

Executive Summary Backgrounder

No. 2328
October 22, 2009



Published by The Heritage Foundation

The Price of Prop 8

Thomas M. Messner

Support for Proposition 8, the democratically established marriage amendment in California, has come with a heavy price for many individuals and institutions that think that marriage should remain the union of husband and wife. Publicly available sources, including evidence submitted in a federal lawsuit in California, show that expressions of support for Prop 8 have generated a range of hostilities and harms that include harassment, intimidation, vandalism, racial scapegoating, blacklisting, loss of employment, economic hardships, angry protests, violence, at least one death threat, and gross expressions of anti-religious bigotry. Because the issue of marriage is still very much alive in California and throughout the nation, the naked animus manifested against people and groups that supported Prop 8 raises serious questions that should concern anyone interested in promoting civil society, democratic processes, and reasoned discourse on important matters of public policy, such as marriage.

Although many same-sex marriage activists have condemned certain types of hostilities described in this paper and certain hostile acts have been committed at random or were illegal, the fact remains that many Prop 8 supporters have paid a considerable price for defending marriage as the union of husband and wife. Indeed, no matter who is to blame for the hostility surrounding Prop 8, one lesson of Prop 8 cannot be denied: Individuals and

institutions that publicly defend marriage as the union of husband and wife risk intimidation, harassment, and reprisal—at least some of it targeted and coordinated.

Furthermore, although some same-sex marriage activists have expressed disagreement with certain types of conduct described in this paper, few activists would disavow the ideology underlying much of the outrage surrounding Prop 8 and other efforts to defend marriage. Arguments for same-sex marriage, although often couched in terms of tolerance and inclusion, are based fundamentally on the idea that limiting marriage to the union of husband and wife is a form of bigotry, irrational prejudice, and even hatred against homosexual persons who want the state to license their relationships. As this ideology seeps into the culture, belief in marriage as the union of husband and wife will likely come to be viewed as an unacceptable form of discrimination that should be purged from society through legal, cultural, and economic pressure.

When people stand firmly by their beliefs about marriage as the union of husband and wife despite

This paper, in its entirety, can be found at:
www.heritage.org/Research/Family/bg2328.cfm

Produced by the Richard and Helen DeVos
Center for Religion and Civil Society

Published by The Heritage Foundation
214 Massachusetts Avenue, NE
Washington, DC 20002-4999
(202) 546-4400 • heritage.org

Nothing written here is to be construed as necessarily reflecting
the views of The Heritage Foundation or as an attempt to
aid or hinder the passage of any bill before Congress.

facing social stigmatization, economic hardship, and other reprisals, they provide an important example of civic courage and inspire particular virtues that are essential to the proper functioning of any free and open society. The freedom of parties on both sides of the marriage debate to voice their

views and to promote them in public policy should be respected.

—Thomas M. Messner is a Visiting Fellow in the Richard and Helen DeVos Center for Religion and Civil Society at The Heritage Foundation.

Background

No. 2328
October 22, 2009



Published by The Heritage Foundation

The Price of Prop 8

Thomas M. Messner

Abstract: *Supporters of Proposition 8 in California have been subjected to harassment, intimidation, vandalism, racial scapegoating, blacklisting, loss of employment, economic hardships, angry protests, violence, at least one death threat, and gross expressions of anti-religious bigotry. Arguments for same-sex marriage are based fundamentally on the idea that limiting marriage to the union of husband and wife is a form of bigotry, irrational prejudice, and even hatred against homosexual persons. As this ideology seeps into the culture more generally, individuals and institutions that support marriage as the union of husband and wife risk paying a price for that belief in many legal, social, economic, and cultural contexts.*

Support for Proposition 8, the democratically established marriage amendment in California, has come with a heavy price for many individuals and institutions that think that marriage should remain the union of husband and wife. Publicly available sources, including evidence submitted in a federal lawsuit in California,¹ show that expressions of support for Prop 8 have generated a range of hostilities and harms that includes harassment, intimidation, vandalism, racial scapegoating, blacklisting, loss of employment, economic hardships, angry protests, violence, at least one death threat, and gross expressions of anti-religious bigotry. Because the issue of marriage is still very much alive in California and throughout the nation,² the naked animus manifested against people and groups that supported Prop 8

Talking Points

- People who supported Prop 8 have been subjected to harassment, intimidation, vandalism, racial scapegoating, blacklisting, loss of employment, economic hardships, angry protests, violence, at least one death threat, and gross expressions of anti-religious bigotry.
- Many same-sex marriage activists have condemned certain types of hostilities, and certain hostile acts have been committed at random or were illegal.
- One lesson of the hostility surrounding support for Prop 8 is that individuals and institutions that publicly defend marriage as the union of husband and wife risk intimidation, harassment, and reprisal—at least some of it targeted and coordinated.
- People who stand firmly by their beliefs about marriage despite the consequences provide an important example of civic courage.
- The freedom of parties on both sides of the marriage debate to voice their views and to promote them in public policy should be respected.

This paper, in its entirety, can be found at:
www.heritage.org/Research/Family/bg2328.cfm

Produced by the Richard and Helen DeVos
Center for Religion and Civil Society

Published by The Heritage Foundation
214 Massachusetts Avenue, NE
Washington, DC 20002-4999
(202) 546-4400 • heritage.org

Nothing written here is to be construed as necessarily reflecting the views of The Heritage Foundation or as an attempt to aid or hinder the passage of any bill before Congress.

raises serious questions that should concern anyone interested in promoting civil society, democratic processes, and reasoned discourse on important matters of public policy, such as marriage.

Donor Disclosure Laws in the Internet Age

Much of the hostility directed against Prop 8 supporters has been facilitated by a California law that requires the disclosure of certain personal information of individuals who donate \$100 or more in support of or opposition to a ballot measure. Information subject to disclosure includes the donor's full name, occupation, and employer.³ Once this information is disclosed to the State of California, the state then publishes this information on its Web site, enabling anyone with Internet access to view detailed donor reports online in html format or in a downloadable Microsoft Excel spreadsheet.⁴

With this information at hand, several Web sites have been designed that facilitate the easy identi-

fication and targeting of Prop 8 supporters. For example, one of these Web sites is a GoogleMaps "mashup" that combines donor information with an interactive map, allowing activists to ascertain the identity, employer, amount of donation, and approximate location of certain Prop 8 supporters in particular geographic areas.⁵ A Web site called

Expressions of support for Prop 8 have resulted in harassment, intimidation, blacklisting, and other reprisals and harm.

"Californians Against Hate" highlights particular Prop 8 supporters in its "Dishonor Roll" and provides addresses and telephone numbers for some of them.⁶ At least one Web site allows users to search for Prop 8 supporters who work in their businesses.⁷

Because of the California donor disclosure law, some Prop 8 supporters have become targets without ever placing a sign in their yard, putting a

