

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

NATIONAL ORGANIZATION FOR)
MARRIAGE and)
AMERICAN PRINCIPLES IN ACTION,)
)
Plaintiffs)
)
v.)
)
WALTER F. MCKEE, et al.)
)
Defendants.)

Civil No. 1:09-cv-00538

Excerpts from NOM Deposition dated May 26, 2010 and June 23, 2010

REDACTED PURSUANT TO CONSENT CONFIDENTIALITY ORDER DATED
FEBRUARY 16, 2010. UNREDACTED COPY OF THIS DOCUMENT WILL BE FILED
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UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

ORIGINAL

Civil Docket No.: 1:09-cv-00538

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NATIONAL ORGANIZATION FOR MARRIAGE
AND AMERICAN PRINCIPLES IN ACTION,

Plaintiffs

vs

WALTER F. MCKEE, et al.,

Defendants

* * * * *

CONFIDENTIAL DEPOSITION

DEPONENT: BRIAN S. BROWN

Taken before Joanne P. Alley, a Notary Public in
and for the State of Maine, at the offices of the
Maine State Attorney General, Burton Cross Office
Building, Augusta, Maine, on **May 26, 2010**,
beginning at 1:00 p.m., and on **June 23, 2010**,
beginning at 9:15 a.m., pursuant to notice given.

APPEARANCES:

THOMAS KNOWLTON, ESQUIRE
PHYLLIS GARDINER, ESQUIRE
JOSIAH NEELEY, ESQUIRE

ALSO PRESENT:

JONATHAN WAYNE on May 26, 2010 and June 23, 2010
PAUL LAVIN on May 26, 2010

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I N D E X

DEPONENT:

BRIAN S. BROWN

By Attorney Knowlton 4, 121
By Attorney Neeley 119

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1 (CONFIDENTIAL DEPOSITION)

2 (This deposition was taken before Joanne
3 P. Alley, Notary Public, at the offices of Maine
4 State Attorney General, Burton Cross Office
5 Building, Augusta, Maine, on May 26, 2010,
6 beginning at 1:00 p.m., and on June 23, 2010,
7 beginning at 9:15 a.m.)

8 (The deponent was administered the oath
9 by the Notary Public.)

10 BRIAN S. BROWN, after having been duly
11 sworn by the Notary Public, was deposed and
12 testified as follows:

13
14 EXAMINATION

15 BY MR. KNOWLTON:

16 Q. Please state your full name for the record.

17 A. Brian Stephen Brown.

18 Q. Mr. Brown, how old are you?

19 A. I am 34 years old.

20 Q. My name is Thomas Knowlton. I'm an assistant
21 attorney general representing the defendants in
22 this action, and you're here today to answer some
23 questions about the lawsuit that the National
24 Organization for Marriage has brought against the
25 defendants.

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21 Q. I want to ask you now about the NOM marriage PAC.

22 Is that another separate entity?

23 A. Correct, in New Jersey.

24 Q. Is that formed under New Jersey law?

25 A. We don't have a federal PAC right now. We plan on

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1 creating one, but we don't have one right now.

2 Q. So the PAC that is called the NOM Marriage PAC is
3 that a New Jersey state PAC?

4 A. There is no NOM Marriage PAC.

5 Q. Okay, I'm mistaken then. I thought I saw some
6 reference to something called a NOM marriage PAC.

7 A. We plan on having it, but we don't have it now.

8 Q. That would be the federal PAC?

9 A. That would be a federal political action
10 committee, connected political action committee.

11 Q. By connected political action committee, what do
12 you mean?

13 A. Connected to our 501(c)(4) under FEC regulations.

14 Q. What's the name of the PAC that NOM formed in New
15 Jersey?

16 A. NOM PAC NJ.

17 Q. Is there also a NOM PAC NY?

18 A. Yes, there is.

19 Q. And is the Rhode Island PAC called NOM Rhode
20 Island PAC?

21 A. That one is NOM Rhode Island PAC just to mix it
22 up.

23 Q. What is the California PAC called?

24 A. Well, you ask seemingly simple questions that are
25 very hard to answer.

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2 A. The reason it's hard to answer is because NOM
3 California was not -- under state rules was a PAC
4 but not a candidate PAC. It was a ballot
5 initiative -- primarily sponsored ballot
6 initiative committee connected to NOM and which
7 NOM could pay the administrative expenses of, but
8 it was separate from NOM and had its own
9 obligations. So when you ask me about the PAC, I
10 assume you're -- you may be referring to that. In
11 the wake of the passage of Proposition 8, we have
12 now filed to start an independent expenditure PAC
13 called NOM California PAC. There was NOM
14 California and now there's NOM California PAC.

15 Q. Okay, I understand. The first one was formed just
16 for purposes of ballot initiative and now this
17 latest one is formed for other purposes?

18 A. Correct.

19 Q. What are the purposes for NOM California PAC?

20 A. To be able to make independent expenditures to
21 support candidates that support traditional
22 marriage and to make independent expenditures to
23 oppose candidates that support same sex marriage.

24 Q. Are there any other PACs that NOM has formed? Is
25 there one formed in Virginia?

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1 A. No. There are no other PACs that NOM has formed.

2 Q. Why didn't NOM form a PAC in Maine?

3 A. Because after having legal advice, there was no
4 need to.

5 Q. So it sounds like the reason for NOM forming PACs
6 was a determination made by counsel for NOM that
7 it was necessary for NOM to form a PAC to do what
8 NOM wanted to do in that state?

9 A. Correct. Depending on what our objectives are
10 would depend on whether a PAC would need to be
11 created.

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Q. So why did NOM form the PAC in New York?

A. Because that's the only way in New York to support
or oppose candidates.

Q. You mean under New York law?

A. Under New York law.

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5 BY MR. KNOWLTON:

6 Q. I was talking actually about the most recent one,
7 NOM California PAC, the thing that's called NOM
8 California PAC that engages in independent
9 expenditures. Are you the chairperson of that
10 entity?

11 A. Well, we haven't engaged in independent
12 expenditures yet through that PAC.

13 Q. All right. Has it been formed?

14 A. It has been formed.

15 Q. Are you the chairperson?

16 A. I am.

17 Q. All right. Now, the older PAC that was just
18 called NOM California that dealt with balloting
19 issues, were you the chairperson of that entity?

20 A. I was the treasurer for that entity.

21 Q. And as treasurer you had sole decision making
22 authority?

23 A. Not there.

24 Q. All right.

25 A. There's a special structure in California called

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1 the primarily created ballot initiative committee.

2 Q. Okay, tell me about that.

3 A. Relatively unique in the law in California in
4 which a nonprofit organization like ours can
5 create a ballot initiative committee and not -- do
6 you really want to know about this?

7 Q. In a sentence or two.

8 A. Okay, in a sentence or two.

9 Q. If you can.

10 A. A nonprofit organization if it wants to be
11 involved in an initiative or referenda can create
12 a committee what's called a primarily sponsored
13 ballot initiative committee which means that the
14 nonprofit has control of it and is able to use its
15 administrative expenses to fund it and then to
16 raise money within it but have it covered by the
17 administrative expenses covered by the (c)(4)
18 nonprofit.

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3 Q. Are funds that are raised -- strike that. Do each
4 of these PACs, these state PACs, do their own
5 fundraising?

6 A. Yes.

7 Q. Are funds raised by the PAC available for use by
8 NOM, the (c)(4)?

9 A. It would depend on state law. I don't know that
10 we've ever done that other than if you're closing
11 a PAC down you have to give the money to some
12 place and then you would do that, but I'm not -- I
13 don't -- that would make little sense.

