

No. 08-205

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In the Supreme Court of the United States

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CITIZENS UNITED,

*Appellant,*

v.

FEDERAL ELECTIONS COMMISSION,

*Appellee.*

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

**BRIEF OF AMICUS CURIAE  
ALLIANCE DEFENSE FUND  
IN SUPPORT OF APPELLANT**

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## INTEREST OF *AMICUS* IN THIS CASE<sup>1</sup>

ALLIANCE DEFENSE FUND (“ADF”) is a not-for-profit public interest organization that provides strategic planning, training, and funding to attorneys and organizations regarding religious civil liberties and family values. ADF and its allied organizations represent hundreds of thousands of Americans who believe strongly in these topics, and who have a right to express those views through this nation’s political process. ADF’s allies include more than 1,200 lawyers and numerous public interest law firms, many of whom have been recently pressed into service to represent individuals and organizations being harassed for expressing their viewpoints in the political arena.

ADF has advocated for the rights of Americans to exercise their religious beliefs and to express those beliefs in the political arena. ADF has been directly or indirectly involved in at least 500 cases and legal matters, including cases before this Court such as *Good News Club v. Milford Central Schools*, 533 U.S. 98 (2001), *Mitchell v. Helms*, 530 U.S. 793 (2000);

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<sup>1</sup> All parties have consented to the filing of this brief. No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than Amicus Curiae, its members, or its counsel made a monetary contribution to its preparation or submission.

*Agostini v. Felton*, 521 U.S. 203 (1997); and *Dale v. Boy Scouts of America*, 530 U.S. 640 (2000).

## SUMMARY OF ARGUMENT

ADF contends that the Bipartisan Campaign Reform Act of 2002 (“BCRA”), and specifically its provisions requiring the disclosure of names and addresses of anyone who contributes \$1,000.00 or more for the purpose of furthering an electioneering communication, operate as an unconstitutional restraint upon an individual’s First Amendment right to express his or her political viewpoints in the public arena, to the extent that the BCRA’s definition of “electioneering communication” is interpreted to extend in any manner whatsoever to anything other than express advocacy or its functional equivalent.

ADF first contends that this Court has already addressed this First Amendment concern by limiting the BCRA’s definition of “electioneering communications,” so that the only communications regulable under any provision of the BCRA are those that are capable of no interpretation other than an appeal to vote for or against a specific candidate. *See Fed. Election Comm’n v. Wisconsin Right to Life, Inc.*, 127 S. Ct. 2652 (2007) (“*WRTL*”). As such, the trial court’s decision that the BCRA’s disclosure provisions apply more broadly is erroneous and should be reversed.

Alternatively, ADF contends that the instant case presents the Court with the opportunity to ensure that the BCRA’s disclosure provisions operate in

such a fashion as to ensure that Americans continue to have “the liberty to discuss publicly and truthfully all matters of public concern without previous restraint or fear of subsequent punishment.” *First Nat’l Bank of Boston v. Bellotti*, 435 U.S. 765, 776 (1978). This liberty to express one’s political views without fear of reprisal is one that pre-dates the very formation of our Constitution; it is a right that has existed throughout the life of this great nation; it is a freedom that now hangs in the balance as clearly evidenced by events emanating from the most recent election cycle. The Court has the opportunity to preserve this very critical privilege accorded to the people of this country, by reversing the decision of the trial court, and holding that the BCRA’s disclosure provisions do not apply so broadly as to encompass speech beyond express advocacy or its functional equivalent.

## ARGUMENT

**I. THERE EXISTS A STRONG AND HISTORICALLY PROTECTED INTEREST IN PROMOTING AND PRESERVING AN INDIVIDUAL'S RIGHT TO EXPRESS HIS OR HER POLITICAL VIEWPOINTS. THIS COURT HAS CONSISTENTLY SUBJUGATED GOVERNMENTAL INTERESTS, SUCH AS THOSE FOUND IN THE BCRA, TO THOSE INDIVIDUAL RIGHTS WHEN ADDRESSING ISSUE ADVOCACY.**