1. See *ProtectMarriage.com v. Bowen*, No. 2:09-cv-00058 (E.D. Cal.). The claims asserted in this case include a challenge under the First Amendment of the U.S. Constitution to the application of California's disclosure laws in this case. See Complaint at 15–19 (Count 1), *ProtectMarriage.com v. Bowen*, No. 2:09-cv-00058 (E.D. Cal. filed January 7, 2009).
2. The California Supreme Court recently upheld Prop 8 against legal challenges brought by same-sex marriage activists, see *Strauss v. Horton*, 207 P.3d 48, 62–64 (Cal. 2009), but parties favoring same-sex marriage have filed a federal court case challenging Prop 8 under the U.S. Constitution, see Complaint, *Perry v. Schwarzenegger*, No. 3:09-cv-02292 (N.D. Cal. filed May 22, 2009), and at least one petition for an initiative concerning marriage in California was in circulation as of October 15, 2009, see 2009 Ballot Measure Update, http://www.sos.ca.gov/elections/elections_j.htm#circ (last visited Oct. 15, 2009). This initiative would reverse the result of Prop 8 by removing Section 7.5 of Article I from the California Constitution. See Letter from Yes! on Equality, to the Initiative Coordinator in the Office of the California Attorney General, April 30, 2009, available at http://ag.ca.gov/cms_attachments/initiatives/pdfs/i808_initiative_09-0011.pdf. Furthermore, same-sex marriage also is an issue in several other states including Maine, New York, Rhode Island, and New Jersey.
3. See Complaint at ¶¶ 51 n.4, 54, *ProtectMarriage.com v. Bowen*. See also *id.* at ¶¶ 43–58 (providing overview of California campaign finance system).
4. See Plaintiffs' Memorandum in Support of Motion for Summary Judgment at 8, *ProtectMarriage.com v. Bowen*, No. 2:09-cv-00058 (E.D. Cal. filed June 3, 2009). The state's Web site is located at California Secretary of State CalAccess Campaign Finance, <http://cal-access.sos.ca.gov/Campaign/Measures/Detail.aspx?id=1302602&session=2007> (last visited Aug. 8, 2009).
5. See "Prop 8 Maps, <http://www.eightmaps.com> (last visited Oct. 15, 2009). See also Plaintiffs' Memorandum in Support of Motion for Summary Judgment at 26–27, *ProtectMarriage.com v. Bowen*.
6. The "Dishonor Roll" and contact information can be viewed at Californians Against Hate Dishonor Roll, <http://www.californiansagainsthate.com/dishonorRoll.html> (last visited Oct. 15, 2009).
7. The *San Francisco Chronicle* posted a search engine on its Web site that allows users to search for donors by their employer. See Proposition 8 Contributors, <http://www.sfgate.com/webdb/prop8> (last visited Oct. 6, 2009). The *Los Angeles Times* and the *Sacramento Bee* posted similar search engines on their Web sites, though they do not allow users to search for donors by employer. See *The Gay-Marriage Battle: Follow the Donors*, <http://www.latimes.com/news/local/la-metro-prop-8%2C0%2C2463893.htmlstory?appSession=49147401149443> (last visited Oct. 15, 2009), and *Search for Prop. 8 Donors*, <http://www.sacbee.com/1098/story/1392716.html> (last visited Oct. 15, 2009).

sticker on their car, or appearing at a public rally. These more public forms of support for Prop 8 certainly generated plenty of animosity, as documented below. However, many individuals became targets for harassment, intimidation, and reprisals simply for donating \$100 or more in support of Prop 8.

Vandalism and Sign Theft

Many reports of hostility toward Prop 8 supporters involve acts of vandalism. An elderly couple who put a Yes on 8 sign in their yard had a block thrown through their window.⁸ A senior citizen who placed a pro-Prop-8 bumper sticker on her car had her car's rear window smashed in.⁹ Some individuals with pro-Prop-8 bumper stickers had their cars keyed.¹⁰ One woman with a "One Man, One Woman" bumper sticker had her car keyed and tires deflated while she was in a grocery store.¹¹ One man who placed signs in his yard and stickers on his cars and motorbike reported that someone egged and floured his home three times and egged, floured, and honeyed his car twice.¹² Someone also

pushed over the man's motorbike and scraped the bumper stickers off the back glass windows of his cars.¹³ Several other individuals reported that Yes on Prop 8 bumper stickers were scraped or ripped off their vehicles or defaced.¹⁴

Because of the California donor disclosure law, some Prop 8 supporters have become targets without ever placing a sign in their yard, putting a sticker on their car, or appearing at a public rally.

Some individuals found their property vandalized with spray paint. Vandals spray-painted vehicles, garages, fences, and Yes on 8 signs in Yucaipa, California.¹⁵ An Alta Loma resident who placed a Yes on 8 sign in her yard found the words "love for all" and "no on 8" spray-painted on her fifth-wheel trailer.¹⁶ In San Jose, vandals spray-painted the garage doors of two homeowners who displayed signs supporting Prop 8.¹⁷ Vandals also spray-

-
8. See *Prop. 8 Passage Spawns Protests, Violence and Vandalism*, CHRISTIAN EXAMINER, Dec. 2008, available at http://www.christianexaminer.com/Articles/Articles%20Dec08/Art_Dec08_09.html.
 9. See Declaration of John Doe 11 in Support of Plaintiffs' Motion for Summary Judgment, *ProtectMarriage.com v. Bowen*, No. 2:09-cv-00058 (E.D. Cal. filed June 3, 2009).
 10. See, e.g., Declaration of Sarah E. Troupis in Support of Plaintiffs' Motion for Summary Judgment, *ProtectMarriage.com v. Bowen*, No. 2:09-cv-00058 (E.D. Cal. filed June 3, 2009) [hereinafter "Troupis Declaration"] (Exhibit Z) (citing Aaron Bruner, *Prop 8 Supporters Face Sign Theft, Vandalism*, CALIFORNIA AGGIE, Oct. 29, 2008, available at <http://theaggie.org/article/1747>).
 11. See Declaration of John Doe 12 in Support of Plaintiffs' Motion for Summary Judgment, *ProtectMarriage.com v. Bowen*, No. 2:09-cv-00058 (E.D. Cal. filed June 3, 2009). Another Prop 8 supporter who put stickers on her car also reported that her car was keyed, leaving a gash about 27 inches long. See Declaration of John Doe 13 in Support of Plaintiffs' Motion for Summary Judgment, *ProtectMarriage.com v. Bowen*, No. 2:09-cv-00058 (E.D. Cal. filed June 3, 2009).
 12. See Declaration of John Doe 14 in Support of Plaintiffs' Motion for Summary Judgment, *ProtectMarriage.com v. Bowen*, No. 2:09-cv-00058 (E.D. Cal. filed June 3, 2009).
 13. See *id.*
 14. See Declaration of John Doe 24 in Support of Plaintiffs' Motion for Summary Judgment, *ProtectMarriage.com v. Bowen*, No. 2:09-cv-00058 (E.D. Cal. filed June 3, 2009) (bumper sticker ripped off); Declaration of John Doe 25 in Support of Plaintiffs' Motion for Summary Judgment, *ProtectMarriage.com v. Bowen*, No. 2:09-cv-00058 (E.D. Cal. filed June 3, 2009) (bumper sticker ripped off); Declaration of John Doe 31 in Support of Plaintiffs' Motion for Summary Judgment, *ProtectMarriage.com v. Bowen*, No. 2:09-cv-00058 (E.D. Cal. filed June 3, 2009) (bumper sticker was defaced by changing "Yes on 8" to "No on 8").
 15. See Troupis Declaration (Exhibit U) (citing Bob Banfield, *Neighborhood Vandalized Over Prop 8*, KABC-TV (Oct. 31, 2008), http://abclocal.go.com/kabc/story?section=news/local/inland_empire&id=6482810&rt=print). The report is unclear about whether the victims of vandalism included even some property owners who had not expressed support for Prop 8.
 16. Troupis Declaration (Exhibit V) (citing Rob McMillan, *Anti-Prop 8 Vandals Hit Alta Loma Home*, KABC-TV (Oct. 28, 2008), http://abclocal.go.com/kabc/story?section=news/local/inland_empire&id=6470557&rt=print).

painted anti-Prop-8 messages on commercial and residential buildings in Fullerton.¹⁸

Other forms of vandalism were more bizarre. One woman who placed a pro-Prop-8 sign on her balcony reported finding that her staircase leading downstairs had been covered in urine.¹⁹ She also found a puddle of urine at the bottom of the stairs.²⁰

Swastikas and other graffiti were scrawled on the walls of the Most Holy Redeemer Catholic Church in San Francisco.