14 Q. All right. Have any of your NOM PACs closed down?

15 A. No.

16 Q. So there would be separate bank accounts
17 established for each of these NOM PACs?

18 A. Correct.

19 Q. Is NOM registered -- the (c)(4) now, is NOM
20 registered with the FEC?

21 A. I don't know what you mean by that.

22 Q. NOM files independent expenditure reports with the
23 FEC?

24 A. Yes. It's registered for independent
25 expenditures.

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1 Q. It files reports whenever it makes independent
2 expenditures requiring the filing of a report?

3 A. For federal candidates, yes.

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8 Q. So how does NOM track contributions that are being
9 made to the NOM Legal Defense Fund?

10 A. They're all tagged as NOM Legal Defense Fund
11 donations when they're received either through the
12 internet or through mail, and that's how we know
13 what donations are going where.

14 Q. Are they deposited in a designated bank account?

15 A. I don't believe so.

16 Q. Which bank account are they deposited in?

17 A. Our Education Trust 501(c)(3).

18 Q. There are at least two bank accounts that we have
19 received statements from you guys that refer to
20 the Education Trust.

21 MR. NEELEY: If I could clarify, I think
22 one of the statements is actually listed as
23 Education Trst, which I think is a typo. I
24 believe that's for the Ruth Institute, and if you
25 have the statements --

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1 BY MR. KNOWLTON:

2 Q. Would you look at this document for a second,
3 which appears to be a bank statement for the
4 National Organization for Marriage Education Trst,
5 Inc. Are you familiar with that bank statement?

6 A. Yes.

7 Q. Is that -- for which NOM entity is that bank
8 account designated?

9 A. It's the 501(c)(3) or it is a trust. It is the
10 trust, the 501(c)(3).

11 Q. Is this for the Ruth Institute or is this for the
12 Education Trust?

13 A. No, this is the Education Trust.

14 Q. So are the donations to the NOM Legal Defense Fund
15 being deposited into that bank account which is

16
17 A. There are actually two bank accounts for the trust
18 in order to -- just for management issues, and the
19 Ruth Institute has a separate bank account but it
20 is under the NOM Education Trust. So just you
21 giving me that number, I don't know which one that
22 refers to.

23 Q. That was the one that said Education Trst, that
24 number I just referred to.

25 A. I believe that this is for the Ruth Institute part

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1 of our Education Trust, not the -- not the trust
2 itself.

3 Q. What's the -- sorry, go ahead.

4 A. There are two accounts. There's one account for
5 the -- all donations that are received for the
6 Ruth Institute are put into and then there's our
7 general (c)(3) account.

8 Q. So NOM receives contributions that are earmarked
9 for the Ruth Institute?

10 A. No, NOM doesn't, the Education Trust does. That's
11 a separate entity.

12 Q. Well, what distinguishes the trust receiving a
13 contribution as opposed to NOM receiving a
14 contribution?

15 A. Because they're separate entities. NOM is not
16 receiving the donation, the Education Trust is
17 receiving the donation. It is a trust. It is not
18 the corporation itself.

19 Q. Here's another bank statement for the National
20 Organization for Marriage Education Trust, account

21
22 Would you look at that for a second?

23 A. Yes.

24 Q. What is that account for?

25 A. This is our -- this is for the trust -- this is

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1 for the trust general fund and, again, we created
2 a separate bank account with advice from our
3 lawyers for the Ruth Institute because the Ruth
4 Institute was originally created as a separate
5 organization but then became a project of the
6 National Organization for Marriage. So for
7 management purposes, we created a separate bank
8 account.

9 Q. So if someone sent NOM a check for the purpose of
10 donating to the NOM Legal Defense Fund would that

11

12 A. Yes. Let me clarify. If NOM received the check,
13 it would need to be written out to NOM. If it's
14 written out to the NOM Legal Defense Fund or the
15 NOM Education Trust, that's the only way by which
16 it would be deposited into those accounts. If
17 it's written out to NOM, it's a separate -- it's
18 going to NOM.

19 Q. So if someone makes a check payable to the NOM
20 Legal Defense Fund, your testimony is that it will

21

22 A. Yes.

23 Q. But no check payable to NOM will get deposited in

24

25 A. It could be if we had spoken -- if there was a

1 letter or something saying this was meant for the
2 (c)(3) and we clarified that the intent of the
3 donor was to -- and we spoke with the donor and
4 they said, well, you know, we made a mistake, we
5 meant to write it out to the NOM Education Trust.
6 If that was clear, then you could have a check
7 written to NOM that would be deposited, but we
8 would have to clarify and, again, we would get the
9 advice of our lawyers on how to do that. We've
10 done that before.

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MR. KNOWLTON: I'd like to just put a stipulation on the record here. I just spoke with counsel for NOM and he agreed that NOM would stipulate to the authenticity of all documents created by NOM and their affiliates and produced by NOM in this case that these documents were created by NOM and disseminated to their mailing lists on or about the date shown on the document or if there is no date, on or about the date that the document was prepared, is that right, Josiah?

MR. NEELEY: That's correct.

MR. KNOWLTON: And, similarly, with respect to the bank account records, NOM stipulates that the bank account records that have been provided to the defendants are authentic business records of NOM. They are going to reserve their objections under the First Amendment but otherwise

1 don't object to the foundational admissibility of
2 those bank account statements, is that correct?

3 MR. NEELEY: That's correct.

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MR. KNOWLTON: Does either Mr. Neeley or Mr. Brown want to let us know which NOM PACs we have received account statements for and which we haven't?

MR. NEELEY: I believe there's an account

which I don't have here down in my notes whether it's California or New York.

THE DEPONENT: I believe that's New York.

MR. NEELEY: I think it's New York. The California one is an independent PAC.

MR. KNOWLTON: So, Mr. Brown, is it your testimony that the defendants have not been provided with any bank account statements for either the NOM Rhode Island PAC or the New York PAC?

MR. NEELEY: No, you should have those statements for those accounts.

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13 Q. My question is much simpler. Are there any PACs,
14 whether or not you contend that NOM does or does
15 not have corporate control over, that we have not
16 been provided the bank account statements for
17 other than the California PAC?

18 MR. NEELEY: The only other PAC I believe
19 would be the New Jersey PAC.

20

21 BY MR. KNOWLTON:

22 A. Yeah, there's a Marriage PAC New Jersey, and I
23 would have to look at -- that has not been active
24 and I would have to look at whether -- look at the
25 law in New Jersey, but that's the only -- the

1 Marriage PAC New Jersey would be the only one. We
2 do not have a federal PAC.

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25 Q. What records does NOM keep to keep track of its

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1 revenues and its expenditures?

2 A. We keep copies of the checks, donation forms.

3 When it's a snail mail donation we even generally

4 save the envelope.

5 Q. For how many years has NOM kept the checks in

6 which donations are made?

7 A. Well, there's a copy of -- we keep a copy of the

8 check. That would be going back to 2007.

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NOM Rhode Island?

A. Correct.

Q. Thank you, and here's another one for account

NOM. Could you tell us what that is?

A. It looks like this may be a PAC account, but I'm not sure. This may be -- oh, yeah, this is -- this is the DOMA Defense Fund which we created -- we did create a separate account for the DOMA Defense Fund in order to manage -- manage it more efficiently. I think at the time what we wanted to do is make sure that we were able to account for the money that went into the DOMA Defense Fund because it had its own micro site.

NOM for contributions to the DOMA Defense Fund?