The United States Constitution states that “Congress shall make no law...abridging the freedom of speech.” U.S. Constitution amend. I. This Court has recognized that political speech “occupies the core of the protection afforded by the First Amendment.” *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 346 (1995). “Discussion of public issues...[is] integral to the operation of the system of government established by our Constitution. The First Amendment affords the broadest protection to such political expression in order ‘to assure [the] unfettered interchange of ideas for the bringing about of political and social changes desired by the people.’” *Buckley v. Valeo*, 424 U.S. 1, 14 (1976) (quoting *Rita v. United States*, 354 U.S. 476, 484 (1957)). The *McIntyre* Court further noted that these principles extend equally to issue-based elections, and that issue advocacy “is the essence of First Amendment expression.” *McIntyre*, 514 U.S. at 347.

















































































## APPENDIX 4

### Radical Gay Activists Seek to Intimidate Christians

*Since Nov. 4, Christians have reported increased incidences of church vandalism and sometimes-violent attacks for their support of traditional marriage.*

[11.19.08] The Nov. 4 passage of constitutional amendments banning gay marriage in California, Arizona and Florida has evoked a sometimes-violent response from radical gay activists who have vandalized churches, mobbed intercessors and disrupted a worship service in Michigan.

Intercessors with a house of prayer in San Francisco said they feared they might be killed Friday night during a routine prayer walk through the area's Castro district, which has a large gay community. They said a crowd who thought they were marriage amendment demonstrators shouted lewd remarks, pushed them, threw hot coffee on their faces and threatened the prayer group leader with death. ([See related video.](#))

One man reportedly hit an intercessor on the head with her Bible before shoving her to the ground and kicking her. Before police arrived, another house of prayer member said someone repeatedly tried to pull his pants down.

"We hadn't preached, we hadn't evangelized," one of

the intercessors said after the incident. “We worshipped God in peace, and we were about to die for it.”

Police eventually escorted the group to their van, telling the intercessors they had to leave if they wanted to make it out, one witness said.

“These are the nicest kids,” said TheCall founder Lou Engle, who knows many of the young intercessors involved in the incident. “That night they were doing only worship. They weren’t trying to aggravate anything.”

“I think what’s happening is an exposure of what’s really there and an underbelly of this [radical gay] movement,” Engle added. “I think the church has to really reveal what’s going on there so the nation gets a clue about what they’re making an alliance with.”

In Michigan, where voters in 2004 approved an amendment defining marriage as the union of one man and one woman, a Chicago-based gay rights organization called Bash Back interrupted a Nov. 9 service at an Assemblies of God congregation in Lansing. ([See related video.](#))

After staging a demonstration outside Mount Hope Church to draw most of the security staff away from the worship service, protestors masked as congregants stood up in the middle of the service, “declared themselves fags and began screaming loudly,” Bash Back leaders said in a statement posted online.

The protestors pulled the fire alarm and threw thousands of fliers into the congregation, while a gay couple rushed to the front and began kissing in front of the pastor. "Let it be known: So long as bigots kill us in the streets, this pack of wolves will continue to BASH BACK!" the group said in a statement about the incident.

Bash Back leaders said Mount Hope was targeted because it is "complicit in the repression of queers" by working to "institutionalize transphobia and homophobia" through "repulsive" ex-gay conferences and hell house plays, "which depict queers, trannies and womyn [sic] who seek abortions as the horrors."

In a statement posted on Mount Hope's Web site, church leaders said they don't "attempt to identify the church as anti-homosexual, anti-choice, or right wing" but do "take the Bible at face value and believes what the Bible says to be the truth."

Mount Hope spokesman David J. Williams Jr., said the sheriff's department had launched an investigation into the incident. "We're really asking for prayer for the people that did this," Williams said. "They need Jesus; they need to know His love."

Attorney John Stemberger, who chaired Florida's marriage amendment campaign, said many gay protestors want to intimidate the public into silence. "Their goal is to create an intense climate of intimidation and hostility within the culture to try and deter people from supporting traditional

marriage and other pro-family initiatives in the future,” Stemberger said. “We will not be bullied into silence, indifference or inaction.”

In Palm Springs, Calif., a 69-year-old woman planned to file charges against protesters who reportedly pushed the woman and spit on her during a Nov. 8 rally opposing the passage of Proposition 8, which amends the state constitution to define marriage as the union of one man and one woman. Phyllis Burgess said authorities convinced her to press charges against the attackers.

