

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF MAINE

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4  
5 Civil Docket No.: 1:09-cv-00538  
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9 \* \* \* \* \*

10 NATIONAL ORGANIZATION FOR MARRIAGE  
11 AND AMERICAN PRINCIPLES IN ACTION,

12 Plaintiffs

13 vs

14 WALTER F. MCKEE, et al.,

15 Defendants

16 \* \* \* \* \*

17 CONFIDENTIAL DEPOSITION

18 DEPONENT: BRIAN S. BROWN

19 Taken before Joanne P. Alley, a Notary Public in  
20 and for the State of Maine, at the offices of the  
21 Maine State Attorney General, Burton Cross Office  
22 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.

23 APPEARANCES:

- 24 THOMAS KNOWLTON, ESQUIRE
- PHYLLIS GARDINER, ESQUIRE
- 25 JOSIAH NEELEY, ESQUIRE

ALSO PRESENT:

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

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I N D E X

DEPONENT:

BRIAN S. BROWN

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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.

1           I have a few preliminary requests for you.  
2           First, the court reporter can only take down one  
3           person speaking at a time, so would you please  
4           wait until I finish my question before you begin  
5           starting your answer?

6           A. Um-hum, yes.

7           Q. And my second request is that the court reporter  
8           can only take down verbal responses, so would you  
9           please answer verbally and not by nodding or  
10          shaking your head?

11          A. Yes.

12          Q. Great, and, third, if you don't understand any of  
13          my questions or feel that it's vague or ambiguous,  
14          would you please let me know and I'll do my best  
15          to clarify it?

16          A. Yes.

17          Q. And if you answer a question without asking me to  
18          clarify it, I'm going to assume that you  
19          understood my question and you intended your  
20          answer to be responsive. Is that fair?

21          A. Yes.

22          Q. All right. Are you taking any drugs or medication  
23          today that would interfere with your memory or  
24          your mental faculties in any way?

25          A. No.

1 Q. What did you do to prepare for today's deposition,  
2 Mr. Brown?

3 MR. NEELEY: Oh, just before we proceed.

4 MR. KNOWLTON: Sure.

5 MR. NEELEY: I want to designate this  
6 deposition as confidential pursuant to Section 4  
7 of the confidentiality order in the case.

8 MR. KNOWLTON: How much of the deposition  
9 do you --

10 MR. NEELEY: Well, as I read the order, the  
11 way it works is that I'd like to designate the  
12 entire thing confidential now and then when the  
13 transcript comes out we can look at which  
14 particular pieces need to remain confidential.

15 MR. KNOWLTON: Okay. So rather than do  
16 that as to each question and answer as we go  
17 along?

18 MR. NEELEY: Yeah, I think that would be  
19 too complicated and it's better to just do it that  
20 way.

21 MR. KNOWLTON: That's fine, and we can  
22 revisit it after the transcript comes back.

23 MR. NEELEY: Correct. Thank you.

24

25 BY MR. KNOWLTON:

1 Q. Mr. Brown, what did you do to prepare for today's  
2 deposition?

3 A. I looked over the Amended Complaint, looked over  
4 the questions that you had sent in the deposition  
5 order, and reviewed some of our internal  
6 documents.

7 Q. What internal documents did you review?

8 A. Well, we just gave some financial documents, and I  
9 looked those financial documents over, and there  
10 was a proposal that was included. All of the  
11 things that have been handed over to you I've  
12 looked over.

13 Q. All right. Other than the documents that were  
14 provided to us today by your counsel, did you look  
15 at any other documents in preparation for today's  
16 deposition?

17 A. I can't think of any others than those that I've  
18 given to you.

19 Q. And by those that I've given to you, you mean  
20 today?

21 A. Today, correct.

22 Q. Would you look at what's being marked as  
23 Defendants Exhibit 1, which is a notice to take  
24 the deposition of National Organization for  
25 Marriage, please?

1           MR. KNOWLTON: Sorry I didn't make enough  
2       copies for you guys.

3           MR. WAYNE: No problem.

4           MR. KNOWLTON: Some of these you might  
5       have.

6

7       BY MR. KNOWLTON:

8       Q. Just let me know after you've had a chance to look  
9       through it.

10      A. Yes, I've looked through it.

11      Q. Is this one of the documents that you reviewed in  
12      preparation for today's deposition?

13      A. Correct.

14      Q. In looking at the items designated on Schedule A,  
15      do you see those?

16      A. I see those.

17      Q. There are 16 designated items. Do you see each of  
18      those items?

19      A. I do.

20      Q. Are you the person whom NOM has designated to give  
21      testimony about each of those items here today?

22      A. Yes.

23      Q. And are you prepared today to testify about each  
24      of those 16 items?

25      A. Many of these items we have objections.

1 Q. Other than any objections that may be made by  
2 counsel --

3 A. Okay, yes.

4 Q. -- in terms of the subject matter of the items are  
5 you prepared to testify?

6 A. Oh, yes.

7 Q. Mr. Brown, where do you live?

8 A. I live in Great Falls, Virginia.

9 Q. Have you ever been convicted of a crime of any  
10 kind?

11 A. No.

12 Q. Do you have a college degree?

13 A. Yes, I do.

14 Q. Where did you get that?

15 A. Whittier college.

16 Q. Out in California?

17 A. Whittier College in California, yes.

18 Q. When did you graduate from Whittier College?

19 A. What is it, geez, '90 -- when did I graduate from  
20 college? Sorry, one second.

21 Q. That's okay, take a second. This is one of the  
22 easier questions.

23 A. I know.

24 MR. NEELEY: It's all downhill from here.

25

1 BY MR. KNOWLTON:

2 A. I'm horrible at remembering dates. Roughly '96.

3 Q. You believe it was 1996?

4 A. Um-hum.

5 Q. And what was your degree in from Whittier?

6 A. History.

7 Q. Do you have any further education after Whittier?

8 A. I do.

9 Q. What is that?

10 A. I have a BA/MA from Oxford University, the  
11 Somerville College.

12 Q. And what is that degree in?

13 A. Modern history.

14 Q. And when did you complete those studies?

15 A. It was in 2000.

16 Q. Do you have any other formal education?

17 A. I do.

18 Q. What is that?

19 A. I have a -- I'm a candidate in philosophy at  
20 UCLA. It's a non-terminal degree. The terminal  
21 degree is a Ph.D., so I'm technically a candidate  
22 in philosophy for the doctorate.

23 Q. When you say you're technically a candidate for  
24 the doctorate, does that mean that you don't  
25 necessarily plan on getting it?