A. Correct.

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12 A. Well, NOM does the payroll and takes care of the
13 expenses for NOM Rhode Island. So you would have
14 transfers going back and forth from accounts for
15 something like NOM Rhode Island. Also for the
16 Ruth Institute NOM pays the payroll for the Ruth
17 Institute out of NOM, but the Ruth Institute is a
18 501(c)(3) under the NOM Education Trust. So
19 instead of having the NOM Education Trust create a
20 whole separate payroll system, the NOM Education
21 Trust reimburses NOM for paying payroll of the
22 501(c)(3). So there would -- there will -- there
23 are a number of transfers every month that account
24 for payroll but also for general expenses. NOM
25 Rhode Island is -- is -- we fund NOM Rhode Island,

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1 we keep it as a separate account. It's under NOM,
2 we're all one organization, but as a means of
3 record keeping we have a separate bank account.

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Q. What did you mean by being active in all 50 states in December 2009?

A. We have members and supporters in all 50 states, we send e-mails and communications to individuals in all 50 states and we're a national organization. We're not devoted to any one particular state. We're devoted to protecting marriage throughout the country.

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1 Q. Let me just show you the form 990 for 2008 that
2 was attached to the Complaint which I'll mark as
3 Exhibit 10.

4 (Whereupon, Deposition Exhibit #10 is marked.)

5

6 BY MR. KNOWLTON:

7 A. Yes, I was going to say two million but it's three
8 million.

9 Q. NOM spent roughly three million dollars in 2008?

10 A. NOM, yes, but, again, it gets complicated because
11 of state law. We had a PAC, a ballot initiative
12 committee that spent substantially more in
13 California and it was separate.

14 Q. So you're saying that the -- are you referring to
15 the California PAC by what you just said?

16 A. Well, there's NOM California -- there's NOM
17 California which is a primarily sponsored ballot
18 initiative committee, and then that still exists
19 but there's no activity, and then there's NOM
20 California PAC which is an independent expenditure
21 PAC. So they're actually two different entities.

22 MR. NEELEY: If I could clarify, was the
23 NOM independent expenditure PAC active in 2008?

24 THE DEPONENT: No, no, no, it was not.

25

1 BY MR. KNOWLTON:

2 A. So, yes, and the 1.87 million dollars that we
3 contributed through the separate ballot initiative
4 committee is listed in the 990 on page 2.

5 Q. So on page 2 of Exhibit 10 where it refers to
6 expenses of roughly 1.87 million dollars, what
7 were those expenses, generally speaking, for?

8 A. It was -- it was contributions through the
9 separate -- the separate primarily organized
10 ballot initiative committee to passage of
11 Proposition 8.

12 Q. So NOM contributed 1.8 million dollars to the
13 separate ballot initiative --

14 A. No.

15 Q. -- committee?

16 A. No, NOM raised -- the law in California is that if
17 you're going to raise money specifically for a
18 ballot initiative that you need to -- that you
19 have a couple of options. One option is to create
20 a primarily sponsored ballot initiative committee
21 and that allows the sponsoring organization, the
22 501(c)(4), to pay for the administrative costs,
23 and then that organization -- that committee then
24 raises its own money and spends it, but because it
25 was a primarily sponsored committee, at least my

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1 understanding of this, is that it still has to be
2 put on your 990, but the committee itself was the
3 one doing the fundraising specifically for
4 California, not NOM.

5 Q. Right now I'm talking about spending, not
6 fundraising, because this page 2 is about
7 spending.

8 A. Okay.

9 Q. So this says that NOM spent roughly 1.8 million
10 dollars in the state of California in 2008.

11 A. Through the primarily sponsored ballot initiative
12 committee.

13 Q. What does that mean "through the committee?" Are
14 you saying you gave this through the committee?

15 A. No.

16 Q. Or the committee was the entity that decided how
17 the money would be spent?

18 A. The money was both raised and spent through the
19 committee; the money was both raised and spent
20 through the committee.

21 Q. What do you mean "the money was spent through the
22 committee?"

23 A. NOM itself didn't make the contributions, the
24 committee did. NOM under California law is the
25 primary sponsor but to say that NOM did it would

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1 mean that we were breaking California law. NOM
2 can only do this through the primarily sponsored
3 ballot initiative committee.

4 Q. What you're saying is the form 990 requires these
5 expenditures to be reported on NOM's 990?

6 A. Correct.

7 Q. Okay. Would you agree that NOM's purpose in
8 spending the money in California was, first, to
9 get enough signatures to put Proposition 8 on the
10 ballot and, second, to promote Proposition 8?

11 A. Yes.

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Q. Okay. Let's talk about 2009 and, first, let's just talk about NOM's efforts nationally. Roughly how much money did NOM spend in 2009?

A. I think seven and a half million dollars.

Q. I'm looking for round numbers, so that's fine. It may be a little more, it may be a little less?

A. Yeah, or eight. Actually I think it was more like eight, sorry.

Q. So NOM spent roughly eight million dollars during 2009?

A. (Deponent nods affirmatively.)

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4 Q. Do you recall Dede Scozzafava?

5 A. Oh, yes.

6 Q. S-C-O-Z-Z-A-F-A-V-A?

7 A. I thought you were asking about state legislative

8 races. That's a federal congressional special

9 election race and we did an independent

10 expenditure in that race.

11 Q. Roughly how much money did NOM spend on the Dede

12 Scozzafava -- if I'm saying that right -- race?

13 Am I saying that right?

14 A. Scozzafava, yeah, roughly \$100,000. That was an

15 independent expenditure, and that's all filed with

16 the FEC as far as an independent expenditure form.

17 Q. You would agree with me that NOM's purpose in

18 running the ads about Dede Scozzafava was to

19 persuade New Yorkers to vote against her?

20 A. We didn't -- we didn't -- we did mailings and

21 radio ads I believe. Is that what you're

22 referring to or television ads? You don't care

23 what it is.

24 Q. Regardless of the media.

25 A. Yes, yes, that was an independent expenditure so

1 there was express advocacy.

2 Q. And NOM's purpose was to defeat Dede Scozzafava,
3 agreed?

4 A. The purpose of that expenditure, yes.

5 Q. And did NOM spend money in New Hampshire in 2009?

6 I'm referring to the Jeb Bradley state senate

7 race. Are you familiar with that?

8 A. Yes, we did. We contributed money to a PAC and we

9 -- I think we did issue ads in that race.

10 Q. Do you recall how much money NOM spent in New

11 Hampshire in 2009?

12 A. I don't.

13 Q. Can you give me a rough order of magnitude on how

14 much it was?

15 A. It would be much smaller, \$10,000, \$15,000.

16 Q. Other than the ads about the Jeb Bradley race, did

17 NOM spend money in New Hampshire in 2009

18 concerning Governor Lynch?

19 A. Well, we spent funds on lobbying or making, you

20 know, educating voters on the fact that there was

21 a vote coming up and they should contact their

22 representatives to vote no and also to urge

23 Governor Lynch to not sign the bill.

24 Q. Do you agree that NOM's purpose on spending money

25 in connection with that state senate district race

182

1 involving Jeb Bradley was to promote the election
2 of Jeb Bradley?

3 A. No. In that race I believe what NOM did was we
4 did voter education on Bradley's positions and
5 then we did contribute some direct money to a
6 political action committee. So there were two
7 separate expenditures, if I recall correctly, and
8 one of them was a survey.
9 (Whereupon, Deposition Exhibit #11 is marked.)

10

11 BY MR. KNOWLTON:

12 Q. I'm showing you what's marked as Defendant's
13 Exhibit 11. It appears to be an April 21, 2009
14 e-mail update written by NOM.

