

## CASE #8: IN THE SPIRIT OF FULL DISCLOSURE

On November 4, 2008, 52.3% of California voters approved Proposition 8 – also known as the Marriage Protection Act. The proposition amended the state constitution to bar same-sex couples from civil marriage.<sup>1</sup> On May 26, 2009, the California Supreme Court confirmed the legality of Prop 8, while at the same time allowing same-sex couples who were married before November 5, 2009 to remain married.<sup>2</sup> Although supporters of Prop 8 feel that so-called traditional marriage has finally received its due protection, advocates of same-sex marriage have decried the ratification of the voter initiative as a gross violation of civil rights, akin to anti-miscegenation laws.

Backed by California's campaign disclosure law, an anonymous individual has put together the website [www.eightmaps.com](http://www.eightmaps.com), which "takes the names and ZIP codes of people who donated to the ballot measure [Prop 8]... and overlays the data on a Google map."<sup>3</sup> Some of the individuals and companies who donated money to outlaw same-sex marriage have received death threats, and "their businesses have been boycotted."<sup>4</sup> In response to this harassment, a group of Prop 8 supporters have filed a lawsuit attempting to "to block their campaign finance records from public view."<sup>5</sup> Without the protection of their personal information, some donors have indicated that they would not contribute to similar causes, lest they receive further harassment. This is exactly what critics of eightmaps.com fear: disclosure laws, coupled with new technologies, such as Google maps, could discourage voters from participating in the political process. As Michael Shin has noted, websites disclosing donor information are not "explicitly pernicious." However, they can become a tool for violence and persecution.<sup>6</sup>

According to Dr. Shin, a political scientist, transparency in the electoral process promotes an informed electorate, thus "enhancing the quality of democracy." However, critics of eightmaps.com have noted that the goal of transparency and disclosure laws is to expose powerful private interests that are trying to influence the government – not private citizens writing \$100 checks to a political cause of their choice. While transparency is necessary for an effective democracy, so too is privacy. Political theorist Anabelle Lever has noted that privacy rights are not merely instrumentally useful in protecting political participation, but also necessary for the full exercise of personal freedom and equality.<sup>7</sup>

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<sup>1</sup> "California General Election: Official Voter Information Guide," <http://voterguide.sos.ca.gov/past/2008/general/title-sum/prop8-title-sum.htm>.

<sup>2</sup> *Strauss v. Horton*, 207 P.3d 48 (Cal. 2009), opinion available online at: <http://www.courtinfo.ca.gov/opinions/documents/S168047.PDF>.

<sup>3</sup> Stone, Brad, Prop 8 Donor Web Site Shows Disclosure law is 2-Edged Sword," <http://www.nytimes.com/2009/02/08/business/08stream.html>, *New York Times* (Feb. 7, 2009).

<sup>4</sup> Zavis, Alexandra, et al., "Gay marriage bashers threaten boycotts of pro-Prop. 8 restaurants," <http://latimesblogs.latimes.com/lanow/2008/11/gay-marriage-ba.html>, *Los Angeles Times* (Nov. 12, 2008).

<sup>5</sup> Lawrence, Steve, "Calif. gay marriage foes want donors anonymous," <http://www.sfgate.com/cgi-bin/article.cgi?f=/n/a/2009/01/08/state/n172303S97.DTL>, *San Francisco Chronicle* (Jan. 9, 2009).

<sup>6</sup> Shin, M.E., "Democratizing electoral geography: Visualizing votes and political neogeography," *Political Geography*, v. 28, i. 3, pp. 149-152 (Mar. 2009).

<sup>7</sup> Lever, Annabelle, "Privacy Rights and Democracy: A Contradiction in Terms?" *Contemporary Political Theory*, v. 5(2), pp. 142-162 (May 20, 2004).

On the other hand, eightmaps.com can enhance individuals' freedom by allowing them to vote with their dollars. By boycotting Prop 8 donors, supporters of equal rights for same-sex couples are, as many oppressed minorities have done in the past, using soft power to bring about change. As a No-on-8 activist put it, "a citizen has every right to donate money to a cause that hurts me. And I have as much right to express my disagreement by not patronizing their business."<sup>8</sup>

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<sup>8</sup> Schwyzer, Hugo, "Prop 8, boycotts, and villains who aren't villains," <http://hugoschwyzner.net/2008/11/13/prop-8-boycotts-and-villains-who-arent-villains/#comment-467301> HugoSchwyzer.net (blog) (Nov. 13, 2008).