



# NOM EXPOSED

NOVEMBER 2011

## “GAYS AS BULLIES” EXPOSED AS FALSE

EFFORT BY THE NATIONAL ORGANIZATION FOR MARRIAGE TO DEMONIZE,  
INTENTIONALLY CONCEAL DONATIONS REJECTED BY COURTS

The National Organization for Marriage (NOM) argues aggressively that, despite widely-supported public disclosure laws on the books, it does not have to reveal its donors and that marriage equality opponents don't have to be publicly known. NOM stands firmly on the side of nondisclosure and secrecy.

Yet just over the past few weeks and months, multiple federal judges and state boards have have thrown out NOM-backed cases, concluding the reasons NOM cites for needing such secrecy — LGBT people are bullies and will harass NOM supporters — is bogus and without sufficient evidence. NOM has unsuccessfully challenged disclosure laws in Washington, Maine, Minnesota, New York, California, Rhode Island, and Iowa. In fact, in every jurisdiction that NOM and its allies have tried to undermine public disclosure they have lost.

“...WHILE PLAINTIFFS CHARACTERIZE THEIR EVIDENCE AS VOLUMINOUS AND COMPRISED OF ‘VIRTUALLY COUNTLESS REPORTS OF THREATS, HARASSMENT, AND REPRISALS,’ [...] THEY HAVE POINTED TO RELATIVELY FEW INCIDENTS ALLEGEDLY SUFFERED BY PERSONS LOCATED ACROSS THE ENTIRE COUNTRY WHO HAD SOMEHOW MANIFESTED THEIR SUPPORT FOR TRADITIONAL MARRIAGE.”

- U.S. DISTRICT COURT, EASTERN DISTRICT OF CALIFORNIA,  
Filed Nov. 4, 2011

## WASHINGTON

The National Organization for Marriage and one of its affiliates sought to repeal a domestic partnership law two years ago in Washington state. They gathered the requisite number of signatures to put repeal on the ballot, but voters overwhelmingly decided to keep the law in place. During the campaign, the NOM side demanded that the 138,000 signatures remain under seal. If the names were publicly disclosed, they contended, gay people would threaten, harass and intimidate the signers. In October, U.S. District Court Judge Benjamin Settle threw out NOM's case, citing no credible evidence. The case followed from a 2010 U.S. Supreme Court decision in which even Justice Scalia strongly rejected the anti-LGBT groups' claims.

**“PLAINTIFFS HAVE PRODUCED INSUFFICIENT EVIDENCE THAT THE MORE INCENDIARY EVENTS ON WHICH THEY RELY WERE CONNECTED TO PROPOSITION 8 OR TO GAY MARRIAGE AT ALL.”**

**- U.S. DISTRICT COURT, EASTERN DISTRICT OF CALIFORNIA, Filed Nov. 4, 2011**

## CALIFORNIA

In January 2009, NOM sued the California Secretary of State in federal court to avoid disclosing donors to the Yes on Proposition 8 campaign. California law requires campaign committees to report information for any contributors of \$100 or more, which is then made publicly available. Rather than follow the decades-old California Public Records Act, NOM suggested that it was entitled to a blanket exemption. In October, U.S. District Court Judge Morrison England Jr. rejected NOM's suit, upholding California's campaign finance reporting laws and noting that “disclosure... prevents the wolf from masquerading in sheep's clothing.” As in Washington the court found NOM's evidence insufficient.

## MAINE

Throughout 2009, NOM provided \$1.8 million to oppose the ballot referendum on marriage equality in Maine, but it illegally failed to disclose where the money came from. Maine law requires that any funds raised to support or oppose a ballot question be made public. The Maine Ethics Commission launched an inquiry and unanimously denied NOM's request to dismiss the state investigation into the organization's finances. NOM sued the Commission in February of this year, but a federal judge sided with the Commission and upheld Maine's campaign finance disclosure law as constitutional. NOM then took its case to the 1st Circuit Court of Appeals, which sided with the State of Maine earlier this month. (NOM remains under investigation by state officials.)