Vandals also hit houses of worship. Perpetrators used orange paint to vandalize a statue of the Virgin Mary outside one church.²¹ Offices at the Cornerstone Church in Fresno were egged.²² Swastikas and other graffiti were scrawled on the walls of the

Most Holy Redeemer Catholic Church in San Francisco, a parish known widely as being “gay-friendly.”²³ In San Luis Obispo, the Assembly of God Church was egged and toilet-papered, and a Mormon church had an adhesive poured onto a doormat and keypad.²⁴ Signs supporting Prop 8 were twisted into a swastika at Our Lady of Perpetual Help Catholic Church in Riverside.²⁵ Someone used a heavy object wrapped with a Yes on 8 sign to smash the window of a pastor’s office at Messiah Lutheran Church in Downey.²⁶

In addition, reports of Yes on Prop 8 signs being defaced, damaged, dislocated, or stolen are almost too numerous to track reliably.²⁷ According to one source, the Yes on 8 campaign estimated that approximately one-third of an estimated 25,000 signs distributed in California were stolen or vandalized before the campaign ended.²⁸ Prop 8 support-

-
17. See Troupis Declaration (Exhibit W) (citing KGO-TV, Vandals Strike Prop 8 Homes in SJ (Oct. 27, 2008), http://abclocal.go.com/kgo/story?section=news/local/south_bay&id=6472609&pt=print); *id.* (Exhibit X) (KCAL-9, Vandals Target Prop 8 Supporters in NorCal (Oct. 28, 2008), <http://cbs2.com/local/Proposition.8.Vandalism.2.850469.html>).
18. See Troupis Declaration (Exhibit T) (citing Barbara Giasone, *Vandals Spray Paint Signs in Downtown Fullerton*, ORANGE COUNTY REG., Oct. 20, 2008, available at <http://www.ocregister.com/articles/macdonald-one-police-2200383-paint-vandals>).
19. See Declaration of John Doe 12.
20. See *id.*
21. See Declaration of John Doe 23 in Support of Plaintiffs’ Motion for Summary Judgment at 2, *ProtectMarriage.com v. Bowen*, No. 2:09-cv-00058 (E.D. Cal. filed June 3, 2009).
22. See Troupis Declaration (Exhibit R) (citing KFSN-TV, Vandals Egg Downtown Fresno Church (Oct. 28, 2008), <http://abclocal.go.com/kfsn/story?section=news/local&id=6473251&pt=print>).
23. Meredith May, *Vandals Desecrate Pro-Gay Catholic Church*, S.F. CHRON., Jan. 6, 2009, available at <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2009/01/06/BA5B1540PH.DTL>.
24. See Troupis Declaration (Exhibit O) (citing Adrienne S. Gaines, *Radical Gay Activists Seek to Intimidate Christians*, CHARISMA MAG., Nov. 19, 2008, available at <http://www.charismamag.com/index.php/news/19444>).
25. See Troupis Declaration (Exhibit S) (citing KCAL-9, Vandals Arrange Prop. 8 Signs into Swastika, Nov. 7, 2008, at <http://cbs2.com/local/Proposition.8.Vandalism.2.859176.html>); *id.* (Exhibit Q) (citing Chelsea Phua, *Mormon Church in Orangevale Vandalized in Wake of Prop. 8 Vote*, SACRAMENTO BEE, Nov. 9, 2008).
26. See Troupis Declaration (Exhibit O), *supra* note 24. Other incidents of church vandalism have also been reported. According to one news source, for example, seven Mormon houses of worship in Utah and 10 Mormon church buildings in the Sacramento region were vandalized in the first week after Prop 8 passed. See Jennifer Garza, *Feds Investigate Vandalism at Mormon Sites*, SACRAMENTO BEE, Nov. 14, 2008, available at <http://www.sacbee.com/crime/story/1399018.html>.
27. See, for example, the summaries of declarations submitted by John Does 13, 14, 16, 18, 20, 22, 24, 25, 26, 31, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 55, 57, and 58 in support of the plaintiffs’ motion for summary judgment in *ProtectMarriage.com v. Bowen*. The summaries are provided in Plaintiffs’ Statement of Undisputed Facts in Support of Motion for Summary Judgment, *ProtectMarriage.com v. Bowen*, No. 2:09-cv-00058 (E.D. Cal. filed June 3, 2009) (Appendix B).

ers who replaced stolen signs often had their signs stolen again.²⁹ Sign thefts also often involved the added element of trespass or fear of trespass.³⁰ In some cases, perpetrators crossed fences and walls to steal signs or removed signs that had been securely fastened in place.³¹ One individual reported coming home late and hearing male voices outside her home.³² Another individual reported that a suspected perpetrator quickly drove away when spotted through the front window of his house.³³

Harassment, Hostility, and Slurs

Several individuals who supported Proposition 8 reported receiving harassing telephone calls, e-mails,

and mailings. Prop 8 supporters have reported receiving phone calls and voice mails calling them “bigot”³⁴ and using vulgar language.³⁵ Sometimes harassers called at work.³⁶ A public relations firm hired by the Yes on 8 Campaign received so many harassing phone calls from one person that the sheriff’s office became involved.³⁷ Other Prop 8 supporters received e-mails, letters, and postcards using vulgar language³⁸ and offensive labels like “gay hater.”³⁹ Through the contact form on his business’s Web site, one individual received an e-mail stating “burn in hell.”⁴⁰ One e-mail threatened to contact the parents of students at a school where a particular Prop 8 supporter worked.⁴¹

28. See Troupis Declaration (Exhibit AA) (citing Salvador Hernandez, *Prop. 8 Sign-Stealing Ignites Free Speech Debate*, ORANGE COUNTY REG., Oct. 30, 2008).
29. See, e.g., Declaration of John Doe 45 in Support of Plaintiffs’ Motion for Summary Judgment, ProtectMarriage.com v. Bowen, No. 2:09-cv-00058 (E.D. Cal. filed June 3, 2009) (stating that “the signs I had replaced the original in my yard with were also stolen” and “signs I had placed around the neighborhood were also stolen repeatedly”); Declaration of John Doe 47 in Support of Plaintiffs’ Motion for Summary Judgment, ProtectMarriage.com v. Bowen, No. 2:09-cv-00058 (E.D. Cal. filed June 3, 2009) (stating he began “bringing in the signs at night” after his second sign supporting Prop 8 was stolen).
30. See, e.g., Declaration of John Doe 41 in Support of Plaintiffs’ Motion for Summary Judgment, ProtectMarriage.com v. Bowen, No. 2:09-cv-00058 (E.D. Cal. filed June 3, 2009) (“Because of the location of the signs, anyone who stole the signs would have had to trespass on my property.”).
31. See Declaration of John Doe 13 (stating that, after her sign was vandalized, she repaired it and placed it inside a low wall so vandals would have to go out of their way to reach it); Declaration of John Doe 26 in Support of Plaintiffs’ Motion for Summary Judgment, ProtectMarriage.com v. Bowen, No. 2:09-cv-00058 (E.D. Cal. filed June 3, 2009) (stating that sign thief “had to climb a brick retaining wall that is approximately 5.5 to 6 feet tall”); Declaration of John Doe 33 in Support of Plaintiffs’ Motion for Summary Judgment, ProtectMarriage.com v. Bowen, No. 2:09-cv-00058 (E.D. Cal. filed June 3, 2009) (“Whoever removed the signs had to climb up the slope of my property to remove the signs.”); *id.* (stating he “purposely secured several of the signs to branches of trees in my yard” but “[s]omeone also ripped these signs down”); Declaration of John Doe 46 in Support of Plaintiffs’ Motion for Summary Judgment, ProtectMarriage.com v. Bowen, No. 2:09-cv-00058 (E.D. Cal. filed June 3, 2009) (stating that large, handmade “sign was stolen even though I had it wired to two trees on my property and had placed a light on it”).
32. See Declaration of John Doe 45 (“On the evening that this first sign was destroyed, I went into the garage to put my recyclables in the recycle can and heard male voices in my front yard.”).
33. See Declaration of John Doe 47.
34. Declaration of John Doe 56 in Support of Plaintiffs’ Motion for Summary Judgment, ProtectMarriage.com v. Bowen, No. 2:09-cv-00058 (E.D. Cal. filed June 3, 2009).
35. See Declaration of John Doe 28 in Support of Plaintiffs’ Motion for Summary Judgment, ProtectMarriage.com v. Bowen, No. 2:09-cv-00058 (E.D. Cal. filed June 3, 2009).
36. See *id.* (stating that “I received a voice mail from an unknown male at my workplace”); Declaration of John Doe 53 in Support of Plaintiffs’ Motion for Summary Judgment, ProtectMarriage.com v. Bowen, No. 2:09-cv-00058 (E.D. Cal. filed June 3, 2009) (“Once my personal information was released to the public in February, I began to receive harassing phone calls at work.”). See also Declaration of John Doe 56 (stating that “a man called my office and left me a voice mail message” after John Doe 56 donated to Prop 8 in the name of John Doe 56’s business); Declaration of John Doe 1 in Support of Plaintiffs’ Motion for Summary Judgment, ProtectMarriage.com v. Bowen, No. 2:09-cv-00058 (E.D. Cal. filed January 15, 2009) (“My stores received numerous harassing phone calls that referenced my support of Proposition 8.”).
37. See Declaration of John Doe 52 in Support of Plaintiffs’ Motion for Summary Judgment, ProtectMarriage.com v. Bowen, No. 2:09-cv-00058 (E.D. Cal. filed June 3, 2009).