Nationwide, gay rights advocates protested marriage bans on Saturday, pointing particularly to California’s Proposition 8, which defined marriage as between one man and one woman and overturned a state Supreme Court ruling that had legalized gay marriage. Many of the demonstrations were peaceful, according to Associated Press (AP) reports, with participants waving rainbow-colored flags and holding signs saying “Don’t Spread the H8.”

But pastors across the country, particularly in California, say incidents of vandalism and theft have increased since Nov. 4. One California pastor said a minister in his state received death threats for his support of Proposition 8. According to reports from California’s Protect Marriage campaign:

- At Messiah Lutheran Church in Downey, Calif., a “Yes on 8” sign was wrapped around a heavy object and used to smash the window of the pastor’s office.

- Several “Yes on 8” yard signs were stolen from Calvary Chapel Ventura, as well as a large banner displaying the church’s name and service times.
- Park Community Church in Shingle Springs, Calif., received harassing phone calls and has been threatened with lawsuits by Proposition 8 opponents.
- Bloggers targeted Yorba Linda, Calif., pastor Jim Domen, who is open about his past struggle with same-sex attraction, and his girlfriend for harassment after seeing the couple’s photo in news reports about the passage of Proposition 8.
- The words “No on 8” were spray-painted on a Mormon church in Orangevale, Calif.
- A brick was thrown through the window of Family Fellowship Church in Hayward, Calif., and at Trinity Baptist Church in Arcata, Proposition 8 opponents vandalized the church’s marquee, which encouraged support for the marriage amendment; stole the church’s flags; and committed other acts of vandalism totaling \$1,500.
- Eggs thrown on the building of San Luis Obispo Assembly of God and toilet paper was strewn across the property, while a Mormon church in the same city had adhesive poured onto a doormat, a keypad and a window.

The Mormon Church, headquartered in Salt Lake City, Utah, has also become a target of gay rights

activists because it provided major funding to the Proposition 8 campaign and encouraged its members to support the marriage amendment, which passed with 52 percent of the vote.

Some gay rights advocates have called for a boycott of the state of Utah, and Bash Back leaders admitted to vandalizing Mormon churches there, as well as in Washington state and California. A Mormon temple in Salt Lake City reported receiving a letter containing a white, powdery substance that forced the facility to close while police launched an investigation.

"The hypocrisy, hatred, and intolerance shown by the gay rights movement isn't pretty," said Randy Thomasson, president of the Campaign for Children and Families, a leading California-based pro-family group. "While claiming to be against hate and for tolerance and choice, the homosexual activists are revealing their hatred of voters and religion and showing their intolerance of people's personal choices to support man-woman marriage. By attacking the people's vote to protect marriage in the state constitution, homosexual activists have declared war on our republic and our democratic system."

Christian leaders say the backlash is likely to continue and may worsen. "It's actually desperation time for us all across the nation to be praying," Engle said. "They're calling [Christians] haters when all they're doing is simply saying there's a higher authority. It's a raging against Christ and His loving, foundational laws. It is becoming an anti-Christ rage.

They are creating a Jesus of their own mind, a Jesus who lets everybody do whatever they want.

“I think the church has to be prepared [for religious persecution],” he added. “Our allegiance is to God and His Word, and if that means imprisonment and martyrdom, so be it.” -- **Adrienne S. Gaines**

## APPENDIX 5

### VANDALS SPRAY PAINT SIGNS IN DOWNTOWN FULLERTON IF CAUGHT, VIOLATORS COULD FACE UP TO ONE YEAR IN PRISON, \$10,000 FINE.

By **BARBARA GIASONE**  
THE ORANGE COUNTY REGISTER

FULLERTON – Vandals used gold spray paint to scrawl anti-Proposition 8 messages on commercial and residential buildings in the downtown and east Fullerton over the weekend, police said.

The "Prop H8TE" message was found on the Bank of America and Union Bank on north Harbor Boulevard, and on a retail store in the 500 block of north Harbor. Additional tagging was found on houses near Dorothy Lane.