## MINNESOTA

In June 2011, the Minnesota Campaign Finance and Public Disclosure Board ruled that groups advocating for or against a ballot measure on gay marriage are subject to certain disclosure requirements under state law. NOM had falsely argued that supporters of marriage equality would harass and intimidate their donors, and cause property damage if they were made public. The Board rejected NOM's bid for nondisclosure. The Board's decision followed a federal court ruling in September 2010 that upheld the state's campaign finance disclosure laws against challenge by NOM's lawyers. NOM is continuing to fight disclosure of its donors in connection with the ballot measure.

## NEW YORK

NOM wanted to run ads in support of Carl Paladino for Governor in 2010 but didn't want to make donors' names public. Under New York law, running ads in support of any candidate could classify the group as a political committee. As a political committee, it, like every other organization, would then be subject to several reporting and disclosure requirements. NOM refused and filed suit. U.S. District Judge Richard Arcara rejected NOM's suit in February.

## RHODE ISLAND

In September 2010, NOM sued the state of Rhode Island to keep its donors secret, arguing the state's restrictions on political advertising and campaign finance disclosure requirements were unconstitutional and overly broad. A district judge disagreed, and the 1st Circuit Court of Appeals upheld the district judge's ruling.

## IOWA

In 2009, NOM meddled in a special legislative election, part of its efforts to get a constitutional amendment reversing the state Supreme Court's unanimous decision recognizing marriage equality. NOM asked its supporters to contribute in a nationwide email saying that "...best of all, NOM has the ability to protect donor identities." The e-mail and subsequent complaints prompted a letter from the Iowa Ethics and Campaign Finance Board stating that state law requires disclosure of political contributions solicited for the Iowa campaign.

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Why NOM doggedly fights donor disclosure is unclear. It has argued that complying with campaign finance laws is burdensome and unconstitutional. It has also argued that gay rights advocates and their supporters will harass, intimidate, even damage property of the donors should their identities be known. Serious scrutiny of these claims has revealed only isolated incidents, questionable reports and, more often than not, legitimate acts of public criticism typical of any hard-fought campaign.

In California, for example, the court debunked NOM's harassment allegations, pointing out that "numerous of the acts about which [they] complain are mechanisms relied upon, both historically and lawfully, to voice dissent... This court cannot condemn those who have legally exercised their own constitutional rights in order to display their dissatisfaction with [NOM's] cause." Ultimately, vilifying the LGBT community is part of the group's fake victimization crusade.

"... THE VAST MAJORITY OF THE INCIDENTS CITED BY PLAINTIFFS ARE ARGUABLY, AS CHARACTERIZED BY DEFENDANTS, TYPICAL OF ANY CONTROVERSIAL CAMPAIGN. FOR EXAMPLE, PICKETING, PROTESTING, BOYCOTTING, DISTRIBUTING FLYERS, DESTROYING YARD SIGNS AND VOICING DISSENT DO NOT NECESSARILY RISE TO THE LEVEL OF 'HARASSMENT' OR 'REPRISALS,' ESPECIALLY IN COMPARISON TO ACTS DIRECTED AT GROUPS IN THE PAST... A GOOD PORTION OF THESE ACTIONS ARE THEMSELVES FORMS OF SPEECH PROTECTED BY THE UNITED STATES CONSTITUTION."

- U.S. DISTRICT COURT, EASTERN DISTRICT OF CALIFORNIA, Filed Nov. 4, 2011

# “PLAINTIFFS’ LIMITED EVIDENCE IS SIMPLY INSUFFICIENT TO SUPPORT A FINDING THAT DISCLOSURE OF CONTRIBUTORS’ NAMES WILL LEAD TO THREATS, HARASSMENT OR REPRISALS.”