- 1 A. Well, you have to finish a dissertation.
- 2 Q. Okay, but you plan to?
- 3 A. I plan to eventually, yes.
- 4 Q. All right, and what would that be in?
- 5 A. History.
- 6 Q. What type of history?
- 7 A. American history.
- 8 Q. Do you have any other formal education in any  
9 other area?
- 10 A. No.
- 11 Q. Would you please give me your employment history  
12 starting roughly in 1996 upon gradation from  
13 Whittier College?
- 14 A. I served for a year as director of student  
15 development at the Intercollegiate Studies  
16 Institute.
- 17 Q. Excuse me, what is that?
- 18 A. The Intercollegiate Studies Institute? It is a  
19 501(c)(3) nonprofit organization dedicated to  
20 protecting liberty, especially in education.
- 21 Q. And where is that located?
- 22 A. That's in Wilmington, Delaware.
- 23 Q. I'm sorry, and what was your position there?
- 24 A. Director of student development.
- 25 Q. And what did you do as director of student

1 development?

2 A. Organized grad students for conferences and  
3 seminars in colleges around the country.

4 Q. Could you elaborate on that for me, just explain a  
5 little more what you did?

6 A. We would bring speakers into colleges to speak on  
7 topics -- a variety of topics and help organize  
8 the students so that they would have contacts with  
9 both professors in their field and other  
10 universities and ideally within their own  
11 university.

12 Q. And I believe you said you held this position for  
13 one year?

14 A. One year.

15 Q. Until 1997?

16 A. Yes, until 19 -- yeah, until late 1997 I believe.

17 Q. What did you do after that?

18 A. I spent two years at Oxford University.

19 Q. So did you leave that position to commence your  
20 studies at Oxford?

21 A. Well, actually I left that position to go to UCLA  
22 for one year and then from UCLA I took a leave of  
23 absence and went to Oxford for two years and then  
24 returned to UCLA.

25 Q. So when you first went to UCLA, what was your

1 course of studies?

2 A. It was for a master's, Ph.D. in history.

3 Q. Have you had any other employment experience since  
4 going to Oxford?

5 A. Yes. After I graduated from Oxford and had been  
6 back to do my teaching at UCLA, I then went and  
7 became executive director of the Family Institute  
8 of Connecticut, first in Westport, Connecticut,  
9 and then in Hartford, Connecticut.

10 Q. And roughly what year was that?

11 A. 2001.

12 Q. And what did you do as the executive director of  
13 the Family Institute of Connecticut?

14 A. I was basically the chief executive officer. I  
15 ran it and directed it from -- it may actually  
16 have been 2002 when I took over until I took over  
17 as executive director of the National Organization  
18 for Marriage in June of 2007.

19 Q. And what were your job responsibilities at the  
20 Family Institute of Connecticut?

21 A. Direct our overall programming, fundraising,  
22 liaison with the board, all of what you would  
23 expect from an executive director of a nonprofit  
24 organization.

25 Q. How large a nonprofit in terms of revenues and/or

1 employees was the Family Institute of Connecticut?

2 A. We had four employees I think by the time I left,  
3 and we had at our height roughly half a million  
4 dollar budget a year.

5 Q. Did you do the fundraising yourself or did you --  
6 strike that. Did you do the fundraising yourself?

7 A. Not all alone, no.

8 Q. You and other members of the organization?

9 A. The board and myself.

10 Q. What was the mission of the Family Institute of  
11 Connecticut?

12 A. To protect the family as the basic foundation of  
13 society.

14 Q. And by that do you mean marriage or what aspect of  
15 the family?

16 A. Well, we -- we protected and defended the family  
17 as the basic institution of society, both in life  
18 and in the definition of marriage. We're involved  
19 in both those issues but had a broader -- we had a  
20 broader mission statement in the sense that we  
21 could be involved in any issues relating to family  
22 life.

23 Q. And how did the organization protect the family?  
24 What did it do to protect the family?

25 A. Oh, we lobbied for and against certain types of

1           legislation, we performed educational activities  
2           throughout the state, we were involved in radio,  
3           interviews, basic public education.

4       Q. Was it a 501(c)(4) did you say?

5       A. Originally it was a 501(c)(3) and then it also  
6           became -- there was a 501(c)(4) arm.

7       Q. Other than this case or the related state case,  
8           have you ever been a plaintiff or a defendant in  
9           any type of court or administrative action at any  
10          time?

11      A. Do traffic tickets count?

12      Q. Let's put traffic tickets to the side.

13      A. Other than traffic tickets, I was involved in  
14          California in a robbery and assault during  
15          Proposition 8 in which someone attempted to  
16          physically remove the yard signs I was putting  
17          up. I did prosecute in that and he was convicted  
18          of a robbery.

19      Q. Can I stop you for a second? When you say you  
20          were involved in a robbery, are you saying that  
21          you believe you were the victim of a robbery or an  
22          assault in California?

23      A. I was.

24      Q. And did the local district attorney's office bring  
25          a criminal action against the person who did this?

- 1 A. Yes, they did.
- 2 Q. And you were a witness in connection with that  
3 action?
- 4 A. Correct.
- 5 Q. All right, and you testified that this person was  
6 convicted of a particular crime?
- 7 A. I believe I was sent a statement that he had been  
8 convicted of robbery, and we -- we also at the  
9 Family Institute were plaintiffs in a motion to  
10 intervene in the Kerrigan case. So I don't know  
11 if that counts under the question you asked.
- 12 Q. Okay, thank you. Have you personally been sued?
- 13 A. No.
- 14 Q. Okay, and other than the related state action here  
15 in Maine, have you been the plaintiff in any type  
16 of court or administrative action at any time?
- 17 A. Yes. The National Organization for Marriage is a  
18 plaintiff in the Bowen suit in California.
- 19 Q. You're referring to the ProtectMarriage.com case?
- 20 A. Yes.
- 21 Q. At least that's what I call it. There are many  
22 plaintiffs, I take it, and one of the plaintiffs  
23 are you saying is NOM?
- 24 A. There are two plaintiffs and we are the second  
25 plaintiff, NOM.

1 Q. While we're on the subject, is ProtectMarriage.com  
2 affiliated in any way with the National  
3 Organization for Marriage?

4 A. No, they're a separate organization.

5 Q. I understand they're a separate organization. Are  
6 they affiliated in any way in terms of their  
7 organizational structure or funding or board of  
8 directors?

9 A. If you mean -- affiliated it would seem to me that  
10 it would -- do you mean by affiliated that we  
11 maintain some control of ProtectMarriage?

12 Q. Who is the executive director of  
13 ProtectMarriage.com?

14 A. I believe it's Ron Prentiss.

15 Q. And did NOM have any role in the formation of  
16 ProtectMarriage.com?

17 A. No, ProtectMarriage.com began in 2002 with the --  
18 I believe they began in 2002, so they predated the  
19 National Organization for Marriage.

20 Q. And other than the California case, the cases in  
21 Maine, has the National Organization for Marriage  
22 been a plaintiff or a defendant in a court or  
23 administrative action at any time?