Harassment sometimes took other forms. For example, two women painted an arrow and the words “Bigots live here” on the window of an SUV and parked the vehicle in front of a household that had supported Prop 8.⁴² In another case, an individual who supported Prop 8 found himself the subject of a flyer distributed in his town. The flyer

Several individuals who supported Prop 8 reported receiving harassing telephone calls, e-mails, and mailings.

included a photo of him, labeled him a “Bigot,” and stated his name, the amount of his donation to Prop 8, and his association with a particular Catholic Church.⁴³ At the University of California, Davis, a Yes on 8 table on the quad was reportedly attacked by a group of students throwing water balloons and shouting “you teach hate.”⁴⁴ A professor at Los Angeles City College allegedly told students in his class, “If you voted yes on Proposition 8, you are a

fascist [expletive deleted].”⁴⁵ One Prop 8 supporter received a book, sent anonymously through Amazon.com, that contained “the greatest homosexual love stories of all time.”⁴⁶

Prop 8 supporters holding signs in public places also reported incidents of notable hostility. One woman who stood near a street with a Yes on 8 sign reported that a man stopped his car and shouted at her, “You despicable filthy bag of [expletive deleted].”⁴⁷ Other drivers circled the block and yelled things like “You [expletive deleted]” each time they drove by her.⁴⁸ Once a car with several men stopped, and a man in the back seat opened the door and threw something at her.⁴⁹ Another driver stopped her car and yelled, “Get the [expletive deleted] out of here. Who do you think you are, bringing that hate into my neighborhood?”⁵⁰ One Prop 8 supporter who witnessed repeated vulgarities at sign-waving events said she felt nervous and scared and chose not to take her children with her.⁵¹ Another Prop 8 supporter concluded that in the

-
38. See Declaration of John Doe 54 in Support of Plaintiffs’ Motion for Summary Judgment, ProtectMarriage.com v. Bowen, No. 2:09-cv-00058 (E.D. Cal. filed June 3, 2009).
39. Declaration of John Doe 51 in Support of Plaintiffs’ Motion for Summary Judgment, ProtectMarriage.com v. Bowen, No. 2:09-cv-00058 (E.D. Cal. filed June 3, 2009).
40. Declaration of John Doe 4 in Support of Plaintiffs’ Motion for Summary Judgment, ProtectMarriage.com v. Bowen, No. 2:09-cv-00058 (E.D. Cal. filed Jan. 15, 2009) (Exhibit B).
41. See Declaration of John Doe 10 in Support of Plaintiffs’ Motion for Summary Judgment, ProtectMarriage.com v. Bowen, No. 2:09-cv-00058 (E.D. Cal. filed June 3, 2009).
42. Troupis Declaration (Exhibit AW) (citing Matthai Kuruvila, *Mormons Face Flak for Backing Prop. 8*, S.F. CHRON., Oct. 27, 2008, available at <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2008/10/27/BAP113OIRD.DTL>). See also CBS5, *Heated Gay Marriage Debate Playing out in SJ Yard* (Oct. 20, 2008), <http://cbs5.com/local/gay.marriage.sign.2.844943.html>. This second citation includes a photograph.
43. See Declaration of John Doe 2 in Support of Plaintiffs’ Motion for Summary Judgment, ProtectMarriage.com v. Bowen, No. 2:09-cv-00058 (E.D. Cal. filed Jan. 15, 2009); *id.* (Exhibit A).
44. Troupis Declaration (Exhibit Z), *supra* note 10.
45. Press Release, Alliance Defense Fund, “Calif. Professor to Student: ‘Ask God What Your Grade Is,’” Feb. 12, 2009, available at <http://www.alliancedefensefund.org/news/pressrelease.aspx?cid=4823>.
46. Declaration of John Doe 23. See also Plaintiffs’ Statement of Undisputed Facts in Support of Motion for Summary Judgment (Appendix B) (summarizing declaration submitted by John Doe 23).
47. Declaration of John Doe 16 in Support of Plaintiffs’ Motion for Summary Judgment, ProtectMarriage.com v. Bowen, No. 2:09-cv-00058 (E.D. Cal. filed June 3, 2009).
48. *Id.*
49. See *id.*
50. *Id.* John Doe 16 tried to tell the woman yelling at her that she, John Doe 16, was a fourth-generation San Franciscan and owned a house four blocks from where she was holding the Yes on 8 sign, but “the woman kept screaming and drowning [John Doe 16] out.” *Id.*

future she would make sure that at least one man was with each group of wavers to ensure the protection and safety of the teenagers who participated.⁵²

Prop 8 also triggered hostility against African-Americans, who were reported to have supported the ballot measure by large margins. “According to eyewitness reports published on the Internet,” states one news source, “racial epithets have been

Prop 8 also triggered hostility against African-Americans, who were reported to have supported the ballot measure by large margins.

used against African Americans at protests in California—with some even directed against blacks who are fighting to repeal Prop. 8.”⁵³ One man, for example, reported he was called a particular racial slur twice and said the anti-Prop-8 protest he attended “was like being at a klan rally except the

klansmen were wearing Abercrombie polos and Birkenstocks.”⁵⁴ Another man reported that “he and his boyfriend, who are both black, were carrying NO ON PROP 8 signs and still subjected to racial abuse.”⁵⁵

“Mormons in the Crosshairs”⁵⁶

Mormons were particularly and systematically targeted for supporting Prop 8. One leading gay-rights activist in West Hollywood said, “The main finger we are pointing is at the Mormon church”⁵⁷ Joe Solmonese, head of the Human Rights Campaign, echoed this sentiment on the *Dr. Phil* show when, in response to a question from a Mormon audience member asking why his church was being targeted, he reportedly declared, “We are going to go after your church every day for the next two years unless and until Prop 8 is overturned.”⁵⁸ At least one of the Web sites targeting Prop 8 donors focuses specifically on Mormons.⁵⁹ And one anti-Prop-8 activist has filed a complaint asking Califor-

51. See Declaration of John Doe 13.

52. See Declaration of John Doe 20 in Support of Plaintiffs’ Motion for Summary Judgment, *ProtectMarriage.com v. Bowen*, No. 2:09-cv-00058 (E.D. Cal. filed Jan. 15, 2009).

53. Troupis Declaration (Exhibit AK) (citing Alison Steteman, *What Happens If You’re on Gay Rights’ ‘Enemies List’*, TIME, Nov. 15, 2008, available at <http://www.time.com/time/nation/article/0,8599,1859323,00.html>).