15 A. Yes, we gave -- as I said, we gave a direct
16 contribution to Cornerstone Action PAC.

17 Q. What was the purpose of Cornerstone Action PAC?

18 A. It's a political action committee dedicated to
19 electing pro-family legislators in New Hampshire.

20 Q. Was that PAC's purpose in spending money to
21 promote the election of Jeb Bradley?

22 A. Yeah, the purpose of the expenditure in that race,
23 yes, but that is not -- that's not -- just so
24 everyone knows, I'm not the treasurer of that PAC
25 and that's not controlled by NOM.

183

1 Q. What other states other than Maine did NOM spend
2 money in during 2009?

3 A. Iowa.

4 Q. What did NOM do in Iowa to spend money in 2009?

5 A. We did -- we did an Iowa-specific ad. We also
6 were involved in a special election. I believe
7 that was in 2009, the Steve Burgmeier race.

8 Q. When you say you were involved in a special
9 election, what do you mean by that?

10 A. We did an independent expenditure in that race.

11 Q. Was the expenditure designed to promote or defeat
12 Mr. Burgmeier?

13 A. Promote.

14 Q. And he was a pro-family candidate, correct?

15 A. Correct.

16 Q. Okay, and roughly what was the size of that
17 independent expenditure?

18 A. I think \$96,000.

19 Q. What other states did NOM spend money in during
20 2009?

21 A. Well, Iowa, New Hampshire, Maine, Washington, D.C.

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7 Q. So you, Mr. Mutty and Mr. Emrich were the
8 organizers of the StandforMarriage Maine PAC?

9 A. Yes, yes.

10 Q. Was anyone else involved?

11 A. Well, I think pretty early on we knew that there
12 would need to be a campaign manager, and so Frank
13 Schubert of Schubert Flint Public Affairs was
14 involved. I don't recall the exact time at which
15 he became involved.

16 Q. What was your formal position in StandforMarriage
17 Maine?

18 A. I was an executive committee member.

19 Q. What was the role of the executive committee?

20 A. To give direction and leadership to the overall
21 campaign to help, you know, guide the committee.

22 Q. Was there a fundraising committee at
23 StandforMarriage Maine?

24 A. No.

25 Q. Did the executive committee in effect also serve

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1 s the fundraising committee for StandforMarriage

2 Maine?

3 A. Yes.

4 Q. What was your role at StandforMarriage Maine? I

5 understand you were a member of the executive

6 committee but what did that mean?

7 A. Well, we had weekly calls. We had to hire a

8 campaign manager. We had to do everything that

9 you had to do to direct a campaign, including

10 raising money. So I also helped in fundraising.

11 Q. How did you help in fundraising for

12 StandforMarriage Maine?

13 A. Well, I wore two hats. I wore the hat of being an

14 executive committee member and so we would

15 encourage folks to give directly to

16 StandforMarriage Maine.

17 Q. Can I stop you for a second? When you say "we",

18 do you mean NOM sent out e-mails encouraging

19 people to donate directly to StandforMarriage

20 Maine?

21 A. No. When I say "we", I mean members of the

22 executive committee. You asked what our functions

23 were.

24 Q. Okay, I'm sorry, go ahead. I'm sorry, so you said

25 "we" meaning the executive committee of

1 StandforMarriage Maine encouraged people to donate
2 directly to StandforMarriage Maine?

3 A. Correct, and so I did that also, but obviously
4 from the beginning because, you know, NOM had, you
5 know, given a substantial amount to California, we
6 always thought that NOM would give a substantial
7 amount to Maine, but ideally it would be a lesser
8 substantial amount rather than a bigger
9 substantial amount.

10 Q. What was the initial expectation of how much NOM
11 was going to give to StandforMarriage Maine?

12 A. Well, I think that -- I think we initially thought
13 the absolute top would be a million dollars.

14 Q. How was that figure arrived at?

15 A. Well, it had been very difficult. I had moved to
16 California with my family to do Proposition 8 and
17 we had -- we were a growing organization. We had
18 been asked to do a lot of different things in a
19 lot of different states and, therefore, to do
20 another 1.8 million dollars or whatever we spent
21 in California we didn't want to do again. So, you
22 know, the goal was to do something substantial, a
23 million dollars. The ideal would have been that
24 we would have -- I think initially the budget was
25 somewhere around two and a half to three million

1 dollars. I could be wrong on that.

2 Q. When you say "the budget" you mean

3 StandforMarriage Maine's budget?

4 A. Yeah, I think the budget may have actually been

5 like three million dollars initially. I need to

6 go back and review my notes because it quickly

7 changed, and so the idea would be that, you know,

8 we would -- it would be a very substantial gift to

9 give a million dollars to a state effort.

10 Q. How did that initial expectation change over time?

11 A. Well, similar to California, that as we were -- we

12 were -- unlike California, we were greatly out

13 spent in Maine and, therefore, in order to keep up

14 and get our message out, we had to do more --

15 there had to be more money.

16 Q. How was it that StandforMarriage Maine asked NOM

17 for money? And I say that because you were

18 wearing two hats. You were on the executive

19 committee of StandforMarriage Maine and you were

20 also the executive director of NOM. So how did

21 that happen?

22 A. Well, it happened in a number of ways. Obviously

23 the campaign manager when a campaign is laid out

24 and you have a certain budget, when you're not

25 meeting that budget, he's going to say we need to

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1 raise more money and then everyone is going to go
2 out and try to raise the money. One of the
3 functions I had was to have -- you know, to have
4 NOM give money to StandforMarriage Maine when it
5 was -- when it was needed and to also make sure
6 that there was other fundraising going on.

7 Q. And so as the summer of 2009 progressed, would you
8 discuss during your weekly NOM executive committee
9 phone calls the potential for increasing --

10 A. Yes.

11 Q. -- the amount of money that NOM was going to give
12 to StandforMarriage Maine?

13 A. Yes.

14 Q. Was there consensus amongst the members of the NOM
15 executive committee that that was an appropriate
16 thing to do?

17 A. Yes.

18 Q. How was it decided that ultimately NOM would give
19 roughly 1.8 million to StandforMarriage Maine?

20 A. Well, there was complete consensus that this was
21 an important fight and that we should increase
22 what we originally thought we were going to give.

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Q. Okay. Why is the StandforMarriage Maine budget contained in NOM's National Strategy for Winning the Marriage Battle?

A. Well, because we wanted to let folks who were interested in our strategy know the groups that we're supporting and what they're going to do with -- you know, what they're going to do. So we also included, you know, New Jersey and we had already given a significant amount of money to Maine and so it was informational. I mean, there's also information on us giving money to APP or supporting APP here.

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11 Q. Was Exhibit 12 also sent to major donors?

12 A. Yes, it was. 13 Q. All right. Going back to the efforts in Maine for

14 a second, what was the initial purpose in NOM

15 giving money to StandforMarriage Maine?

16 A. To allow StandforMarriage Maine to promote the

17 referendum.

18 Q. Right. So in other words, is it fair to say it's

19 in two parts, NOM's initial purpose in giving

20 money to StandforMarriage Maine was to get enough

21 signatures to put the question on the ballot?

22 A. That was the first phase definitely.

23 Q. And the second phase or second reason NOM gave

24 money to StandforMarriage Maine was to promote

25 Question 1 after it was on the ballot?

1 A. Correct.

2 Q. All right. How often in the late summer or fall
3 of the Maine campaign did StandforMarriage Maine
4 need to turn to NOM for funding?