24 A. Administrative action, does that include a  
25 complaint being filed against you?

- 1 Q. Yes.
- 2 A. Iowa, a complaint was filed against us in Iowa  
3 which was dismissed.
- 4 Q. What type of complaint was filed against NOM in  
5 Iowa?
- 6 A. An election complaint alleging that we had broken  
7 election laws which was dismissed.
- 8 Q. So the complaint was brought to the attention of  
9 an administrative agency within the state of Iowa?
- 10 A. Correct.
- 11 Q. And you're saying the state agency reviewed the  
12 complaint and dismissed it?
- 13 A. Correct.
- 14 Q. Were there any other proceedings in which NOM has  
15 been involved either as a plaintiff or a  
16 defendant?
- 17 A. I am not aware of any, although it has been  
18 alleged that there's a complaint filed against us  
19 in California but to my knowledge we're not  
20 actually -- we're not actually named in that by  
21 the state. So that would be the only question.  
22 Mr. Carter alleged that there was a California  
23 complaint file against us. I have not received  
24 any documentation of that.
- 25 Q. To your knowledge has NOM been the subject of an

1 investigation by any governmental body other than  
2 Iowa and the Maine Commission?

3 A. No investigation that I'm aware of, no.

4 Q. Have you ever had your deposition taken before,  
5 Mr. Brown?

6 A. No, I have not.

7 (Whereupon, Deposition Exhibit #1 is marked.)

8

9 BY MR. KNOWLTON:

10 Q. Now, would you take a look at Exhibit 1, please,  
11 Schedule B, which is a list of documents. Mr.  
12 Brown, are you able to go through the list on  
13 Schedule B and tell me whether or not the  
14 documents you brought today are responsive to #1?

15 A. Yes.

16 Q. So are you saying that the list of the names and  
17 addresses of the contributors listed in Schedule B  
18 has been provided to us today?

19 A. No, I am not saying that.

20 Q. Okay, I'm misunderstanding you then.

21 A. You asked me if I could answer you if I -- if I  
22 could answer you whether I could respond to this.

23 Q. All right, I understand. So the answer is no, the  
24 answer to #1 is there are no documents that have  
25 been provided to us today that are responsive to

1 #1?

2 A. Well, the answer is yes I can answer you, but no  
3 as far as us providing these documents.

4 Q. Okay. Could you go through items 1 through 11 and  
5 just let me know which of those items NOM has  
6 brought documents with it today?

7 A. We objected to 2. I believe we objected to 3.

8 Q. Let's start on 3.

9 A. Okay.

10 Q. So did you not bring any bylaws of NOM with you  
11 today?

12 MR. NEELEY: I believe the bylaws are  
13 included in the Amended Complaint.

14 MR. KNOWLTON: They're not actually  
15 included in the Amended Complaint. That's why I  
16 asked for them.

17 MR. NEELEY: Okay.

18

19 BY MR. KNOWLTON:

20 A. I thought that the original bylaws -- the bylaws  
21 were included in the Amended Complaint and we do  
22 not have amended bylaws.

23 Q. All right. Let's just take this one at a time.

24 (Whereupon, Deposition Exhibit #2 is marked.)

25 BY MR. KNOWLTON:

1 Q. I'm now showing you what's marked as Defendant's  
2 Exhibit 2 that are labeled Amended Bylaws for  
3 National Organization for Marriage. These are  
4 Exhibit 2 to the Amended Complaint that was filed  
5 in this action. Would you agree with me, Mr.  
6 Brown, that what Exhibit 2 contains is part of the  
7 bylaws?

8 A. Yes.

9 Q. Okay.

10 A. That's what it looks like.

11 Q. Great. Well, I assume that NOM has available and  
12 would produce to us the actual bylaws?

13 MR. NEELEY: Sure, yeah.

14 MR. KNOWLTON: Great, and would you --

15

16 BY MR. KNOWLTON:

17 Q. Mr. Brown, are there signed copies of Exhibit 2 in  
18 NOM's records?

19 A. I believe so.

20 Q. Okay, great. Going back to Exhibit 1, item 4, has  
21 NOM brought with it today the organizational  
22 documents for any entity related to NOM or  
23 affiliated with NOM?

24 A. It was my understanding that the Articles of  
25 Incorporation had already been forwarded. I

1 believe there was an objection to organizations  
2 affiliated with NOM, if I recall correctly.

3 MR. KNOWLTON: I don't believe we've  
4 received any objection to this Exhibit 1 since  
5 we've served it. Mr. Neeley, have you folks sent  
6 us an objection that hasn't made its way to my  
7 desk?

8 MR. NEELEY: I would have to check. I  
9 don't think so. I think the -- can I speak with  
10 Mr. Brown for a minute?

11 MR. KNOWLTON: Sure.

12 (OFF RECORD)

13

14 MR. KNOWLTON: So I was asking you about  
15 item 4 of Schedule B in Exhibit 1, Mr. Brown.

16 MR. NEELEY: We will provide those  
17 documents, my apologies.

18 MR. KNOWLTON: Okay, great.

19

20 BY MR. KNOWLTON:

21 Q. Item 5 to Schedule B of Exhibit 1, have any  
22 documents been provided that are responsive to  
23 that item?

24 A. No, I don't believe so.

25 Q. Was there a reason why they were not provided?

1 A. This falls under the objection about donor names.

2 Q. To the extent that there are donor names on there  
3 I would understand that, but I believe that many  
4 of the schedules that are referred to in Exhibit 5  
5 do not have donor names on them and we would ask  
6 that those be provided.

7 MR. KNOWLTON: Is there any objection,  
8 other than the fact that they might have donor  
9 names, to providing the rest of the 990?

10 MR. NEELEY: No, and you'll have to get  
11 with me about what exactly it is that you think  
12 you're missing.

13 MR. KNOWLTON: I was just going through the  
14 990 that was attached to the Complaint. There are  
15 references to all sorts of other schedules,  
16 Schedule R, Schedule C, schedule this and that,  
17 and as long --

18 MR. NEELEY: Okay.

19 MR. KNOWLTON: I would ask that you provide  
20 them, understanding that you will reserve your  
21 right to object to anything to the extent it has  
22 donor names on it.

23 MR. NEELEY: Sure, correct.

24 MR. KNOWLTON: Is that fair?

25 MR. NEELEY: Yes.

1 MR. KNOWLTON: Great, thanks.

2

3 BY MR. KNOWLTON:

4 Q. In terms of #6, Mr. Brown, has NOM's form 990 for  
5 2009 been prepared yet?

6 A. No, it has not.

7 Q. How far along in that process is the 2009 form  
8 990?

9 A. I believe we have an extension until August 15th.

10 Q. So NOM filed for an extension to file the 990 for  
11 2009?

12 A. Correct.

13 Q. Were any audited or unaudited financial statements  
14 provided today? I'm looking at item 7 now in  
15 Schedule B.