54. Posting of Pam Spaulding to www.pamshouseblend.com, <http://www.pamshouseblend.com/showDiary.do?diaryId=8077> (Nov. 07, 2008, 16:15:00 PM EST) (quoting Posting of Rod to rodonline.typepad.com, <http://rodonline.typepad.com/rodonline/2008/11/n-word-and-raci.html> (Nov. 7, 2008, 12:34 EST) (internal quotations omitted)).

55. *Id.* (quoting Posting of Rod, *supra* note 54). Other sources also recognized the racial hostility that followed Prop 8. See Kathryn Kolbert, Memorandum from Kathryn Kolbert, President, People For the American Way Foundation, to Progressive Allies and Journalists (Nov. 7, 2008) (describing as “inexcusable” the “speed with which some white gay activists began blaming African Americans—sometimes in appallingly racist ways—for the defeat of Proposition 8”), available at http://site.pfaw.org/site/PageServer?pagename=issues_equality_prop_8_memo; Posting of Wayne Besen to www.truthwinsout.org, <http://www.truthwinsout.org/blog/truth-wins-out-condemns-racial-intolerance-within-the-lgbt-community-following-proposition-8-defeat> (Nov. 7, 2008) (expressing “grave disappointment” with “those in the LGBT community” who engaged in “scapegoating minorities”).

56. This phrase was also the title of an article authored by Kathryn Lopez and published at Townhall.com on November 26, 2008. See Kathryn Lopez, *Mormons in the Crosshairs*, TOWNHALL, Nov. 26, 2008, http://townhall.com/columnists/KathrynLopez/2008/11/26/mormons_in_the_crosshairs.

57. Troupis Declaration (Exhibit AR) (citing Jim Carlton, *Gay Activists Boycott Backers of Prop 8*, WALL ST. J., Dec. 27, 2008 (quoting Vic Gerami and describing him as “a leading gay activist in West Hollywood, Calif.”), available at <http://sec.online.wsj.com/article/SB123033766467736451.html>).

58. Maggie Gallagher, *Above the Hate*, REAL CLEAR POLITICS, Nov. 26, 2008 (internal quotations omitted), http://www.realclearpolitics.com/articles/2008/11/above_the_hate.html.

59. See Troupis Declaration (Exhibit AW), *supra* note 42. According to this source, “One Web site run by a Prop. 8 opponent, Mormonsfor8.com, identifies the name and hometown of every Mormon donor.” *Id.* The source also reported that, “[o]n the Daily Kos, the nation’s most popular liberal blog, there is a campaign to use that information to look into the lives of Mormons who financially support Prop. 8.” *Id.*

nia officials to investigate the Church of Jesus Christ of Latter-day Saints for its support for the marriage amendment.⁶⁰

The “Home Invasion” television ad, in particular, sought to exploit anti-Mormon bigotry for political gain. The ad depicts two Mormon missionaries

Mormons were particularly and systematically targeted for supporting Prop 8.

invading the home of a lesbian couple, ransacking their belongings, and tearing up their marriage license. “Hi, we’re from the Church of Jesus Christ of Latter-day Saints,” says one of the Mormon missionaries. “We’re here to take away your rights,” says the other. The ad concludes with script and a voiceover stating, “Say NO to a Church taking over

your government. Vote NO on Proposition 8.”⁶¹ This manifestation of undisguised religious bigotry undoubtedly caused great concern to many people. The *Los Angeles Times*, on the other hand, lamented that same-sex marriage activists had failed to air more “hard-hitting” ads like it.⁶²

After Prop 8 passed, crowds of same-sex marriage activists congregated for protests at Mormon houses of worship throughout the nation.⁶³ One video shows same-sex marriage activists massed outside the Mormon temple in New York City crying “fascist church” repeatedly.⁶⁴ Another video appears to show angry activists rattling the gates of the temple in Los Angeles and chanting “shame on you.”⁶⁵ Images from various protests show signs like “Mormon Scum,”⁶⁶ “Get your filthy church off me,”⁶⁷ and “Keep your hate in Salt Lake.”⁶⁸

-
60. See Editorial, *The Prop 8 Campaign Money*, N.Y. TIMES, Nov. 29, 2008, available at http://www.nytimes.com/2008/11/29/opinion/29sat2.html?_r=3&th&emc=th; see also Californians Against Hate, Sworn Complaint Filed Against Mormon Church with California FPPC and 2 State Attorneys General, <http://californiansagainsthate.blogspot.com/2008/11/sworn-complaint-filed-against-mormon.html> (Nov. 13, 2008, 00:55:00 PST).
61. A video of the smear ad is posted at Youtube online video: Home Invasion: Vote No on Prop 8 (posted by CourageCampaign, Oct. 31, 2008), <http://www.youtube.com/watch?v=q28UwAyzUkE>.
62. Editorial, *Prop. 8’s Battle Lessons*, L.A. TIMES, Nov. 11, 2008, available at <http://www.latimes.com/news/opinion/editorials/la-ed-marriage11-2008nov11,0,3352846.story>. The editorial discussed the “many mistakes” made by Prop 8 foes, and stated, “Same-sex marriage advocates produced only one hard-hitting commercial, depicting a pair of Mormon missionaries ripping up the wedding license of a married gay couple, but didn’t air it until election day.” *Id.*
63. Protests in the City of Los Angeles prompted the Los Angeles Police Department to call a “tactical alert.” FOXNews, *Several Gay Marriage Ban Protesters Arrested in Clashes with Police in California* (Nov. 6, 2008), <http://www.foxnews.com/story/0,2933,447744,00.html>. A protest in Long Beach, though characterized as mostly peaceful, reportedly involved the arrest of 15 people, a smashed police car window, and roughly 100 protestors who refused to leave, blocked traffic at an intersection, and attempted to incite others to riot. See Troupis Declaration (Exhibit K) (citing Pamela Hale-Burns, *Prop. 8 Protest Mostly Peaceful Despite 15 Arrests*, LONG BEACH PRESS-TELEGRAM, Nov. 8, 2008, available at http://www.presselegram.com/search/ci_10938555). Same-sex marriage supporters also protested in other cities throughout California and the nation. See, e.g., CNN, *Same-sex Marriage Rallies Stretch Across Nation* (Nov. 16, 2008), <http://www.cnn.com/2008/US/11/15/same.sex.marriage/index.html>; Wyatt Buchanan, *Prop. 8 Protests Could Become National Movement*, S.F. CHRON., Nov. 15, 2008, available at <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2008/11/15/MNF014400P.DTL>.
64. A copy of this video can be viewed at Youtube online video: Gay Marriage Mormon Church Protest NYC (posted by Gllafc, Nov. 14, 2008), <http://www.youtube.com/watch?v=PvdDoLeFXh0&feature=related>.
65. See, for example, the footage from 5:08 to 6:00 in the video posted at Youtube online video: Mormon Temple Los Angeles —Target of Gay Anger & Mob—LGBT Protest—Join the Impact LA (posted by Vintageyellow71, Nov. 7, 2008), <http://www.youtube.com/watch?v=GxagcNFyHyc&feature=related>.
66. See, e.g., Erin Gorski, *Anger Over Gay Marriage Vote Directed at Mormons*, USA TODAY, Nov. 13, 2008, available at http://www.usatoday.com/news/religion/2008-11-13-Mormon-gay-marriage_N.htm. The article reported that protestors chanted “Mormon scum” outside the Mormon temple in Los Angeles. *Id.* Also see the photograph posted at Maurine Jensen Proctor, “The Hypocrisy of the Tolerance Movement,” MERIDIAN MAG., available at <http://www.meridianmagazine.com/familyleadernetwork/081114tolerance.html> (last visited Aug. 8, 2009).