5 A. Oh, repeatedly. I mean, as I said, initially we
6 made a commitment to do a million dollars and that
7 was -- obviously, you know, we weren't just going
8 to give a million dollars and that's it. We
9 wanted to make sure that everything was running
10 smoothly and the campaign was running smoothly and
11 things were going well. So we were always going
12 to give that money in increments just as we did in
13 California. So it was repeatedly -- you know, I
14 would say, you know, we made a decision on what
15 disbursements we were going to make every two
16 weeks to a month.

17 Q. Is it fair to say that StandforMarriage Maine was
18 asking for more money on a weekly basis in the
19 September/October 2009 time period?

20 A. Well, I mean, it was clear -- it was clear that
21 extra money was needed so I don't know that there
22 was every week an ask. It was just always there.

23 Q. So even if StandforMarriage Maine wasn't asking,
24 NOM understood throughout the months of September
25 and October of 2009 that StandforMarriage Maine

1 needed more money to fund its efforts?

2 A. Correct.

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5 Q. So would you agree that during the month of
6 October 2009 NOM raised more than two million
7 dollars?

8 A. I think we raised 1.6 million dollars but, yeah,
9 let me go back. Yeah, we raised over two million
10 dollars in October.

11 Q. How much of that money went to StandforMarriage
12 Maine?

13 A. I don't know in the month of October. I think we
14 had already given a significant amount of money.

15 Q. On page 3 do you see a \$300,000 wire transfer to
16 StandforMarriage Maine?

17 A. Yes.

18 Q. On page 5 do you see another \$300,000 transfer to
19 StandforMarriage Maine on October 9th?

20 A. Yes.

21 Q. On October 14th do you see another \$500,000
22 transfer to StandforMarriage Maine?

23 A. Yes.

24 Q. That's 1.1 million I think, is that right?

25 A. Correct.

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1 Q. And on October 27 do you see another \$160,000
2 transfer to StandforMarriage Maine?

3 A. Yes.

4 Q. And there are others but it's fair to say that --

5 A. So that's 1.2 million.

6 Q. Okay, that NOM contributed at least 1.2 million to
7 StandforMarriage Maine in October of 2009?

8 A. Yes.

9 Q. So, for example, on October 1st for a minute,
10 let's go back to pages 2 and 3 of this exhibit.

11 On October 1st at some point NOM received a
12 \$300,000 wire transfer?

13 A. Um-hum.

14 Q. Later that same day NOM transferred \$300,000 to
15 StandforMarriage Maine, do you agree?

16 A. Yes.

17 Q. Were you the person that was authorizing all those
18 contributions to StandforMarriage Maine in October
19 of 2009?

20 A. Yes. 21

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1 Q. What's NOM's budget for 2010?

2 A. Roughly 13 million.

3 Q. Is there a document that --

4 A. No.

5 Q. -- contains that budget figure for 2010?

6 A. No.

7 Q. Why not?

8 A. Because the budget is always changing based upon

9 how much -- how many donations we get and that

10 number is changing, and our basic projects are

11 laid out in our strategy.

12 Q. Okay. Would you agree that NOM has spent money so

13 far in 2010 in Hawaii and California, among other

14 places, but let's just start with California and

15 Hawaii?

16 A. Yes.

17 Q. Roughly how much did NOM spend in California on

18 the Tom Campbell race?

19 A. Well, we did an issue ad for Campbell that was

20 about \$300,000, spent \$50,000 on an independent

21 expenditure and I believe another 50 on another

22 issue-type communication, so 400 there and

23 probably 50 in -- I can't remember what we did in

24 Hawaii, but I believe it's around \$50,000.

25 Q. Let's just get through the California race first.

213

1 Would you agree that NOM's purpose in spending
2 this money in California was to help defeat Tom
3 Campbell?

4 A. Well, ultimately we wanted to see Tom Campbell
5 defeated, so yes.

6 Q. Okay. What happened to Tom Campbell in the
7 primary?

8 A. He was defeated.

9 Q. So it's fair to say that NOM's purpose in spending
10 this money in California was to influence the Tom
11 Campbell race, isn't that fair?

12 A. Yeah, the -- the question of what the purpose was
13 and the nature of the communication are two
14 different things.

15 Q. I'm not asking you to comment on whether or not it
16 was express advocacy or not. I'm just asking you
17 a more basic question. NOM's purpose in spending
18 this money was to influence the Tom Campbell race?

19 A. Correct.

20 Q. And, similarly, in Hawaii NOM was supporting, I
21 believe, a gentleman named Charles Djou, D-J-O-U.
22 Does that sound right?

23 A. Correct.

24 Q. He was running for the House of Representatives,
25 is that correct?

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1 A. Correct.

2 Q. And what happened to Mr. Djou in his primary?

3 A. He won.

4 Q. All right. Fair to say that NOM was spending the

5 money on that race to support Mr. Djou's

6 candidacy?

7 A. Yes.

8 Q. And roughly how much was that, do you recall?

9 A. I think \$50,000.

10 Q. And, again, as in California, NOM's purpose in

11 spending this money in Hawaii was to influence the

12 election in which Mr. Djou was running for the

13 House of Representatives, if I'm saying his name

14 correctly. I'm not sure if I am.

15 A. Um-hum.

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23 BY MR. KNOWLTON:

24 Q. Where else did NOM spend money in 2010 so far?

25 A. In New Hampshire we've run a Lynch Lied television

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1 ad.

2 Q. Is Governor Lynch running for re-election?

3 A. Not at the time we started the ad he wasn't a
4 candidate but now he is.

5 Q. Roughly how much has NOM spent in New Hampshire on
6 the Lynch Lied ad or any other efforts?

7 A. \$300,000.

8 Q. Fair to say that NOM's purpose in running the
9 Lynch Lied ad is to help defeat the re-election of
10 Governor Lynch?

11 A. That's -- that's one of the purposes. The other
12 purpose is to educate voters on his positions, but
13 that is one of the purposes.

14 Q. Okay. Has NOM done anything else in New Hampshire
15 during 2010?

16 A. Let me think. I don't recall anything else in New
17 Hampshire.

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8 Q. I wanted to turn to NOM's fundraising efforts
9 during the 2009 to 2010 period. What are all the
10 sources of revenue to NOM -- let me say it
11 differently. Does NOM get dues?

12 A. We do have a \$5 membership due for donors, yes.

13 Q. And that doesn't raise a significant amount of
14 money, it's fair to say?

15 A. Well, \$5 is the minimum to become a member. So
16 people often give more than that and are also
17 members.

18 Q. Okay, and roughly how many members does NOM have?

19 A. 35,000.

20 Q. So even if everybody gave \$10, that's \$350,000
21 from dues?

22 A. Well, yeah, I mean, the dues portion but people
23 tend to give more than once and, again, I don't
24 know what -- this year I think we'll probably
25 raise one to two million dollars from smaller --

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1 from on-line and other donors of that nature, two
2 million, maybe more.

3 Q. From what you would call dues?

4 A. No, no, from the \$5 dues it would only be the
5 35,000 times five.

6 Q. Because I think you testified the first time \$5
7 out of every donation is treated as membership
8 dues?

9 A. Correct.

10 Q. Okay. Are there any other sources of revenue to
11 NOM other than dues and donor contributions other
12 than a tiny bit of interest income perhaps from
13 bank accounts?

14 A. Yeah. No, those would be -- that's where we
15 receive our money, from donors.

16 Q. Does NOM apply for or receive grants from any
17 government organization?

18 A. No.

19 Q. And roughly how much did NOM receive in
20 contributions in 2009?

21 A. Eight million dollars, possibly a little bit
22 more. I need to go back and look but around eight
23 million dollars.