16 MR. NEELEY: Do you have the copy of what  
17 was provided?

18 MR. KNOWLTON: I do not. I think they're  
19 still being copied.

20 MS. GARDINER: Oh, what you brought today?

21 MR. NEELEY: Yes.

22 MR. KNOWLTON: Oh, I'm sorry.

23 MS. GARDINER: We have everything you  
24 brought today.

25 MR. KNOWLTON: We do.

1           MR. NEELEY: It might be useful for him to  
2 be able to look at it.

3           MR. KNOWLTON: Sure.

4           THE DEPONENT: This is responsive to  
5 another request.

6           MR. KNOWLTON: Let me mark as Exhibit 3 one  
7 of the documents you were just looking at, Mr.  
8 Brown, a document that was provided today entitled  
9 National Strategy for Winning the Marriage  
10 Battle.

11          (Whereupon, Deposition Exhibit #3 is marked.)

12

13 BY MR. KNOWLTON:

14 Q. Could you just identify or explain for me what  
15 Exhibit 3 is?

16 A. It's a document highlighting our two-year plan to  
17 protect marriage as the union of a man and a woman  
18 and includes a number of different items  
19 highlighting where -- highlighting subheadings of  
20 where we think the most important battles are in  
21 the country.

22 Q. Who prepared Exhibit 3 for NOM?

23 A. It was a joint work of myself, our president at  
24 the time, Maggie Gallagher, and had input from  
25 board members.

1 Q. Were any third parties involved in the preparation  
2 of any aspect of Exhibit 3?

3 A. Yes, we had a budget from the Maine campaign that  
4 we included as an addendum on the back, and that  
5 was not done by the National Organization for  
6 Marriage.

7 Q. Who prepared the addendum on the back of Exhibit  
8 3?

9 A. We received it from the executive committee of  
10 StandforMarriage Maine.

11 Q. And on the backside -- and by that I mean the very  
12 last page of Exhibit 3 -- there's a reference to  
13 the New Jersey budget, do you see that?

14 A. Um-hum, yes, I do.

15 Q. Who prepared that?

16 A. That was prepared by our public affairs company,  
17 Schubert Flynn Public Affairs, in cooperation with  
18 me.

19 Q. And when was Exhibit 3 prepared? On the date  
20 stated, August 11, 2009?

21 A. It was originally prepared in December I believe.

22 Q. Of what year?

23 A. Actually, I'm sorry, it was originally prepared in  
24 April and then there were changes made to it, if I  
25 remember correctly, but there was an earlier

1 version and this is the changed version, an  
2 updated version.

3 Q. When was this changed version that's Exhibit 3  
4 finalized?

5 A. August 11, 2009.

6 Q. When was the addendum about the Maine campaign  
7 prepared and added to Exhibit 3?

8 A. I believe it was -- it was in the beginning of  
9 August or late July.

10 Q. So this entire Exhibit 3 was done by August 11,  
11 2009?

12 A. I'm trying to remember two different versions, but  
13 if I recall correctly, yes, it was.

14 Q. Okay. Mr. Brown, I was asking you about item 7 on  
15 Schedule B of Exhibit 1 which refers to audited  
16 and unaudited financial statements. Do you see  
17 that reference?

18 A. Yes.

19 Q. Does NOM have any audited or unaudited financial  
20 statements for 2009?

21 A. You have bank reports in which donors' names would  
22 be included. As far as audited financial  
23 statements, those would be a part of the 990, and  
24 they're not completed yet.

25 Q. So it sounds like there are some financial

1 statements in process for 2009 but they're not  
2 completed yet?

3 A. For the year of 2009, yes.

4 Q. Okay. Did you bring with you today any documents  
5 responsive to item 8 in Schedule B?

6 A. Yes, this is responsive to item 8.

7 Q. And by "this" you mean Exhibit 3?

8 A. Exhibit 3, yes.

9 Q. Were there any other documents brought today that  
10 are responsive to item 8?

11 A. I believe this is responsive which is the in-kind  
12 contributions to StandforMarriage Maine PAC of the  
13 National Organization for Marriage.

14 Q. So let me mark this next document as Defendant's  
15 Exhibit 4, and it's going to be a six-page  
16 document.

17 (Whereupon, Deposition Exhibit #4 marked.)

18

19 BY MR. KNOWLTON:

20 Q. I'm marking as Defendant's Exhibit 4 this six-page  
21 document that you are referring to, the first page  
22 of which says Brian Brown, National Organization  
23 for Marriage, in-kind contributions. Would you  
24 please just go through this page by page and tell  
25 me what these documents are?

- 1 A. The first page describes in-kind contributions  
2 from NOM to the StandforMarriage Maine PAC that  
3 were reported to the StandforMarriage Maine PAC in  
4 order to be disclosed on the filing forms for  
5 StandforMarriage Maine PAC. The second is the  
6 actual Schedule A from the filing from  
7 StandforMarriage Maine PAC highlighting in-kind  
8 contributions and segmenting them out, pages 2  
9 through 3 of A-1.
- 10 Q. And are the last two pages of Exhibit 4 also just  
11 part of the StandforMarriage Maine PAC report  
12 filing?
- 13 A. Correct.
- 14 Q. Other than Exhibit 4, which you've just described,  
15 did you bring with you today any other documents  
16 responsive to item 8 in Schedule B?
- 17 A. No, I did not.
- 18 Q. Does NOM have any documents referring to the  
19 allocation of its resources to support its  
20 activities in 2010?
- 21 A. Activities in 2010?
- 22 Q. Correct.
- 23 A. I'm just trying to think through what kinds of  
24 documents exist as far as minutes or board  
25 approved type documents. I'm not aware of any for

1 2010.

2 Q. Is there a budget describing NOM's projected  
3 expenditures for 2010?

4 A. I believe that we included a budget in the earlier  
5 responses.

6 THE DEPONENT: Did we or did we not?

7 MR. NEELEY: You're referring to the  
8 affidavit?

9 THE DEPONENT: Correct.

10 MR. NEELEY: Right, I think that was a  
11 projected budget for 2009.

12 THE DEPONENT: 2009?

13 MR. NEELEY: Yeah.

14

15 BY MR. KNOWLTON:

16 A. This is our basic document as far as our  
17 budgeting. This is our basic document.

18 Q. So beyond Exhibit 3 that was prepared in August  
19 2009, is it your testimony that NOM has no  
20 documents that set forth its expenditures or  
21 planned expenditures for 2010?

22 A. I can think of no formal document that we have  
23 that lays out our expenditures in 2010.

24 Q. Whether it's formal or informal, are there any  
25 documents that set forth NOM's planned

1 expenditures for 2010?

