be conducted very differently. Volunteers and donors will be harder to recruit, as
20 will the services of vendors, strategists, and other contractors. Also, other associations that zeal-
21 ously protect their anonymity will be far less likely to join cause with a ballot measure campaign.

22
23 I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND-
24 CORRECT.

25 Executed on 15 September 2009

26
27 
28 Frank Schubert

I-1

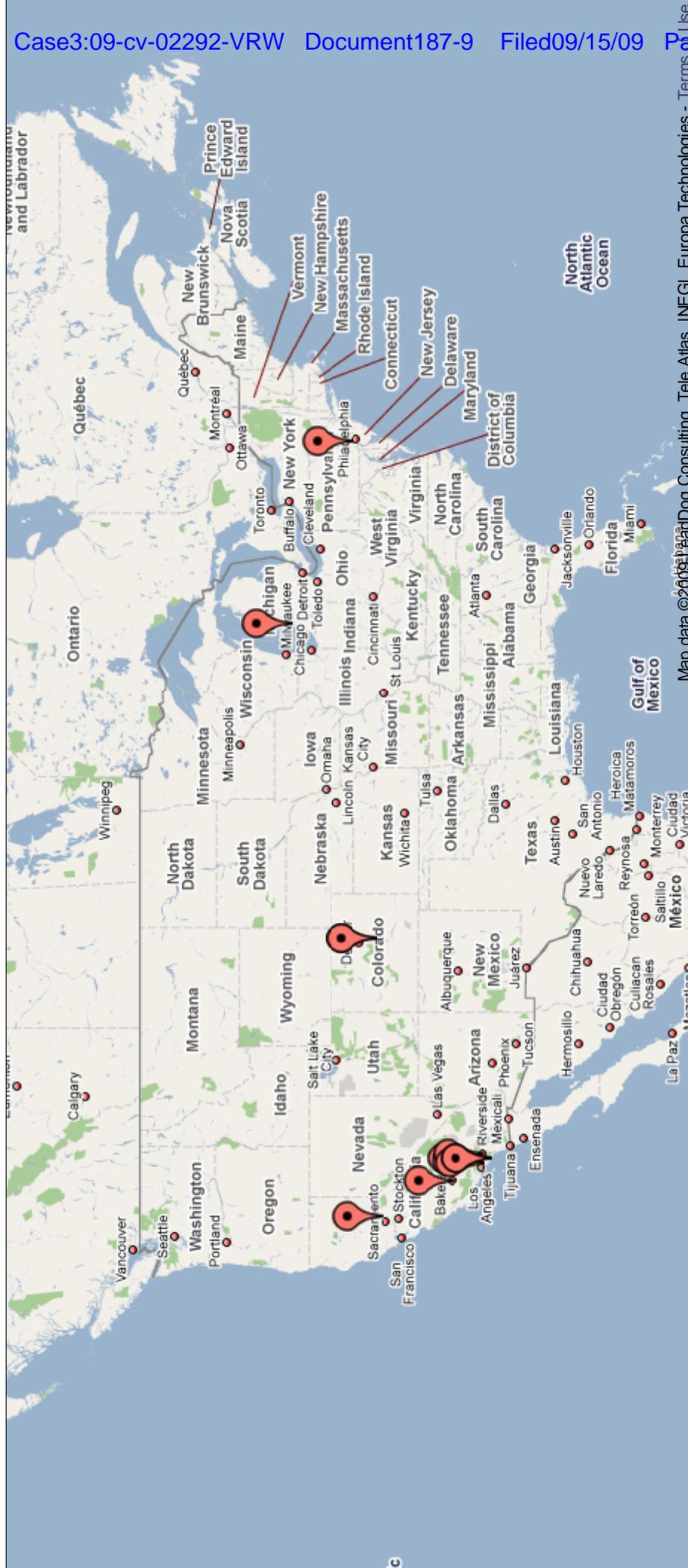
PROP 8 MAPS

A mash-up of [Google Maps](#) and [Prop 8 Donors](#).

Proposition 8 changed the California state constitution to prohibit same-sex marriage. These are the people who donated in order to pass it.

Location Search

Jump to [San Francisco](#), [Salt Lake City](#), or [Orange County](#).