24 Q. Would the amount of contributions roughly match
25 the amount that NOM spent in 2009?

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1 A. Yes, roughly.

2 Q. Does NOM have year-end totals for its expenditures
3 and contributions?

4 A. Yes.

5 Q. Those are documented somewhere?

6 A. Well, we -- we would need to run the report and
7 it's all available to us. Any sort of information
8 we want we can get.

9 Q. Has NOM provided reports to its accountant?

10 A. Yes, yes.

11 Q. In connection with the 2009 990 that show the
12 amount of contributions and expenditures for 2009?

13 A. Yes, Neil Corkery has provided all of those to
14 him. He has the bank statements and that's the
15 primary way by which we would do the audit.

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20 Q. Okay. Was there a fundraising committee at NOM in
21 2009?

22 A. No, there was no formal fundraising committee.

23 Q. I thought I saw a reference to a fundraising
24 committee in some of the documents, even if it
25 wasn't a formally-recognized committee. Was there

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1 group of people who were considered to be the
2 fundraising committee at NOM in 2009?

3 A. No, I think we talked about starting something
4 like that, but, in general, our executive
5 committee tends to be the people who are most
6 involved in this but there isn't some separate
7 group.

8 Q. So the executive committee again is you, Mr.
9 Tellez, Mr. George and Ms. Gallagher, that's four?

10 A. Correct.

11 Q. Okay. Is it the same today as it was in 2009?

12 A. Yes.

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20 Q. Is it important in the fundraising business who

21 does the ask? Is that a term of art in the

22 fundraising business?

23 A. Yes.

24 Q. And what does that mean?

25 A. The person who actually, you know --

247

1 Q. Says please give us money?

2 A. Says give us money. So, yeah, it is important.

3 Q. Were there particular donors that you did the ask
4 for?

5 A. Yes.

6 Q. And, likewise, were there particular donors that
7 Robbie George or Maggie Gallagher did the ask for?

8 A. Yes.

9 Q. The same with Mr. Tellez?

10 A. Yes.

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21 Q. With respect to the major donors, are the asks
22 done by e-mail sometimes?

23 A. Rarely. I can't think of -- I just don't think
24 that would be a good practice in general, but I
25 can't think of any off the top of my head where

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1 that's the way we would approach someone.

2 Q. So in almost all cases they're done either over
3 the phone or face to face?

4 A. Correct.

5 Q. And roughly what's the percentage of over the
6 phone as opposed to face-to-face asks for 2009 and
7 2010?

8 A. I would say the overwhelming majority, 70, 80
9 percent, are over the phone.

10 Q. Even if you're asking for a significant amount of
11 money, let's say over \$100,000, you would still do
12 that over the phone?

13 A. Yes, because any -- many -- I would -- any of the
14 donors that are giving those sums are people who
15 have already donated to us before.

16 Q. They know you, they know your face?

17 A. Yes.

18 Q. They know the organization well?

19 A. Yeah, and they're busy. You know, just thinking
20 through, the overwhelming majority are over the
21 phone.

22 Q. In rough numbers, you know, as a rough order of
23 magnitude in terms of the three major categories
24 of donations I'll call them, you know, snail mail,
25 internet donations or the rest, which are wire

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1 transfers, how would you roughly estimate the
2 relative amounts? How much of the money that NOM
3 receives comes from the wire transfers and -- is
4 it 90 percent, 95 percent, 80 percent? Actually I
5 asked the question very inartfully. How much of
6 the money comes from internet contributions?

7 Let's try it that way.

8 A. It's hard for me to look back at 2009. I can
9 answer for 2010 a lot better.

10 Q. Okay.

11 A. 2010 I think we're on track to do about, you know,
12 one and a half to two million dollars on-line. So
13 that would be 15 percent of the budget.

14 Q. Two million out of --

15 A. I'm sorry, on-line and snail mail.

16 Q. Okay. Out of a 13 million dollar budget, is that
17 what you're estimating?

18 A. Yes.

19 Q. Okay. Would you estimate that the percentage was
20 roughly the same in 2009?

21 A. Probably. It might even be a little less because
22 we're very -- you know, a relatively young
23 organization and didn't have as many donors at the
24 time. So it may be slightly less.

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7 BY MR. KNOWLTON:

8 Q. This is the First Amended Verified Complaint which

9 is dated December 13, '09, and I'd just ask you to

10 take a look at that, please. If you could start

11 by looking at paragraph 26, the last sentence of

12 paragraph 26 estimates how much money NOM received

13 in response to a certain e-mail?

14 A. Um-hum.

15 Q. How did NOM do that?

16 A. How did we estimate?

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20 Q. Clicked on --

21 A. I'm sorry, how many clicked on -- went to the site

22 and then donated. It's never going to be exact

23 because someone could have clicked on, gone to the

24 site, you know, left the site and come back and

25 the cookies could have still, you know, been there

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1 and if they donated later, it would still show up;
2 but what we did is if they clicked on it and went
3 directly to the site and donated and it showed up
4 that they donated by first clicking on the e-mail,
5 that's how we estimated that they gave directly to
6 that e-mail even if there's a possibility that
7 they left the site, came back later in response to
8 some other action. I advised, when we were
9 creating this, them to include anyone who had
10 clicked through the link and donated.

11 Q. Okay. So for each of the paragraphs -- so in
12 paragraph 27, 29 and so forth, in each paragraph
13 where there's an estimate as to how much money it
14 received, that's the method that NOM used, what
15 you just described?

16 A. Correct.

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4 Q. My question specifically, though, is did you
5 attempt to track the snail mail contributions that
6 NOM received in 2009 to see whether any of them
7 were given in response to a communication that
8 mentioned Maine or any other project that NOM was
9 engaged in?

10 A. We would only -- we would track them by the source
11 code of the mailing. They were all tracked by the
12 response device, but we didn't -- we didn't
13 segment them by this is Maine, this is New York.
14 It would be simply segmented by the source code of
15 whatever letter they received.

16 Q. So NOM has that data, has the amount of snail mail
17 contributions it received in response to
18 particular snail mail?

19 A. Correct.

20 Q. Okay.

21 MR. NEELEY: Can I clarify? If someone
22 sends in a donation card that's include with the
23 snail mail solicitations, can you tell based on
24 that card which -- which newsletter or other
25 mailing --

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1 THE DEPONENT: Yes, yes, yeah, the source
2 code will tell us that.
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Q. I mean, I was going to say that I assume your donors want to know what their money, generally speaking, is going to be used for, right?

A. Well, yeah, but, again, we've been very clear with all of our donors that we do not and cannot accept any designated contributions and that was very early on before Maine. So I think that donors understand that and that, you know, success, for example, in California, the passage of Prop 8, donors want to see success. So there's an increasing level of trust and, therefore, you know, there's not the same I guess need to -- it's not -- the idea that you would have to connect it to a different -- an exact campaign isn't accurate.

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15 Q. So when you say that NOM doesn't earmark or
16 reserve donations, does that mean that you don't
17 allow donors to restrict the use of their
18 donations?