Anti-Mormon malice reached a new level when someone mailed packages containing suspicious white powder to Mormon temples in California and Utah.⁶⁹ At least one of those incidents triggered a domestic terrorism investigation by the FBI.⁷⁰ Meanwhile, in Colorado, perpetrators placed a Book of Mormon on the steps of a Mormon church and lit it on fire.⁷¹ Police reportedly investigated the incident as a “bias-motivated arson” related to the church’s position on Prop 8.⁷²

Violence and Threats of Violence

Some of the animosity directed against people and groups that supported Prop 8 was openly threatening or even violent. In Modesto, for example, a Prop 8 supporter was allegedly punched in the face by someone who had stolen several Yes on 8 signs. According to news reports, Jose Nunez, who became a U.S. citizen just months before Prop 8 passed, was waiting to distribute signs outside his Catholic church when a man grabbed several Yes on 8 signs and fled.⁷³ When Nunez followed the thief and tried to recover the signs, the thief reportedly

yelled “What do you have against gays?” and punched Nunez in the face.⁷⁴ According to Prop 8 supporters, Nunez suffered a bloody eye and wounds to his face and was taken by ambulance to a local hospital “where he received 16 stitches under his eye.”⁷⁵

Anti-Mormon malice reached a new level when someone mailed packages containing suspicious white powder to Mormon temples in California and Utah.

In Fresno, the town mayor received a death threat for supporting Prop 8. The threat stated, “Hey Bubba, you really acted like a real idiot at the Yes of [sic] Prop 8 Rally this past weekend. Consider yourself lucky. If I had a gun I would have gunned you down along with each and every other supporter.”⁷⁶ The threat also mentioned a “little surprise” for a local pastor who supported Prop 8 and “his congregation of lowlife’s” [sic]. “Keep letting him preach hate and he’ll be sorry,” the perpetrator threatened.

67. The sign can be seen during the period, roughly, from 0:51 to 0:56 in the video posted at Youtube online video: No on Prop 8 Protest at Mormon Church, Front Gate 11/6/08 (posted by MarcoMoonTV, Nov. 6, 2008), <http://www.youtube.com/watch?v=P4m5yUhrXj0&feature=related>.

68. The sign can be seen during the period, roughly, from 2:51 to 2:55 in the video posted at Youtube online video: *supra* note 64. Another sign sports a hand-drawn swastika. It can be seen during the period, roughly, from 3:40 to 3:44 in the video posted at *id*. The swastika was placed inside the letter “o” in the message “H8 IS TOXIC.” *Id*.

69. See Tami Abdollah, *L.A. Mormon Temple Closed After Suspicious Envelope Arrives in Mail*, L.A. TIMES, Nov. 14, 2008, available at <http://www.latimes.com/news/local/la-me-mormon14-2008nov14,0,7206616.story?track=rss>. White powder also was sent to a Knights of Columbus facility in New Haven, Connecticut. See Troupis Declaration (Exhibit J) (citing Ben Winslow, *Powder Scares at 2 LDS Temples, Catholic Plant*, DESERET NEWS, Nov. 14, 2008, available at <http://deseretnews.com/article/content/mobile/1,5620,705262822,00.html?printView=true>).

70. See Ben Winslow, *FBI to Run More Tests on Mystery Substance Mailed to LDS Church*, DESERET NEWS, Nov. 18, 2008, available at <http://www.deseretnews.com/article/1,5143,705263982,00.html>. According to this story, which focused on the white powder attack in Salt Lake City, Utah, “The FBI has labeled its probe a domestic terrorism investigation.” *Id*.

71. KMGH, *Book of Mormon Set Ablaze on Church Door Step* (Nov. 12, 2008), <http://www.thedenverchannel.com/news/17964575/detail.html>.

72. Troupis Declaration (Exhibit N) (citing Jennifer Garza, *Protests over Proposition 8 Outcome Getting Personal*, DESERET NEWS, Nov. 13, 2008, available at <http://deseretnews.com/article/content/mobile/1,5620,705262671,00.html>). See also KMGH, *supra* note 71.

73. See Seth Hemmelgarn, *Prop 8 Fight Gets Ugly on Both Sides*, BAY AREA REP., Oct. 16, 2008, available at <http://www.ebar.com/news/article.php?sec=news&article=3403>. See also Catholic News Agency, “Attack Outside of Catholic Church Part of ‘Wave of Intimidation,’ Says Yes on 8,” Oct. 15, 2008, <http://www.catholicnewsagency.com/new.php?n=14069>.

74. Catholic News Agency, *supra* note 73.

75. Press Release, ProtectMarriage.com, “Prop. 8 Supporter Violently Attacked for Distributing Lawn Signs,” Oct. 13, 2008, available at <http://www.protectmarriage.com/article/prop-8-supporter-violently-attacked-for-distributing-lawn-signs>.

“He will be meeting his maker sooner than expected.”⁷⁷ The threat also stated that anyone in Fresno displaying a Yes on Prop 8 yard sign or bumper sticker was “in danger of being shot or firebombed.”⁷⁸ Police took the threat seriously, launching a criminal investigation and taking extra steps to protect the mayor and pastor.⁷⁹

Same-sex marriage activists have also targeted the places where Prop 8 supporters work.

In another incident, an elderly woman in Palm Springs was besieged by an angry mob protesting Prop 8. Video footage posted on the Internet shows several men shouting at the woman as a television reporter tries to interview her.⁸⁰ “Get out of here,” one man shouts in the elderly woman’s face.⁸¹ Later the video shows the woman, who is carrying a large cross at this point, surrounded by several men, including at least one who knocks the cross out of the woman’s hands and stomps on it.⁸² Someone also reportedly spit on the 69-year-old lady.⁸³

A small group of Christians encountered similar hostilities when an angry crowd apparently took them for pro-Prop 8 demonstrators as they prayed and sang hymns on a sidewalk in the Castro District of San Francisco.⁸⁴ One of the Christians reportedly later stated that the people in the crowd shouted words like “haters” and “bigots” and then “started throwing hot coffee, soda and alcohol on us and spitting (and maybe even peeing) on us.”⁸⁵ Someone in the crowd allegedly threatened to kill the group’s leader, and someone else allegedly tried to pull down the pants of one of the men in the group.⁸⁶ A woman in the group was allegedly struck on the head with her own Bible before being thrown to the ground and kicked.⁸⁷ Video footage posted on the Internet shows a band of police officers dressed in riot gear fending off the angry crowd and escorting the Christians to safety.⁸⁸

Employees and Business Owners Targeted

Same-sex marriage activists have also targeted the places where Prop 8 supporters work. Businesses and other institutions that employ individuals who

76. Troupis Declaration (Exhibit E) (citing John-Thomas Kobos, Proposition 8 Email Threats, KFSN-TV (Nov. 7, 2008), <http://abclocal.go.com/kfsn/story?section=news/local&id=6494921>). A copy of the threatening communication is included in Exhibit E to the Troupis Declaration and can be found at <http://www.kfsn.com/docs/Life%20Threatening%20Email.pdf>.

77. *Id.*

78. *Id.* “No on 8” condemned the threats. *See id.*

79. *See* Troupis Declaration (Exhibit C) (citing CBS47, Proposition 8 Death Threats (Oct. 31, 2008), <http://www.cbs47.tv/news/local/story/Proposition-8-Death-Threats/iQyK1E0C30aNjdD0tVyMJA.csp>); *id.* (Exhibit D) (citing Amanda Perez, Prop 8 Death Threats, KFSN-TV (Oct. 31, 2008), <http://abclocal.go.com/kfsn/story?section=news/local&id=6479861&pt=print>).

80. *See* the footage from 0:00 to 2:29 of the video posted at Youtube online video: Palm Springs Prop 8 Rally Turns Ugly (posted by PSConfidential, Apr. 30, 2009), <http://www.youtube.com/watch?v=znXHJQsX78o>.