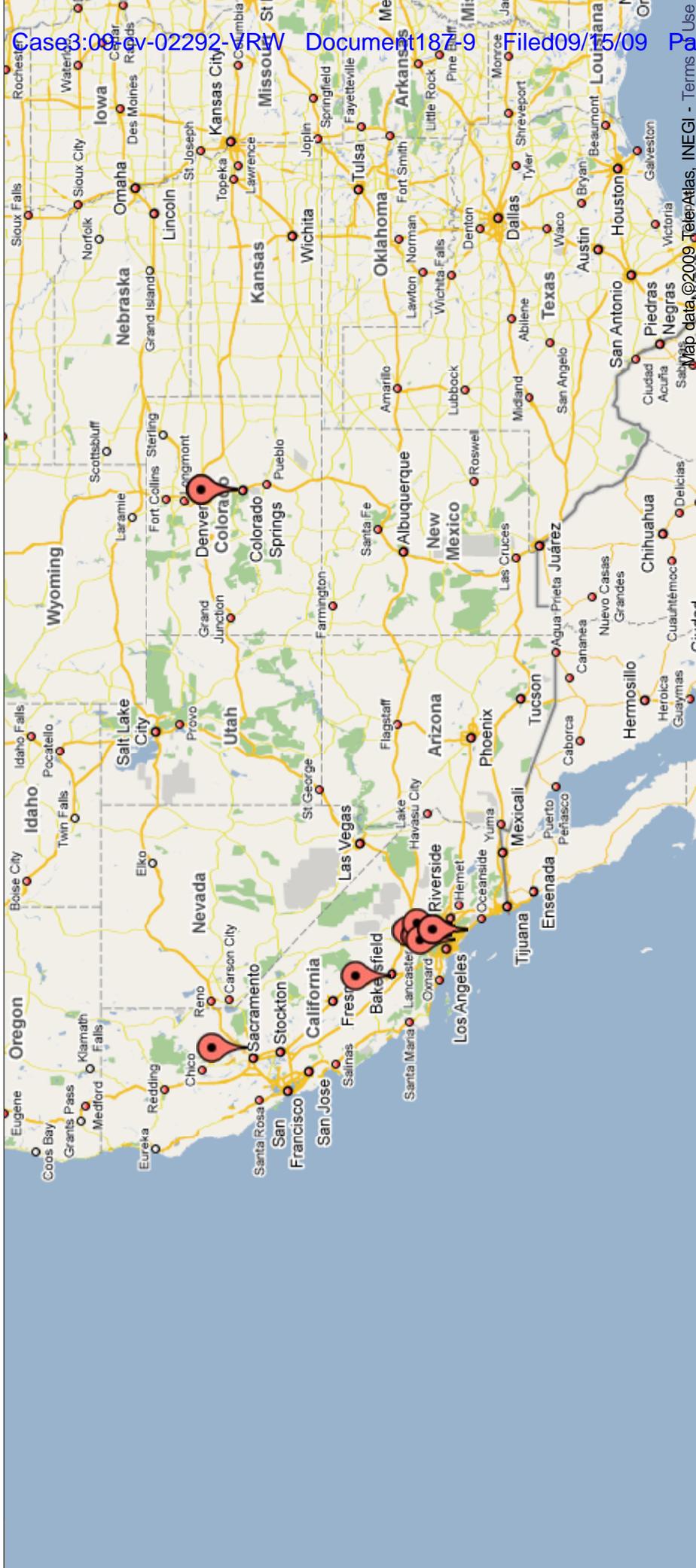
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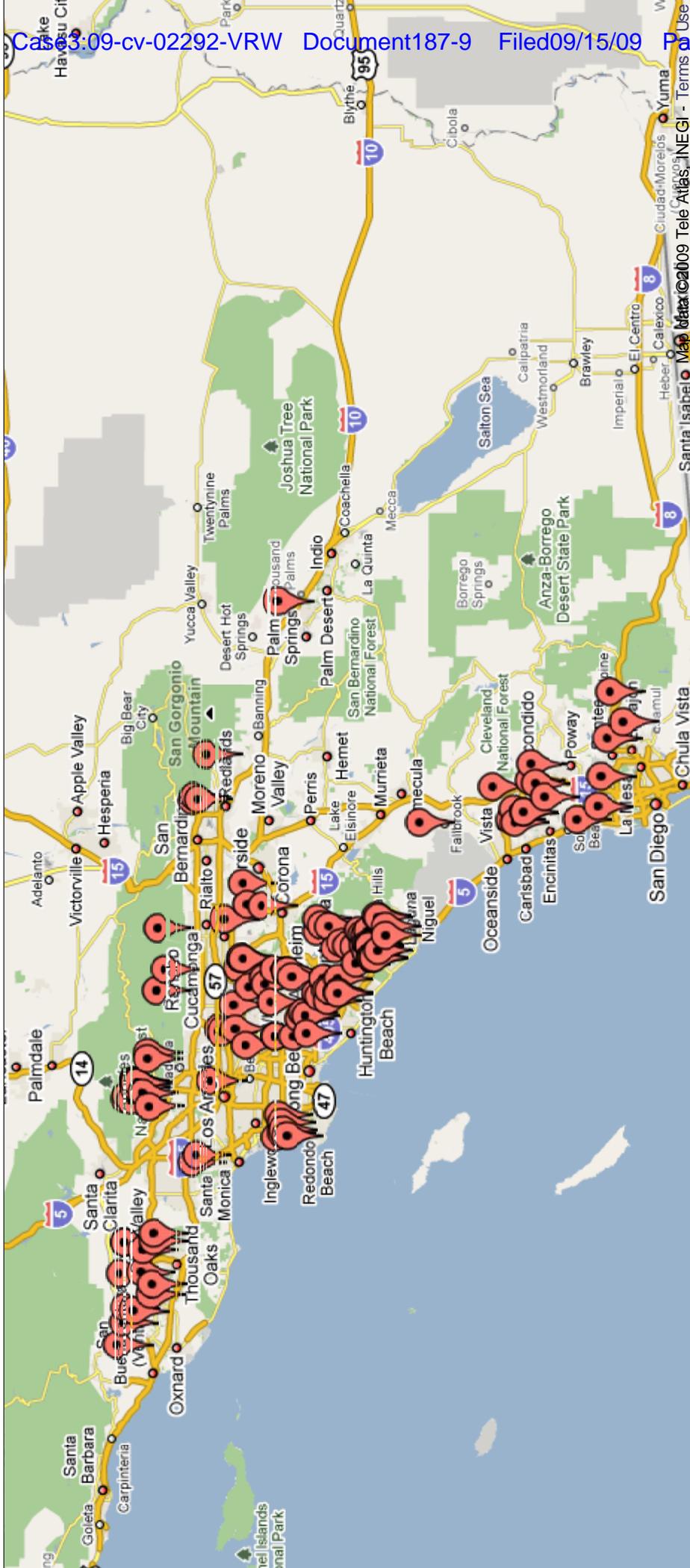
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