**Memorandum**
**Fair Political Practices Commission**

**To:** Chairman Schnur, Commissioners Garrett, Hodson, Montgomery and Rotunda

**From:** Scott Hallabrin, General Counsel
Lawrence T. Woodlock, Senior Commission Counsel

**Subject:** Pending Litigation

**Date:** September 7, 2010

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**1. *ProtectMarriage.Com et al. v. Bowen et al.***

This action was filed on January 9, 2009 in the United States District Court for the Eastern District of California by plaintiffs ProtectMarriage.com - Yes on 8, a Project of California Renewal and National Organization for Marriage California - Yes on 8, Sponsored by National Organization for Marriage. It is a "defendants class action" lawsuit against defendants responsible either for enforcement of the Act, or maintenance and publication of the campaign reports at issue in this case (including the Commission, Attorney General, Secretary of State and various district and city attorneys). The Commission defendants were formally served on January 14, 2009.

Plaintiffs challenge the Act's campaign disclosure requirements on contributions to ballot measure committees as unconstitutional. They cite a variety of adverse actions against persons who supported Proposition 8, which was on the November 2008 ballot, alleging that some of these persons were identified through campaign contribution information made public as required by the Act's campaign reporting and disclosure provisions. The Complaint seeks to permanently enjoin the future disclosure of all of plaintiffs' contributors, expunge the records of all of plaintiffs' past contributors, and to invalidate as unconstitutional the Act's $100 disclosure threshold for contributors to ballot measure committees, the Act's requirement for post-election disclosure of contributors to ballot measure committees, and the Act's failure to purge the records of contributors to ballot measure committees after the election. In all counts, plaintiffs seek declaratory and injunctive relief, and an award of attorney's fees.

Plaintiffs moved for a preliminary injunction on shortened time, which was heard on January 29, 2009 before District Judge Morrison C. England, Jr. The court denied plaintiffs' motion from the bench, concluding that plaintiffs had failed to demonstrate the probability of success on the merits or the likelihood of irreparable injury necessary to support a preliminary injunction. The court issued a written order to this effect on January 30. On February 3, 2009 the Commission defendants timely filed their Answer to Plaintiffs' Second Amended Complaint. On May 15, 2009 the court issued the Scheduling Order to set the timing of further proceedings and on May 27, 2009 the court issued another order granting Plaintiffs' motion, not opposed by Defendants, to file a Third Amended Complaint adding the National Organization for Marriage California PAC to the list of Plaintiffs. The Answer to this Complaint was filed on June 5, 2009.

On June 3, 2009 Plaintiffs filed a Motion for Class Certification and a Motion for Summary Judgment, together with supporting documents. Defendants filed Notices of Non-Opposition to the Class Certification Motion, and on June 10, 2009 filed a Motion seeking denial of Plaintiffs' Motion for Summary Judgment or, in the alternative, continuance of the hearing date under Rule 56. On June 24, 2009 the Court issued an Order denying Plaintiffs' Motion for Summary Judgment, and on August 6, 2009 advised that it would decide class certification without oral argument. The parties reached agreement on class certification and, on November 9, 2009 filed a Stipulation and Proposed Order, entered by the Court on November 25, 2009. The parties are engaged in discovery. Defendants moved the Court for a modification of the 2009 Scheduling Order to allow an extension of the discovery period due to a dispute with Plaintiffs, which the Court granted on May 13, 2010.