2 A. There are possibly e-mails in which we've  
3 discussed this privately.

4 Q. What do you mean privately?

5 A. Amongst -- there may be e-mails that we've  
6 discussed between board members as far as, you  
7 know, where we are involved, but as far as planned  
8 allocations, budgeting out allocations, which is  
9 what you're asking me, we do not have a budget in  
10 the sense of a formal budget laid out everywhere  
11 where each of our line items is going to be paid  
12 out, no. That's not --

13 Q. Do documents exist in which you or members of the  
14 NOM board of directors discussed NOM's  
15 expenditures for 2010?

16 A. I don't believe there are documents talking about  
17 planning expenditures. They may talk about actual  
18 line items of us being involved in certain places,  
19 but as far as budgeting out line items, something  
20 like a budget or planned numbers attached to a  
21 certain effort, I will go back through and look  
22 but I'm not aware of us having e-mails of that  
23 nature or documents of that nature.

24 Q. Do you attend the meetings of the board of  
25 directors of NOM?

1 A. Yes.

2 Q. During those meetings are there discussions  
3 concerning where NOM is planning on expending its  
4 funds for the upcoming period?

5 A. Yes.

6 Q. Are there minutes taken of board meetings where  
7 such discussions happen?

8 A. Yes.

9 Q. I don't believe that we have been provided with  
10 any minutes of any board meetings in which NOM's  
11 expenditures or planned expenditures or past  
12 expenditures have been mentioned. Would you  
13 please provide them?

14 A. Yes.

15 MR. KNOWLTON: Is there any objection to  
16 providing minutes of board of directors meetings,  
17 Josiah?

18 MR. NEELEY: I would have to -- I would  
19 want to look at them to see if there was, you  
20 know, based on our prior objection --

21 MR. KNOWLTON: Other than redacting any  
22 reference to particular donor names, is that the  
23 only objection?

24 MR. NEELEY: Yes.

25 MR. KNOWLTON: Maybe it would just be

1 easier -- and we'll do this in a separate request  
2 afterwards -- to just turn over the minutes rather  
3 than have to go through and figure out line by  
4 line whether there's a formal discussion here or  
5 an informal discussion. It would just be easier  
6 if you can redact any reference to donor names and  
7 just turn over the board minutes for the last two  
8 years. Would there be any objection to that?

9 MR. NEELEY: By the last two years you  
10 mean --

11 MR. KNOWLTON: Going back to 1/1/09.

12 MR. NEELEY: Yeah, I don't have an  
13 objection to that.

14 MR. KNOWLTON: All right. We'll take that  
15 up afterwards.

16 MR. NEELEY: Yes.

17

18 BY MR. KNOWLTON:

19 Q. Mr. Brown, did you bring with you today any  
20 communications with donors or contributors  
21 concerning NOM's planned activities in Maine for  
22 2010?

23 A. I did not.

24 Q. Are there such documents?

25 A. I do not have documents. There are not such

1 documents that I'm aware of, no.

2 Q. Do any of NOM's newsletters or e-mail updates or  
3 other communications with donors or members make  
4 any reference to Maine in 2010?

5 A. There may be e-mails referencing Maine in 2010.  
6 I'm not aware of any but there may -- Maine may be  
7 mentioned in some way.

8 MR. KNOWLTON: Do you mind if we go off the  
9 record for a second?

10 MR. NEELEY: Um-hum.

11 MR. KNOWLTON: Is that okay?

12 MR. NEELEY: Yes.

13 (OFF RECORD)

14

15 MR. KNOWLTON: Council for NOM has agreed  
16 to double-check whether there are any documents  
17 responsive to items 10 and 11 in Schedule B.

18 (Whereupon, Deposition Exhibit #5 is marked.)

19

20 BY MR. KNOWLTON:

21 Q. Let me mark as Exhibit 5 what I think is the last  
22 packet of materials you brought with you today.

23 It's a series of e-mails and transcripts of phone  
24 messages, I believe, that were provided by counsel  
25 for NOM today. Let me show it to you, Mr. Brown.

1           Could you go through what Exhibit 5 is, please?

2           A. Exhibit 5 is examples -- recent examples of saved  
3           phone messages of death threats and harassment of  
4           our staff at our office. These are the most  
5           recent and these have been saved, and we have them  
6           also on audio.

7           Q. Okay. So what's --

8           A. It also includes whenever there is a serious --  
9           whenever there is an actual death threat, we go to  
10          the police and it includes the case numbers and  
11          police reports.

12          Q. So could you just take me through what's in  
13          Exhibit 5 page by page so I can understand it,  
14          please?

15          A. Okay. The first page is the actual transcript of  
16          an April 14th death threat.

17          Q. Is that a phone message?

18          A. Is it a phone message, yes.

19                       MR. NEELEY: We have an audio CD if you  
20          want.

21                       MR. KNOWLTON: Great, thanks.

22                       MR. NEELEY: I don't know if you want to  
23          mark that or not.

24                       MR. KNOWLTON: Sure, we'll mark that as  
25          #6. Exhibit 6 is going to be the audio CD of any

1 phone messages that are contained in Exhibit 5, is  
2 that correct?

3 MR. NEELEY: That's correct, yes.

4 MR. KNOWLTON: All right.

5 (Whereupon, Deposition Exhibit #6 is marked.)  
6

7 BY MR. KNOWLTON:

8 Q. Mr. Brown, after page 1 of Exhibit 5 there's a  
9 bunch of pages from the Princeton Police  
10 Department?

11 A. Correct.

12 Q. Is that a record of the report that NOM made to  
13 the police upon receiving the message that's on  
14 the first page of Exhibit 5?

15 A. Correct.

16 Q. Okay. What was the result of that investigation?

17 MR. NEELEY: If I could clarify, I believe  
18 there's three separate messages recorded on that  
19 first page.

20 MR. KNOWLTON: All right.  
21

22 BY MR. KNOWLTON:

23 Q. There appear to be messages on April 14th, April  
24 20th and April 21st. Is that what's depicted on  
25 the first page, Mr. Brown?

1 A. That's correct.

2 Q. So are the pages from Princeton the records of  
3 reports for each of those phone calls?

4 A. I'm just checking through them. No, I believe  
5 the -- I believe that the one that says page 2 of  
6 2 --

7 Q. Let's call that page 3 of this document.

8 A. Page 3 of this document.

9 Q. Okay.

10 A. I believe that that seems to me to be the same as  
11 -- for some reason it's a duplicate of -- the  
12 third and the fifth page of this entire document  
13 are duplicates it looks like to me.

14 Q. Okay.

15 A. So only the second -- there are only actually two  
16 police case numbers in this document.

17 Q. Okay.

18 A. And they -- they, I believe, refer to the messages  
19 left on the first page. Then we move on to all of  
20 the e-mail messages that we have more access to  
21 because the phone messages sometimes get deleted  
22 automatically by our phone messaging system.

23 Q. Can I stop you for a minute before you go on to  
24 the e-mails?

25 A. Yes.

1 Q. Page 2 of this document, I'm looking at the police  
2 department report, it refers to an incident  
3 between January 17th and January 21st, 2010, do  
4 you see that?