- U.S. DISTRICT COURT, EASTERN DISTRICT OF CALIFORNIA, Filed Nov. 4, 2011

Even U.S. Supreme Court Justice Antonin Scalia has come down on the side of public disclosure and against NOM's secrecy crusade. In *Doe v. Reed*, he wrote: “Requiring people to stand up in public for their political acts fosters civic courage, without which democracy is doomed. For my part, I do not look forward to a society which, thanks to the Supreme Court, campaigns anonymously...and even exercises the direct democracy of initiative and referendum hidden from public scrutiny and protected from the accountability of criticism. This does not resemble the Home of the Brave.”

October 18, 2011

This summer, you signed a pledge to the National Organization for Marriage supporting the enshrinement of discrimination in the U.S. Constitution. A Federal Marriage Amendment would deny loving and committed same-sex couples the legal recognition they deserve. As if this were not bad enough, the same pledge included a promise on your part to establish a McCarthy-like presidential commission that would investigate alleged harassment claims against opponents of marriage equality. While I would urge you to be on the right side of history and support marriage equality, the underlying assumptions behind the fourth tenant of the pledge you took have again been demonstrated to be patently false.

Anti-LGBT forces have consistently argued that they have been subjected to widespread harassment and intimidation for expressing their views. If this were true we would share equally in their concern, as the lesbian, gay, bisexual and transgender community is unfortunately all too familiar with the experience of harassment and intimidation. But when NOM and their friends have had to support these baseless allegations with concrete facts in court and under oath, they have time and again been unable to do so.

This Monday, a federal judge in Washington State – appointed by George W. Bush – flatly rejected claims of harassment and intimidation made by NOM and its allies to support their efforts to keep petition signers for a 2009 referendum (on domestic partnerships) hidden from public view. The court dissected the groups' claims one-by-one, rejecting them as speculative or even bogus. In court the “victims” either admitted that they had not been harassed or could not show that any perceived slights were related to their positions on LGBT civil rights. The court ruled that NOM and its allies had failed to show serious and widespread threats, harassment or reprisals. This decision followed from last year's Supreme Court case, *Doe v. Reed*, in which even Justice Scalia strongly rejected the anti-LGBT groups' claims.

This is not the first time a federal court has scratched its head wondering where the evidence is to support marriage equality opponents' claims of harassment and discrimination. In California, a federal court debunked NOM's harassment allegations pointing out that “numerous of the acts about which [NOM] complain[s] are mechanisms relied upon, both historically and lawfully, to voice dissent... This court cannot condemn those who have legally exercised their own constitutional rights in order to display their dissatisfaction with [NOM's] cause.”

NOM has been painting the gays-are-bullies mural for a while, which of course is a tried and true practice of all anti-gay groups dating back decades. It is their loudest battle cry - and is the reason they give to fight tooth and nail through scores of lawsuits to keep their donors secret – despite popular disclosure laws that promote transparency. Vilifying the LGBT community is part of the group's fake victimization crusade - which has found its way into your presidential campaign.

As I hope you can appreciate now, you were duped into taking a pledge that is substantively and morally empty, one which is based on claims that have been soundly rejected by even conservative federal judges. We urge you to reconsider and retract your pledge. It's doubtful that most Americans would look fondly upon a candidate whose plan is to walk into the White House with a plan to launch baseless investigations of their fellow citizens.

Sincerely,



Joe Solmonese

**NOM has taken the gays-are-bullies narrative to the 2012 Republican presidential primary – having most of the candidates sign a so-called “marriage pledge.” Not surprisingly, the pledge called for a constitutional amendment banning same-sex marriage. Also included, however, was a little noticed provision calling for each candidate, if elected President, to set up a McCarthy-style presidential commission to “investigate” alleged claims of harassment and threats by LGBT Americans.**

**Last month, HRC President Joe Solmonese wrote a letter to those contenders who signed the pledge (Mitt Romney, Rick Perry, Michele Bachmann and Rick Santorum). “You were duped into taking a pledge that is substantively and morally empty, one which is based on claims that have been soundly rejected by even conservative federal judges,” wrote Solmonese. “It’s doubtful that most Americans would look fondly upon a candidate whose plan is to walk into the White House with a plan to launch baseless investigations of their fellow citizens.”**