Sgt. Mike MacDonald said anyone caught causing more than \$400 in damages is subject to one year in state prison or county jail – and \$10,000 in fines. Suspects who are caught causing less than \$400 in damages could be charged \$1,000 and spend one year in county jail.

In addition to the spray-paint vandalism, 500 "Yes on 8" signs valued at \$10 apiece were reported missing throughout the city by a Yes on 8 community organizer, MacDonald said.

At least one resident in the city is using a night-vision camera to catch sign vandals, police said. The homeowner told police he captured images of a woman stealing signs.

"While we respect people's rights to have an opinion on state politics, it's never appropriate to deface property to further their own beliefs," MacDonald said. "We treat this type of crime very seriously.

"Violators will be prosecuted to the fullest extent of the law," he said.

A resident in the northeast section of the city reported late Monday morning that his property was also defaced with gold paint.

"I've lived in the city for 18 years, and I've never had anything like this," Randy Reece said.

"It's ironic the purveyors of tolerance seem to not have any respect for the First Amendment and it's disgusting," Reece said. "I'd like to have a discussion with them if they want to."

Vandalism should be reported to the Fullerton Police Department at 714-738-6715.

## APPENDIX 6

Jun. 07, 2006

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### **TAX AND SPENDING CONTROL: Backers: Foes get physical**

#### **Supporters sue, allege intimidation**

Swarming around signature-gatherers. Yelling and grabbing clipboards. Pouring a can of soda on a petition.

Such are the intimidating tactics circulators of the Tax and Spending Control ballot initiative petition allege are being used against them by a union-backed group.

On Tuesday, TASC's backers filed a lawsuit against Nevadans for Nevada, the group they allege has overstepped legal bounds to block the petition from getting on the ballot.

"The tactics of the blockers are a clear violation of the law," TASC's executive director, Bob Adney, said at a news conference Tuesday. "They're trying to silence people's voices."

He said the blockers' tactics might prevent TASC from getting the 83,156 valid voter signatures needed to get on the ballot.

Nevadans for Nevada Chairman Danny Thompson denied the allegations.

"We are not harassing them," he said. "All we are doing is exercising our First Amendment rights, just like they are. We don't use physical tactics."

Thompson said the petitioners were failing in their signature-gathering and seeking someone to blame.

"If they were successful in getting signatures, they wouldn't be suing our organization for exercising our rights," said Thompson, who also heads the state AFL-CIO.

The TASC initiative aims to amend the Nevada Constitution to limit the government's ability to spend money.

Its signature-gatherers, posted outside Department of Motor Vehicles offices, grocery stores and other high-traffic spots in the valley, have been the target of a first-of-its-kind effort in Nevada. The petition-blocking group has deployed its own workers at the same locations to hand out leaflets encouraging people to "Read the Fine Print and Decline to Sign!"

TASC's backers, in their lawsuit, allege that the petition-blockers, who they call "hired thugs," did more than hand out leaflets.

The lawsuit accuses the blockers of "illegally impeding and preventing" signatures from being

gathered "by intimidation, threats, coercion, violence, restraint, and/or undue influence."

As someone was signing the TASC petition, the lawsuit alleges, blockers approached TASC signature-gatherer Nichole Dickens and put their own papers on top of her clipboard. The blockers stood very close to the signer, talking loudly over Dickens, "thus confusing and intimidating the potential signer," who responded by walking away, the lawsuit alleges.

The lawsuit said such actions are illegal under a Nevada statute that prohibits "intimidation of voters" and that specifically mentions petitions.

"Whether or not we make it (onto the ballot) is not the issue," TASC's attorney, Joel Hansen, said. "The issue is, can petitioners gather in peace, or do they have to be intimidated and harassed?"

The lawsuit seeks a restraining order against the petition-blockers and a six-week extension of the June 20 petition deadline for TASC to make up for the time the lawsuit said the signature-gathering effort has been impeded.

It is scheduled for a Thursday hearing in Clark County District Court.

TASC also filed a complaint with the secretary of state's office calling for criminal charges to be filed against the petition-blockers.

The case echoes another case in which Hansen was involved. Two years ago, Hansen was the lawyer for Nevadans for Sound Government, which sued government entities including the DMV and the University of Nevada for preventing petitioners from gathering signatures on public property.