5 A. I do see that.

6 Q. And the phone messages are from April 2010, would  
7 you agree?

8 A. Yes, you're right. I'm sorry, I skipped over the  
9 first page. I think the reference to between 1/17  
10 and 1/21 was an earlier case that we included that  
11 doesn't refer to the voice messages.

12 Q. Okay, great.

13 A. And we do not have audio for that because they  
14 have been deleted.

15 Q. Okay. So page 3 of Exhibit 5 refers to the phone  
16 messages from the first page?

17 A. Correct.

18 Q. Okay. Page 4 of Exhibit 5 refers back again to  
19 the period between January 17th and January 21st.  
20 It appears to be a duplicate of page 2?

21 A. Correct. For some reason there's two duplicates  
22 here.

23 Q. That's fine, that happens. Page 5 is a duplicate  
24 of page 3, would you agree?

25 A. Yes, correct.

- 1 Q. Starting on page 6 we get e-mails?
- 2 A. Correct.
- 3 Q. Tell me about the e-mails.
- 4 A. We receive numerous e-mails per month, some, you
- 5 know, simply harassment which we don't report and
- 6 some that go to the level of death threats. We've
- 7 included both harassing-type e-mails and those
- 8 that are more threatening in all of these, and
- 9 these go back to June of -- actually I believe
- 10 they go back even further. They go back into
- 11 2008.
- 12 Q. Do any of the e-mail messages that are contained
- 13 in Exhibit 5 appear to have any connection to the
- 14 Maine campaign involving Question 1?
- 15 A. Some occurred during the same period, but I'm not
- 16 seeing any direct reference to Maine.
- 17 Q. Is there any reference, direct or indirect, to the
- 18 Maine campaign in any of the e-mails contained in
- 19 Exhibit 5?
- 20 A. It doesn't look like it, no.
- 21 Q. Other than the e-mails contained in Exhibit 5, are
- 22 you aware of any death threats or other threats
- 23 made to NOM in response to NOM's actions in
- 24 connection with Question 1 in the Maine campaign?
- 25 A. Yes.

1 Q. Please tell me about those.

2 A. It's my understanding that during the Question 1  
3 campaign we received voice messages that were  
4 threatening, not just one. I believe there were a  
5 few that came in that were threatening to  
6 employees. I don't -- those -- I don't believe we  
7 still have those, but that's my understanding from  
8 employees, and I did not myself listen to them.  
9 There may be e-mails. I've tried to thoroughly go  
10 back through e-mails and have my staff help in  
11 doing that, but they're not included here and I  
12 can go back and look again in order to find them.

13 Q. What made you or your staff member believe that  
14 the phone message had something to do with Maine?

15 A. Well, it occurred during the middle of Maine and I  
16 believe there was direct reference to Maine. I  
17 will need to talk to them again. This was awhile  
18 ago, but it was my understanding from the employee  
19 that Maine was referenced.

20 Q. And how many phone calls do you believe NOM  
21 received?

22 A. I don't know. I will have to -- I don't know the  
23 answer to that.

24 Q. What was the gist of the message?

25 A. Well, it was pretty serious. It was more along

1 the lines of do you know how many of us there are,  
2 we can take you out, things like that.

3 Q. Is that what was reported to you by the NOM staff  
4 member?

5 A. My understanding from the employees, we rate these  
6 sorts of threats from a level of just simple  
7 harassment to death threat, and it was more along  
8 the lines of a death threat.

9 Q. Were any of these reported to the police?

10 A. I will have to ask the employees on that. The  
11 burden of -- we do, in general, report any serious  
12 death threat to the police, but the burden of  
13 doing that is on our staff and it can take time.  
14 So I can't say that that has always happened.

15 Q. And during the time that you were engaged in the  
16 Maine campaign it's fair to say that NOM was also  
17 active in many other states in connection with its  
18 mission?

19 A. It was.

20 Q. Okay. So unless the caller specifically mentioned  
21 Maine, there would be no reason for you to  
22 conclude that the message had anything to do with  
23 NOM's activities in Maine, would there?

24 A. No, not unless there was a reference to Maine.

25 Q. Okay.

1           MR. KNOWLTON: Josiah, in order to save  
2           some time today and the next time Mr. Brown comes  
3           to town -- can we go off the record for a second?

4                                 (OFF RECORD)

5  
6           MR. KNOWLTON: Counsel for NOM has agreed  
7           that all of the documents that have been provided  
8           to the defendants in this case are authentic so  
9           that the defendants don't need to lay a foundation  
10          for the authenticity of these documents. Is that  
11          fair?

12          MR. NEELEY: That is fair.

13          MR. KNOWLTON: Can we take a two-minute  
14          break?

15                                 (OFF RECORD)

16

17 BY MR. KNOWLTON:

18 Q. Mr. Brown, if we could just tie up a few loose  
19          ends about the last subject you were telling us  
20          about which had to do with some phone messages  
21          that your staff had received, could you tell me  
22          who the name of the person at NOM was who reported  
23          to you any message that involved the Maine  
24          campaign?

25 A. I believe it was Justin Haas.

1 Q. How do you spell Haas?

2 A. H-A-A-S, who is our director of operations, and I  
3 believe he did not receive the call but one of our  
4 employees, Brian Perkins, received the call or  
5 calls.

6 Q. Where were these employees located at the time?

7 A. In Philadelphia.

8 Q. What month did this happen?

9 A. October, I believe it was either late September or  
10 early October.

11 Q. Where else did NOM have offices at that time?

12 A. In Washington, D.C., Princeton, New Jersey, and in  
13 Rhode Island, Providence, Rhode Island.

14 Q. Does NOM still have offices at all four of those  
15 locations?

16 A. Correct.

17 Q. Can you just tell me when NOM first established  
18 offices at each of those places?

19 A. Oh, goodness.

20 Q. Roughly.

21 A. Our first office was in Princeton in 2007 when we  
22 were founded, June of 2007. We opened up a Rhode  
23 Island office roughly two years ago.

24 Q. And by that you mean roughly sometime in 2008?

25 A. It was in 2008. We then opened our Washington,

1 D.C. office in 2009. I believe it was December --  
2 actually it was December of 2009. So at the time  
3 of these calls the D.C. office was not up and  
4 running and our Philadelphia office was started  
5 because of the amount of harassment we were  
6 receiving in Princeton, and it's not publicly  
7 identified and that was started in 2000 -- in 2008  
8 also.

9 Q. So during, let's just say, the fall of 2009, how  
10 many NOM employees were physically located at the  
11 Philadelphia office on a regular basis?

12 A. Seven employees.

13 Q. Seven out of how many NOM employees at that time?

14 A. Ten.

15 Q. Where were the other three employees located in  
16 the fall of 2009?

17 A. Actually, I'm sorry, we were in D.C. in the fall  
18 of 2009. I was in D.C. and there were -- there  
19 was one other employee at the time with me in D.C.  
20 and then there was one employee in Providence,  
21 Rhode Island.