19 A. Correct, for any political purpose.

20 Q. What does that mean?

21 A. Well, we don't allow them to do it at all but the
22 -- the -- there's no reason why for (c)(3)
23 activities we couldn't do that. So, for example,
24 we try and abide by -- for example, the TV ad you
25 brought up or the Ruth Institute, all the money

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1 that we raise in those accounts goes to the Ruth
2 Institute, but that -- that -- the word designated
3 has to do with the political activity. So they're
4 not designating it for any political activity or
5 any earmarking of any sort of express advocacy.
6 Having our bank account separate is a matter of
7 trust to the donors for (c)(3) type activities or
8 for (c)(4) activities where we could always take
9 money from NOM Rhode Island at any point. We
10 could use that for NOM, but as a matter of where
11 we -- how we want to segment the donations, we
12 create a separate bank account for that. In
13 general for NOM we don't do that. NOM Rhode
14 Island is the equivalent of a chapter and,
15 therefore, we want to allow people to spend their
16 money in Rhode Island. So if you interpret that
17 as designated, I don't interpret that as
18 designated because it's not designated for a
19 political activity, it's designated for a use
20 within Rhode Island but not for any specific
21 political activity, and even there, there's no
22 understanding that we can't use that for NOM.
23 Q. What about people who give to the DOMA Defense
24 Fund? Those are designated in a special bank
25 account, aren't they?

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1 A. They are, but that's lobbying activity. It's not
2 political activity.

3 Q. So it sounds like what you're saying is that NOM
4 allows donors to designate funds but the
5 designation can only be for lobbying activities?

6 A. Well, even there it's not designated. It says
7 right on the donation sheet it's not designated
8 for any purpose. We can take that money out and
9 use it for whatever we want.

10 Q. So even if you tell a donor please give to the
11 DOMA Defense Fund and they say here, here's 10,000
12 for the DOMA Defense Fund, are you saying that we
13 may or may not use it for the DOMA Defense Fund,
14 it depends what we feel like doing?

15 A. It does say that on the sheet. In general we
16 abide by that because we want to spend the money
17 on the DOMA Defense Fund, but that's lobbying
18 activity and it's not political in nature. It's
19 not express advocacy. So there's nothing binding
20 us to that.

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Q. Yes, I'm going to ask you about that in a second, but I'm asking a slightly different question which is, after you tell a donor -- a donor says to you I want this money to be used in, let's say, Maine and you say I'm sorry, we don't accept designated donations, and the donor says I understand that, you can't promise me, you can't legally restrict the money I'm about to give you but I'm still telling you I really hope that my donation gets used in Maine.

A. Well, they can say that but we would make clear that it's not designated and we would follow up by saying that any funds that go into our general treasury, it's up to us to spend in any way that we see fit. We decide how we spend general treasury funds. So a donor could say whatever they want, but we would always respond and people have been instructed to respond that we don't accept independent expenditures -- I'm sorry -- we

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1 don't accept designated funds for political
2 purposes period.

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BY MR. KNOWLTON:

Q. I want to ask you about a few of the wire transfers that are reflected in Exhibit 13. The \$300,000 transfer on October 1st, I want to first ask you some questions about that. Who from NOM was involved in obtaining that donation?

A. I don't recall. I don't know which donation that is.

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1 Q. If you saw the name you could figure it out, but
2 without the name you can't tell whether it was you
3 or someone else?

4 A. Yeah, if I saw the name I could.

5 Q. So are you able to answer any questions about the
6 communication between NOM and the donor that
7 contributed \$300,000 on October 1?

8 A. I can answer general questions that I know that
9 anyone that I spoke with or anyone else spoke with
10 would make clear that it's not a designated
11 contribution.

12 Q. You don't know anything about the communication
13 from NOM to the October 1st donor, what was said
14 by NOM, what the donor said in return, anything
15 about the back and forth between this donor and
16 the NOM person doing the ask? Can you tell me
17 anything about that communication?

18 A. No, not without having the name right now. I
19 would need to figure out each and every one of
20 these before I could do that.

21 Q. So looking at page 3, there's a million dollar
22 donation on October 5th, do you see that?

23 A. Yes.

24 Q. Are you able to tell whether or not -- strike
25 that. Do you know who that donor was?

274

1 A. I believe so.

2 Q. Were you the person who made the ask?

3 A. I was part of the -- I was part of the call, but
4 this was a long-standing donor to NOM who's
5 continued to contribute, and that was connected to
6 a general discussion about an ongoing commitment
7 to NOM in which that was part of the overall
8 commitment.

9 Q. Who else from NOM was part of the phone call?

10 A. I believe that Robbie George and Maggie Gallagher
11 were part of the phone call.

12 Q. And it's fair to say that you made this call at a
13 time when StandforMarriage Maine was looking for
14 money?

15 A. No, I think this call happened -- well, it was
16 looking for money but it didn't happen in
17 October. It happened earlier on, and I need to
18 again look at the donor, but I think that this was
19 part of an ongoing commitment.

20 Q. When was the phone call that led to the million
21 dollar donation in Exhibit 13?

22 A. I think it was in September or August.

23 Q. Was there any follow-up contact from NOM when the
24 donation didn't come in?

25 A. Well, I don't think that there was any issue about

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1 that. My -- my recollection was that he -- that
2 the donor didn't say that he was going to turn
3 around and do it tomorrow but that it was coming
4 in October. So there wasn't any -- there didn't
5 need to be any follow up.

6 Q. So there wasn't any follow up?

7 A. Not that I'm aware of, no.

8 Q. But let's step back for a second. You would agree
9 with me that the month of October was a time in
10 which StandforMarriage Maine was looking hard for
11 sources of money?

12 A. Um-hum.

13 Q. Agreed?

14 A. Agreed.

15 Q. And one of the places StandforMarriage Maine was
16 looking for money was NOM, agreed?

17 A. Correct.

18 Q. The December 6th wire transfer of \$10,000, do you
19 see that?

20 A. December 6th?

21 Q. I'm sorry, if I said December, I meant to say

22 October.

23 A. Okay.

24 Q. October 6th, \$10,000, can you give me any of the
25 details of the solicitation that led to that

276

1 \$10,000 wire transfer?

2 A. No. 3 Q. Looking ahead to the October 9th \$400,000 wire
4 transfer, do you see that?

5 A. Yes.

6 Q. Do you know who that donor was?

7 A. No, I -- again, I would have to go and look
8 through this. I could find out, but I don't know
9 off the top of my head which donor this was.

10 Q. Do you know whether or not you were the person
11 making the ask for any of these October 2009
12 donations?

13 A. I -- I -- I believe I was for -- was involved in
14 all of them. I just would need to -- I need to
15 pinpoint which donor was which in order to answer
16 your question.

17 Q. And are you able to tell me what the gist of the
18 conversation was between NOM and the donor?

19 A. Well, for any of these donors it was -- in any of
20 the conversations -- again, some of these are
21 donations that are recurring and continue to recur
22 in large numbers.

23 Q. Which ones? Can you tell me which of these
24 donations were recurring ones that just happened
25 to show up in October of 2009?

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1 A. No, because the times and amounts are different in
2 certain months, and it's not always the same
3 amount. So the \$400,000 one could be the 300 --
4 you know, I can't differentiate between who is
5 giving the \$400,000 donation and who is giving the
6 \$300,000 donation but October and November
7 typically are when we raise a significant chunk of
8 our money. So it's the end of the year when we
9 usually get this. So if you would look at earlier
10 statements from prior years or likely from this
11 year, you're going to see large donations at the
12 end of the year in October and November. So I
13 think that this is showing us, what, two
14 million? So I would have to go back through each
15 of them in order to look at, you know, each donor
16 and what was -- what was discussed, what the
17 conversation was and when it happened because a
18 number of these -- I would say at least two,
19 possibly three of these are part of recurring
20 donations from larger donors that we receive for
21 ongoing funding.