81. *See* the footage from 0:11-0:16 in the video posted at *id.*

82. *See* the footage from 2:29 to the end of the video posted at *id.*

83. *See* Adrienne S. Gaines, *Radical Gay Activists Seek to Intimidate Christians*, CHARISMA MAG., Nov. 19, 2008, available at <http://www.charismamag.com/index.php/news/19444>.

84. *See* Troupis Declaration (Exhibit O), *supra* note 24 (reporting understanding of the group that the crowd thought they were “marriage amendment demonstrators”); *see also* Troupis Declaration (Exhibit F) (citing Colleen Raezler, O’Reilly Alone Reports Gay Attack on Christians, Culture and Media Institute (Nov. 19, 2008), <http://www.cultureandmediainstitute.org/printer/2008/20081119181938.aspx>); Troupis Declaration (Exhibit G) (citing KTVU, Anger over Prop. 8 Erupts in San Francisco (Nov. 14, 2008), www.ktvu.com/print/17986914/detail.html).

85. Troupis Declaration (Exhibit F), *supra* note 84.

86. *See* Troupis Declaration (Exhibit O), *supra* note 24.

87. *See id.*; *see also* Troupis Declaration (Exhibit F), *supra* note 84.

personally donated to Prop 8 have been threatened with and in some cases subjected to picketing, protests, and damaging boycotts. Some Prop 8 donors resigned from their jobs or took a leave of absence to protect their employers and colleagues.

For example, Scott Eckern was employed as the director of the nonprofit California Musical Theater in Sacramento before being targeted for personally donating \$1,000 to Prop 8. Once Mr. Eckern's support for Prop 8 was discovered, the theater

Targeting businesses for the political and religious views of their owners or even their employees has raised serious concerns about the state of public discourse regarding marriage and the condition of civil society generally.

was “deluged” with criticism from prominent artists who opposed Prop 8.⁸⁹ Critics included Marc Shaiman, the composer of *Hairspray*, who stated that his work could not be performed at the theater because of Mr. Eckern's support for Prop 8.⁹⁰ Mr. Eckern resigned.⁹¹

Richard Raddon was the director of the Los Angeles Film Festival before he landed in the crosshairs of Prop 8 opponents. Mr. Raddon personally donated \$1,500 to Prop 8. As in the case of

Mr. Eckern, once information about Mr. Raddon's personal donation was disclosed to the state and published on the Internet, he became a target of Prop 8 opponents.⁹² According to an op-ed in *The Wall Street Journal*, “A threatened boycott and picketing of the next festival forced him to resign.”⁹³

The extreme nature of this crude, but effective new tactic was poignantly illustrated in the case of Marjorie Christoffersen, a 67-year-old restaurant employee who donated a mere \$100 to Prop 8.⁹⁴ Once information about Ms. Christoffersen's \$100 donation was published on the Internet, Prop 8 opponents launched a protest against the restaurant where she worked, prompting the restaurant to offer activists a free brunch and Ms. Christoffersen to offer an apology.⁹⁵ However, when Ms. Christoffersen refused to renounce her support for Prop 8—like Scott Eckern and Richard Raddon, Marjorie Christoffersen is a Mormon—the meeting “turned ugly” and “[b]oisterous street protests erupted that night.”⁹⁶ Ms. Christoffersen eventually decided to take a leave of absence to protect the restaurant, which is owned by her mother, and the other employees who worked there.⁹⁷

In other cases, business owners who supported Prop 8 either personally or through their enterprises have had their businesses targeted for reprisals by same-sex marriage activists. A dentist in Palo Alto

88. This video has been posted at Youtube online video: Christians Assaulted in San Francisco (posted by PublicFreedom Nov. 20, 2008), <http://www.youtube.com/watch?v=nTuqXiHzZtk>. In addition, a local news source reported that “San Francisco Police officers in riot gear formed a line and escorted the religious group into a van to safely get them out of the area.” KTUV, Anger over Prop. 8 Erupts in San Francisco (Nov. 14, 2008), www.ktvu.com/print/17986914/detail.html.

89. Troupis Declaration (Exhibit A) (citing John R. Lott, Jr. and Bradley Smith, Op-Ed, *Donor Disclosure Has Its Downsides: Supporters of California's Prop. 8 Have Faced a Backlash*, WALL ST. J., Dec. 26, 2008, available at <http://online.wsj.com/article/SB123025779370234773.html>).

90. Troupis Declaration (Exhibit AI) (citing Marcus Crowder, *Theater Felt Growing Pressure before Artistic Director Quit*, SACRAMENTO BEE, Nov. 12, 2008, available at <http://www.sacbee.com/295/story/1390297.html>). See also Jesse McKinley, *Theater Director Resigns Amid Gay-Rights Ire*, N.Y. TIMES, Nov. 12, 2008, available at <http://www.nytimes.com/2008/11/13/theater/13thea.html>.

91. See Troupis Declaration (Exhibit A), *supra* note 89; Troupis Declaration (Exhibit N), *supra* note 72.

92. Troupis Declaration (Exhibit A), *supra* note 89. This source states that the passage of Prop 8 “has generated retaliation against those who supported it, once their financial support was made public and put online.” *Id.* (emphasis added).

93. *Id.*

94. See Troupis Declaration (Exhibit AR), *supra* note 57.

95. See *id.*

96. *Id.*

97. See *id.*

lost patients because he donated \$1,000.⁹⁸ Purves & Associates, an insurance company in Davis, was picketed with signs such as “Purves Family Supports Homophobia” after family members donated to Prop 8.⁹⁹ Protesters rallied and handed out free ice cream to retaliate against a family-owned creamery that supported Prop 8.¹⁰⁰ Activists boycotted the Grand Hyatt hotel in San Diego because its developer donated money to help to put Prop 8 on the ballot.¹⁰¹ Same-sex marriage activists also targeted a self-storage company because its owner and his family donated money to Prop 8.¹⁰²

Boycotting businesses that engage in commercial behavior consumers find objectionable is a time-honored form of activism in American society. However, targeting businesses for the political and religious views of their owners or even their employees—and the decision of these individuals to participate in democratic political processes—has raised serious concerns about the state of public discourse regarding marriage and the condition of civil society generally. No individual should be compelled to choose between making a living and participating in democratic processes affecting fundamental matters of public concern, such as marriage.

Beyond Prop 8

The weeks and months after Prop 8 passed also witnessed other incidents of hostility directed against expressions of support for traditional views on marriage and homosexuality. Some of these incidents were not directly connected with support for Prop 8, which suggests, grimly, that some of the hostilities described in this paper could become

more common in political contests concerning same-sex marriage and other issues involving homosexuality.

No individual should be compelled to choose between making a living and participating in democratic processes affecting fundamental matters of public concern, such as marriage.

In one disturbing incident just days after Prop 8 passed, a radical group called “Bash Back!” allegedly invaded a Christian church in Michigan. The group’s Web site featured photos of members dressed like terrorists and brandishing various objects as weapons.¹⁰³ A press release posted by the Alliance Defense Fund, a public interest legal association that is suing the openly anarchist group in federal court, states:

[M]embers of the group dressed in militant garb staged a protest outside the church during a worship service to distract security personnel, blocking access to the building and parking lot at various times. Other members of the group dressed in plain clothes then deceptively entered the building. At a coordinated time, they sprang up to disrupt the service, terrifying many attendees. The group shouted religious slurs, unfurled a sign, and threw fliers around the sanctuary while two women began kissing near the podium. The group pulled fire alarms as they ran out of the building.¹⁰⁴

98. See Troupis Declaration (Exhibit A), *supra* note 89.

99. Troupis Declaration (Exhibit N), *supra* note 72.

100. See Troupis Declaration (Exhibit AQ) (citing KCRA, Prop. 8 Opponents Protest Ice Cream Parlor (Nov. 17, 2008), <http://www.kcra.com/politics/17994183/detail.html>).