22 Q. How many employees were located in the Princeton,  
23 New Jersey offices in the fall of 2009? I counted  
24 ten so --

25 A. Yeah, there's only -- the Princeton, New Jersey

1 office is mainly for storage at this point.

2 Someone goes up there twice a week from Philly.

3 Philly and Princeton are close to each other so

4 there are only really two days a week where

5 someone is in the Princeton office, at most two

6 days a week.

7 Q. And the situation you described about the number

8 of employees at each office was that the same

9 throughout all of 2009?

10 A. Roughly, yes. One our Philadelphia employees

11 comes down and works in the D.C. office often two

12 days a week, so that's the only reason I'm

13 thinking about it.

14 Q. Is this the other person that you described that's

15 with you in D.C. regularly?

16 A. No, he's an additional -- Justin Haas who I

17 referred to as relaying me the voice mail

18 messages.

19 Q. And as best as you can recall, could you tell me

20 what the substance of the phone messages that were

21 relayed to you by Justin Haas as relayed to him by

22 Brian Perkins?

23 A. I don't recall the exact language. I believe

24 what -- I know that Justin and I spoke about

25 Maine-related calls, and they were at a higher

1 level, at a death-threat-type level. I don't  
2 recall whether he actually, you know, told me what  
3 was said or just said these are the type of calls  
4 we're receiving or I received this call. I don't  
5 remember that. I know that Maine was mentioned.  
6 You know, again, I don't know how many times.

7 Q. Was anyone in particular at NOM identified as the  
8 target of these calls or was it just the  
9 organization generally?

10 A. I believe it was just the organization generally.  
11 Most of the types of calls we receive are -- don't  
12 necessarily say either me or Maggie, some do, and  
13 a few are directed at whoever is on the phone, but  
14 in general I think it's a proverbial you or a  
15 collective you.

16 Q. All right. Mr. Brown, who founded NOM? And by  
17 NOM, it's capital N, capital O, capital M. Who  
18 founded NOM?

19 A. Maggie Gallagher, who is a syndicated columnist,  
20 was our president, Professor Robert George was our  
21 chairman and I was the executive director. We  
22 founded NOM together.

23 Q. When?

24 A. In June of 2007.

25 Q. Why?

1 A. To protect marriage and the faith communities that  
2 sustain it.

3 Q. What do you mean by "to protect the faith  
4 communities that sustain it?"

5 A. To protect the faith communities that believe  
6 marriage is the union of a man and a woman from --  
7 from attacks upon their religious liberty or laws  
8 that would impinge upon their religious liberty.

9 Q. And, again, by faith communities, could you  
10 explain what you mean by that?

11 A. Churches, religious organizations, faith  
12 communities.

13 Q. Has NOM's original mission changed at all since  
14 its founding?

15 A. No.

16 Q. So in 2009 you described NOM as having ten  
17 employees and you went through some description of  
18 where they worked, and I didn't ask you the names  
19 of the employees, but let me just do that now  
20 since there are only ten people. Could you tell  
21 me who the seven employees are who regularly  
22 worked in the Philadelphia office, their names and  
23 their positions?

24 A. Justin Haas, director of operations.

25 Q. What does it mean to be director of operations?

1 A. He helps -- he manages our compliance and overall  
2 administration, and Joe Grabowski, office staff.  
3 His basic position was -- he basically did  
4 database management.

5 Q. He didn't have a title, he was just part of the  
6 staff?

7 A. Yeah, part of the staff. He did have a title but  
8 I'm just having trouble remembering it. He no  
9 longer works with us.

10 Q. Okay.

11 A. Then Mary Haas who is office manager, H-A-A-S.

12 Q. Any relation to Justin?

13 A. Yes, his sister. Brian Perkins, constituent  
14 relations, Kyleen Roe, K-Y-L-E-E-N, Roe, R-O-E,  
15 constituent relations.

16 Q. That's five.

17 A. I'm just --

18 Q. Do you want to move on to another office and come  
19 back to the Philadelphia office?

20 A. No, no, I know it's -- I'm trying to remember her  
21 last name. In the D.C. office -- well, in the  
22 Providence office there's only one employee and  
23 that's Christopher Plante. He's the executive  
24 director of NOM Rhode Island.

25 Q. Can I stop you for a second?

1 A. Um-hum.

2 Q. Whose office is it in Providence? Is it NOM's  
3 office or --

4 A. It is NOM's office. It's a chapter of NOM under  
5 our (c)(4). It's just a state chapter.

6 Q. Okay, and what's it called again?

7 A. NOM Rhode Island.

8 Q. I'm sorry, go ahead. Christopher Plante?

9 A. Correct.

10 Q. What does it mean to be a chapter?

11 A. It just means they're a state office of NOM.  
12 They're not a separate incorporated chapter.  
13 They're under our 501(c)(4).

14 Q. Okay, thank you.

15 A. In Washington, D.C., Paul Bottwell, executive  
16 assistant, David Monge, director of development.

17 Q. And where did Mr. Monge work?

18 A. In D.C.

19 Q. How do you spell Monge?

20 A. M-O-N-G-E.

21 Q. Does development director mean that he was  
22 responsible, at least in part, for fundraising?

23 A. Correct, but I have to go back and look at my  
24 notes to see when we hired Dave. He was not hired  
25 -- I believe it was right at the end of the Maine

1 Ballot Initiative.

2 Q. Okay.

3 A. Actually I think it was after, but I don't recall  
4 the exact date that we hired him.

5 Q. Who was development director before Mr. Monge?

6 A. We didn't have a development director.

7 Q. Okay, thank you. I think we're up to nine  
8 people.

9 A. I'm trying to remember if Reverend John Boyles who  
10 serves as our director of religious outreach was  
11 working with us at the time, and I just can't  
12 remember whether he was there. It was at the very  
13 end where we hired some more employees. I believe  
14 he was on in 2009, but I'm not certain.

15 Q. Where would he have been?

16 A. He was in D.C. He is in D.C.

17 Q. His name again was, I'm sorry, Reverend --

18 A. John Boyles, B-O-Y-L-E-S.

19 Q. So it sounds like there were three people in D.C.,  
20 Mr. Brown, you, Mr. Bottwell and Mr. Monte after  
21 he was hired at some point in 2009?

22 A. Correct.

23 Q. You've identified five people in Philadelphia, Mr.  
24 Haas, Ms. Haas, Mr. Grabowski, Mr. Perkins and Ms.  
25 Roe?