A judge ruled in the group's favor and gave an extension to the petitions, which aimed to repeal the 2003 tax increase and prohibit public workers from serving in the Legislature. But the two initiatives still did not make the ballot.

"This time it's not government interference, it's government employees' unions," Hansen said. "They are only going after our petition because they don't want this petition (TASC) to succeed."

Adney said: "Now we know the lengths to which the politically privileged will go to try to stop this. It scares them to death. All these unions have a vested interest in growing government, raising taxes and increasing spending."

Adney said the blockers' efforts had caused petitioners to become discouraged and gather fewer signatures or quit, meaning TASC had to spend more money on its signature-gathering.

Thompson said the accusations against Nevadans for Nevada, a coalition that includes several unions including teachers, police and firefighters, were implausible.

He said the group's workers were trained according to a strict set of guidelines that prohibit intimidation.

According to a memorandum provided by the group, the petition "educators" are specifically told not to block anyone's path, follow people or vehicles or "engage in harassing, threatening or abusive conduct."

The memo said, "Communications that are respectful will be more effective in carrying the message."

Thompson said his workers' only objective was to give people the facts before they signed the petition.

The union, which previously filed a lawsuit challenging the way TASC is explained on petitions, contends the fine print of the lengthy proposed constitutional amendment contains hidden provisions that people would not like if they knew about them.

"This is an important public policy issue," Thompson said. "Somebody should be saying, 'Hey, take a look at this before you sign.'"

## APPENDIX 7

Jun. 09, 2006

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### **Judge chides ballot groups**

#### **Petition backers, foes agree to rules**

A group of petition circulators and their opponents agreed to abide by a set of ground rules Thursday after a judge lectured them about First Amendment rights and common courtesy.

"What we have to do is we all have to get along, and we cannot have people harassing each other," District Judge Sally Loehrer told the parties during an afternoon hearing.

The matter came before Loehrer after the Committee for Tax and Spending Control filed a lawsuit Tuesday against a union-backed group called Nevadans for Nevada.

TASC, which is gathering signatures for a ballot question designed to limit government spending, alleged the opposing group had used intimidating tactics to deter voters from signing its petition.

Petition circulators have been working outside Department of Motor Vehicles offices, grocery stores and other high-traffic spots in the valley, and Nevadans for Nevada has deployed its own workers at the same locations to hand out leaflets

encouraging people to "Read the Fine Print and Decline to Sign!"

TASC's lawsuit sought a restraining order against the petition-blocking group, which denied engaging in harassment, and a six-week extension of the June 20 petition deadline.

TASC needs 83,156 valid voter signatures to get its question on the November ballot.

Loehrer refused to grant the extension request and said TASC had waited too long to bring the matter to court.

During Thursday's hearing, representatives of both groups agreed to abide by the following rules, which Loehrer incorporated into a court order:

- Neither the petition circulators nor their opponents may yell or use bullhorns.
- No representative of either group may touch the opposing group's supplies or agents.
- Neither group may have more than four workers at any location.
- No more than two representatives of either group may approach a voter at one time.
- If representatives of one group approach a voter first, representatives of the other group must remain at arm's length and not interrupt their conversation.

"Common courtesy says that when one person is speaking to another, another doesn't come up and butt in," Loehrer said.

Attorney Richard McCracken, who represents Nevadans for Nevada, initially opposed the so-called "first-in-time, first-in-right" rule.

"There's no constitutional requirement that one party stay silent because the other is speaking," the lawyer said.

He said the petition opponents need to approach voters before they sign their names, but Loehrer said the opponents can provide the voters with a form authorizing the removal of their signatures and deliver it to the Clark County clerk's office for them.

Gary Peck, executive director of the American Civil Liberties Union of Nevada, observed the hearing and said a court-ordered "first-in-time, first-in-right" rule would have been unconstitutional.

"The First Amendment doesn't say you're free to speak your mind unless you're being rude," Peck said.

But he said the parties can agree to play by a set of rules, as they did at Thursday's hearing.

Bob Adney, TASC's executive director, said that he thinks the new rules will allow his group to gather the necessary signatures by the deadline.