22 Q. That wouldn't have been in response to a phone
23 call, is that what you're saying?

24 A. Some of these, yeah, probably two at least. The
25 million dollar donation obviously is much larger

278

1 so that's why I remember -- these are all large
2 but the million dollar donation is larger and I
3 know is not a part of any recurring gift of the
4 same amount, and that's why I recall having a
5 call; but as I said, it was earlier on and it was
6 related to our national strategy, and I know that
7 that was discussed.

8 Q. What was the most important issue in October of
9 2009 with respect to NOM's efforts?

10 A. Maine.

11 Q. So that being the case, isn't it likely, if not
12 certain, that you would have mentioned the Maine
13 campaign in your solicitations to any donors in
14 September or October of 2009?

15 A. Yeah, we mentioned it with major donors and we
16 also made clear that we don't accept designated
17 gifts and that any donations we receive would go
18 to our general treasury and it would be up to us
19 to figure out how to spend them.

20 Q. Okay, but you do agree that you or anyone else
21 from NOM who was asking for money in September or
22 October of 2009 certainly mentioned Question 1,
23 the Maine campaign and how important that was to
24 NOM?

25 A. Well, I don't know that all of those things were

279

1 said in each of the conversations. Often, you
2 know, we might not have brought up Maine, the
3 donor himself might have brought up Maine, but in
4 response to any of that we would say that if you
5 want to give directly to the Maine campaign, you
6 can give directly to StandforMarriage Maine. Any
7 donations to NOM are to our general treasury and
8 they're not designated or earmarked and that --
9 that any donations to us were going to be put into
10 our general treasury and we would decide where
11 they would go. There's obviously no way not to
12 have -- Maine was going to be discussed because
13 the whole nation was looking at Maine.

14 Q. That was the most important issue to NOM at that
15 time, correct?

16 A. Correct.

17 Q. And to NOM's donors, correct?

18 A. I think some donors were still, you know, quite
19 concerned about the California -- the Perry case.
20 So I don't know that that is necessarily the
21 case. We did not have many donors in Maine, so
22 often many of the donors were focused on
23 California. So I don't know that that's correct.

24 Q. But, Mr. Brown, all the materials that I've seen
25 made clear that NOM was trumpeting Maine as a

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1 chance to beat back same sex marriage in a blue
2 state.

3 A. Um-hum.

4 Q. This was a national issue, agreed?

5 A. Agreed.

6 Q. So it wasn't just a regional Maine issue?

7 A. No.

8 Q. So donors who were like-minded to NOM would have
9 great interest, would they not, in promoting

10 Question 1?

11 A. Yes.

12 Q. In the Maine referendum?

13 A. Yes.

14 Q. Okay.

15 A. In general they would.

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15 BY MR. KNOWLTON:

16 Q. A couple more questions about the earmarking
17 issue, Mr. Brown. When did NOM first develop its
18 policy of not allowing donors to restrict their
19 donations?

20 A. I believe that when we -- when we first started
21 after discussions with counsel we didn't allow
22 designations for political purposes.

23 Q. So back in 2007 you believe?

24 A. Yes.

25 Q. And what's the reason for it?

1 A. Well, because of the fact -- you know, because of
2 -- you know, because of the nature of, I mean,
3 what we're facing here in Maine, that federal law
4 is clear that 501(c)(4)s can engage in political
5 activity but we would be subject to onerous, you
6 know, number of extra requirements if we started
7 raising designated political funds, including
8 subjecting donors to harassment and intimidation.

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19 Q. What do you contend is NOM's major purpose as of
20 June 23rd, 2010?

21 A. The same as our mission statement, the same as
22 it's also been, to protect marriage and the faith
23 communities that sustain it.

24 Q. So that has been NOM's major purpose since its
25 formation in 2007?

1 A. Correct.

2 Q. Does NOM's major purpose change depending on how
3 much it spends on particular activities over a
4 particular year in your view?

5 A. Well, yes, we are limited as a 501(c)(4) to not
6 spending the majority of our funds in political
7 activity, independent expenditures.

8 Q. You would agree that definition that I couldn't
9 repeat but that you gave for major purpose
10 includes trying to get initiatives on the ballot
11 like Question 1 in Maine?

12 A. Well, there are different regulations for
13 different bodies. The IRS might interpret
14 political activity more broadly than the FEC, but,
15 in general, initiatives are generally conceived of
16 as a lobbying-type activity, but under various
17 state laws they can also be regulated in some
18 analogous fashion to political activity, and so in
19 each state there are different regulations. In
20 California there's a particular type of regulation
21 that we abided by and in Maine we did a thorough
22 review of the law and abided by the regulations
23 here in Maine.

24 Q. I'm asking you a different question, maybe it
25 wasn't clear. I'm not asking you about what any

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1 state law says or any federal law says. I'm just
2 asking you what NOM's major purpose is, and I
3 assume you would say the same thing you said a
4 minute ago. Isn't that independent of whatever
5 state NOM is acting in?

6 A. Now I don't understand the question.

7 Q. All right. Can you repeat what you said NOM's
8 major purpose is again?

9 A. To project marriage and the faith communities that
10 sustain it.

11 Q. And the faith-based communities, is that what you
12 said?

13 A. Faith communities.

14 Q. Would you agree that one of the things that NOM --
15 strike that. NOM's activities in donating 1.8
16 million dollars to the StandforMarriage Maine PAC
17 is that activity that is subsumed within the
18 umbrella of protecting marriage and the faith
19 communities that sustain it?

20 A. Yes.

21 Q. Okay. How about trying to defeat Tom Campbell in
22 California?

23 A. Yes.

24 Q. And trying to get elected Mr. Djou in Hawaii?

25 A. Yes.

298

1 Q. So what I'm trying to get at, is everything that
2 NOM does in your view part of protecting marriage
3 and the faith communities that sustain it?

4 A. Yes.

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13 Q. Let me step back for a second. I'm going to get
14 back to paragraph 113 in a second. I've been
15 mulling over in my head more the protect marriage
16 and faith communities that sustain it that you
17 were describing as NOM's major purpose. Is there
18 anything that NOM has done in 2009 or 2010 that
19 wouldn't come under the umbrella of protecting
20 marriage and the faith communities that sustain
21 it?

22 A. I can't think of anything that didn't fit within
23 the overall mission.

24 Q. So you're equating major purpose with mission?

25 A. Well, also with where we've spent our money.

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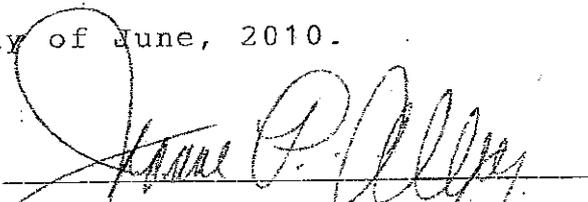
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CERTIFICATE

1
2
3 I, Joanne P. Alley, a Notary Public in and
4 for the State of Maine, hereby certify that on the
5 26th day of May and the 23rd day of June, 2010,
6 personally appeared before me the within-named
7 deponent who was sworn to testify to the truth,
8 the whole truth, and nothing but the truth in the
9 aforementioned cause of action and that the
10 foregoing is a true and accurate record as taken
11 by me by means of computer-aided machine
12 shorthand.

13
14 I further certify that I am a disinterested
15 person in the event or outcome of the
16 aforementioned cause of action.

17
18 IN WITNESS WHEREOF, I have hereunto set my
19 hand this 30th day of June, 2010.

20
21 
22 Joanne P. Alley

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of August 2010, I electronically filed the above document with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following:

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To my knowledge, there are no non-registered parties or attorneys participating in this case.

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