101. See Troupis Declaration (Exhibit AS) (citing William M. Welch, *Prop 8 Foes ‘Blacklist’ Tactics*, USA TODAY, Dec. 21, 2008, available at http://www.usatoday.com/news/nation/2008-12-21-blacklist_N.htm). See also Troupis Declaration (Exhibit BD) (citing Bill Ainsworth, *Gay Rights Groups to Boycott Manchester Grand Hyatt: Owner Donated to Proposition 8*, SAN DIEGO UNION-TRIBUNE, July 10, 2008, available at <http://www.signonsandiego.com/news/metro/20080710-9999-1m10boycott.html>); Troupis Declaration (Exhibit BE) (citing Tony Cochran, *Rally Against Prop H8: Manchester Grand Hyatt*, INDYMEDIA, Nov. 18, 2008, <http://www.indybay.org/newsitems/2008/11/18/18552103.php>).

102. See Troupis Declaration (Exhibit AS), *supra* note 101.

103. See Alliance Defense Fund, *ADF Files Suit Against Radical Group that Invaded Mich. Church* (May 13, 2009), <http://www.alliancedefensefund.org/news/story.aspx?cid=4944>.

In accounts allegedly posted on the Internet after the invasion, Bash Back! described the Mount Hope Church as a “deplorable, anti-queer mega-church” that is “complicit in the repression of queers in Michigan and beyond”¹⁰⁵ and cited the church’s “stance on queer identities” as one reason for the attack.¹⁰⁶

Another case, more widely reported than the church invasion in Michigan, involved Carrie Prejean, the Miss USA beauty contestant. Ms. Prejean was competing in the final round of the Miss USA pageant when she drew a question from pageant judge Perez Hilton about legalizing same-sex marriage.¹⁰⁷ Ms. Prejean’s answer—that, in her view, marriage should be between a man and a woman—generated a tidal wave of criticism, including from Mr. Hilton, who later described Ms. Prejean in crude and derogatory terms in a video blog on his Web site.¹⁰⁸ A co-director of the Miss California association also condemned Ms. Prejean, stating that “[r]eligious beliefs have no place in politics in the Miss CA family.”¹⁰⁹ Both Ms. Prejean and Mr. Hilton have speculated that her answer cost her the crown.¹¹⁰

Lessons of Prop 8 Hostilities

Several anti-Prop-8 activists have condemned certain types of hostility described in this paper.¹¹¹ Some of the incidents described in this paper have involved illegal conduct, meaning the wider community has already condemned it. Some acts of hostility have been perpetrated by random individuals acting in isolation or by unpredictable crowds expressing anger and frustration.

Yet none of these facts changes the reality that many Prop 8 supporters have paid a considerable price for defending marriage as the union of husband and wife. Indeed, no matter who is to blame for the hostility surrounding Prop 8, one lesson of Prop 8 cannot be denied: Individuals or institutions that publicly defend marriage as the union of husband and wife risk harassment, reprisal, and intimidation—at least some of it targeted and coordinated.

Furthermore, although some same-sex marriage activists have expressed disagreement with certain types of conduct described in this paper, few activists would disavow the ideology underlying much of the outrage at Prop 8’s success. Arguments for

104. *Id.*

105. Complaint, Mount Hope Church v. Bash Back, No. 1:09-cv-00427 (W.D. Mich. filed May 13, 2009) (Exhibit 2).

106. *Id.* (Exhibit 3)

107. See, e.g., FOXNews, Miss California Sparks Furor with Gay Marriage Comments on Miss USA Telecast (Apr. 20, 2009), <http://www.foxnews.com/story/0,2933,517137,00.html>. According to one source, “Perez [Hilton] had actually written the question hoping Miss Utah would answer it, thereby bringing attention to the Mormon Church’s financing of the Yes on Prop. 8 campaign.” Benoit Denizet-Lewis, *The Real Perez Hilton*, ADVOCATE, Aug. 2009, available at http://www.advocate.com/issue_story_ektid92886.asp.

108. Denizet-Lewis, *The Real Perez Hilton*, *supra* note 107.

109. Posting of Jimmy Orr to features.csmonitor.com, <http://features.csmonitor.com/politics/2009/04/20/miss-california-sparks-outrage-over-gay-marriage-remarks> (Apr. 20, 2009) (internal quotations omitted).

110. See *id.* See also ABCNews, Perez Hilton ‘Floored’ by Miss California (Apr. 20, 2009), <http://abcnews.go.com/Entertainment/Television/Story?id=7381893&page=2>.

111. See, e.g., KCPW, GLBT Advocates Condemn Attacks on LDS Church (Nov. 14, 2008) (reporting condemnation by GLBT advocacy group Equality Utah of vandalism and white powder attacks directed against Mormon houses of worship), <http://kcpw.org/blog/local-news/2008-11-14/glbt-advocates-condemn-attacks-on-lds-church>; Abdollah, *supra* note 69 (reporting that the L.A. Gay & Lesbian Center in Los Angeles issued a statement “decrying” the incident involving white powder mailed to a Mormon temple); Chelsea Phua, *Mormon Church in Orangevale Vandalized in Wake of Prop. 8 Vote*, SACRAMENTO BEE, Nov. 9, 2008 (reporting that No on 8 campaign denounced vandalism); Amanda Perez, Prop 8 Death Threats, KFSN-TV (Oct. 31, 2008), <http://abclocal.go.com/kfsn/story?section=news/local&id=6479861&pt=print> (reporting that No on 8 organizer condemned death threat against Fresno mayor and pastor), <http://abclocal.go.com/kfsn/story?section=news/local&id=6479861&pt=print>; KCAL-9, Vandals Target Prop 8 Supporters in NorCal (Oct. 28, 2008) (reporting that the campaign to defeat Prop 8 “issued a statement saying it condemns vandalism”), <http://cbs2.com/local/Proposition.8.Vandalism.2.850469.html>.

same-sex marriage, although often couched in terms of tolerance and inclusion, are based fundamentally on the idea that preserving marriage as unions of husband and wife is a form of bigotry, irrational prejudice, and even hatred against homosexual persons who want the state to license their

Individuals and institutions that support marriage as the union of husband and wife risk paying a price for that belief in many legal, social, economic, and cultural contexts.

relationships. As increasing numbers of individuals and institutions, including public officials and governmental bodies, embrace this ideology, belief in marriage as a relationship between a man and a woman likely will come to be viewed as an unacceptable form of discrimination that should be purged from public life through legal, cultural, and economic pressure.

Other sources have explained how changes in law based on this ideology will threaten the religious lib-

erties of individuals and institutions that interact with the government or become subject to nondiscrimination laws.¹¹² The hostility surrounding Prop 8 shows how, once this ideology seeps into the culture more generally, individuals and institutions that support marriage as the union of husband and wife risk paying a price for that belief in many legal, social, economic, and cultural contexts.

Conclusion

When people stand firmly by their beliefs about marriage as the union of husband and wife despite facing social stigmatization, economic hardship, and other reprisals, they provide an important example of civic courage and inspire particular virtues that are essential to the proper functioning of any free and open society. The freedom of parties on both sides of the marriage debate to voice their views and to promote them in public policy should be respected.

—Thomas M. Messner is a Visiting Fellow in the Richard and Helen DeVos Center for Religion and Civil Society at The Heritage Foundation.

112. See, e.g., SAME-SEX MARRIAGE AND RELIGIOUS LIBERTY: EMERGING CONFLICTS (Douglas Laycock et al., eds., 2008); Thomas M. Messner, *Same-Sex Marriage and the Threat to Religious Liberty*, Heritage Found. BACKGROUNDER (No. 2201), Oct. 30, 2008, at 8–18, available at http://www.heritage.org/research/family/upload/bg_2201.pdf; Roger Severino, *Or for Poorer? How Same-Sex Marriage Threatens Religious Liberty*, HARV. J.L. & PUB. POL'Y 30 (2007).