1 A. Correct.

2 Q. Have you missed anybody in Philadelphia?

3 A. I have. If you give me one second I'll remember.

4 Q. Okay.

5 A. Could I step outside for a second?

6 Q. Sure.

7 (OFF RECORD)

8

9 BY MR. KNOWLTON:

10 A. Sorry, I'm trying to figure out who are  
11 contractors and who is staff. Megan Wickard is an  
12 employee and she does -- she's the secretary.

13 Q. How do you spell that?

14 A. M-E-G-A-N, W-I-C-K-A-R-D.

15 Q. Did she work in Philadelphia in 2009?

16 A. She did.

17 Q. Does she still work in Philadelphia?

18 A. She does and the other employee I was thinking of  
19 is not an employee. He was just part-time help.

20 Q. And you've been with NOM from the beginning?

21 A. Correct.

22 Q. What was your position when it first started?

23 A. Executive director.

24 Q. Have you held any other positions within NOM?

25 A. I was recently -- I recently became president and

1           also a board member.

2           Q. When did you become a board member?

3           A. A month ago.

4           Q. Was Ms. Gallagher president up until recently?

5           A. Correct.

6           Q. Who named you as a board director -- let me say  
7           that differently. How did you get to be a member  
8           of the board of directors of NOM?

9           A. Through a board vote.

10          Q. So the current board decides who succeeds outgoing  
11          members?

12          A. The current board can add without -- add members  
13          without outgoing members leaving.

14          Q. So you're an additional member not a replacement?

15          A. Correct.

16          Q. How many members of the board are there now?

17          A. There are -- do you want me to --

18          Q. Do you want to give me the names? I'm going to  
19          come to that anyway so that would be easier..

20          A. There are Robbie George, who is now chairman  
21          emeritus, Maggie Gallagher is now chairman, I am  
22          on the board, Luis Tellez, Chuck Stetson, Ken Von  
23          Kohorn, Neil Corkery, Craig Cardon.

24          Q. How do you spell that?

25          A. C-A-R-D-O-N, Brock Hiatt.

- 1 Q. H-Y-A-T-T?
- 2 A. I'm sorry, H-I-A-T-T, or Orson Scott Card.
- 3 Q. I count ten. Does that sound right?
- 4 A. That's correct.
- 5 Q. And Ms. Gallagher recently became chair of the
- 6 board?
- 7 A. Correct.
- 8 Q. And prior to her, Mr. George was chair of the
- 9 board?
- 10 A. Correct.
- 11 Q. Was Mr. George chairman from the outset of this
- 12 organization's formation until Ms. Gallagher just
- 13 replaced him?
- 14 A. Correct, Dr. George was.
- 15 Q. Does the board of directors have regular meetings?
- 16 A. We do. We have one annual meeting a year.
- 17 Q. When is that usually held?
- 18 A. In July.
- 19 Q. Where?
- 20 A. Princeton, New Jersey.
- 21 Q. Other than the board of directors, who else is
- 22 typically present at board meetings?
- 23 A. Typically only myself and now I am a board member.
- 24 Q. Have you attended all the board meetings since
- 25 2007?

1 A. Correct.

2 Q. Is there an agenda prepared for these meetings?

3 A. Yes.

4 Q. Who prepares it?

5 A. Typically we collaborate with Maggie Gallagher,  
6 myself, Professor George and Luis Tellez.

7 Q. Could you explain what you mean by that?

8 A. The way we operate is that we have phone calls  
9 typically every week with executive committee  
10 members, and during these calls we talk about  
11 issues, administration, everything that involves  
12 the organization. So when drafting a board  
13 agenda, we would all bring up the items that we  
14 think are most important. Again, I can't recall  
15 whether it was just Maggie or myself who worked on  
16 the last board agenda, but I'm pretty sure there  
17 was input from others, and that input would be  
18 from Luis Tellez and Dr. George.

19 Q. Are those the four members of the executive  
20 committee?

21 A. Correct.

22 Q. What is the charge of this executive committee?

23 A. Well, in our bylaws there's no extra charge.  
24 They're just board members like any other board  
25 members, but they help in having the time and the

1 ability to be more involved in a weekly basis.

2 Q. Do the NOM bylaws refer at all to an executive  
3 committee?

4 A. I don't believe that they do. I could be wrong on  
5 that. It isn't -- they don't have any -- the  
6 executive committee doesn't have any extra voting  
7 power or anything that you would typically need to  
8 include in the bylaws. All it is, as I said, an  
9 ability to discuss and be more formally involved  
10 in the week-to-week, month-to-month operations of  
11 NOM.

12 Q. When do these weekly phone calls happen?

13 A. Mondays typically at 11 eastern.

14 Q. Is there an agenda for these weekly meetings?

15 A. No. There's no formal agenda. There's an agenda  
16 as far as discussing -- I typically discuss the  
17 places in which we're operating, the issues we're  
18 confronting.

19 Q. Are there any documents that are prepared after  
20 these weekly phone calls, like a summary?

21 A. Typically, no.

22 Q. Is there ever one that's prepared?

23 A. I think there has been. I think we have when  
24 there's been follow up that is urgent. I don't  
25 know that I would say it's directly related to the

1 call, but we've sent out -- I've sent out e-mails  
2 saying remember, we need to do this or that or the  
3 other but there's not a formal summary that  
4 happens every week.

5 Q. Were there about weekly phone calls in which the  
6 Maine campaign was discussed during 2009?

7 A. Yeah, oh, yeah.

8 Q. Including the funding for the Maine campaign?

9 A. There -- that -- yeah, the funding of the campaign  
10 could be discussed in those calls.

11 Q. Were there any e-mails following these phone calls  
12 in which the funding for the Maine campaign was  
13 discussed?

14 A. I don't recall any e-mails coming out of the phone  
15 calls discussing the Maine campaign, no.

16 Q. Have you looked?

17 A. I have looked. I've looked through all of my  
18 e-mails.

19 Q. Do you retain all your e-mails from 2009?

20 A. I have most. I think some have been deleted. I  
21 don't have a -- I don't have a process why by  
22 which that has happened. It's just some have been  
23 deleted.

24 Q. Do you have a policy by which you retain e-mails  
25 for a certain period of time?

1 A. We don't have a -- we do not have a policy for  
2 retaining e-mails for a set period of time, no.

3 Q. What is your practice?

4 A. Generally to keep all of my e-mails, and --

5 Q. Was the Maine campaign on the agenda for the 2009  
6 meeting of the board of directors?

7 A. No, I don't believe it was.

8 Q. Why not?

9 A. June of 2009 -- I actually don't recall whether it  
10 was on the -- I will find the agenda, but I do not  
11 remember if it was on the agenda.

12 Q. What do you think was on the agenda for the July  
13 2009 meeting of the board of directors?

14 A. I don't recall what was on the agenda for 2009. I  
15 would need to look. I'm sorry, the original  
16 question I was thinking of 2010. I understand  
17 you're asking for 2009, and I believe we did  
18 discuss it. I don't recall what's on the agenda,  
19 though.

20 Q. Do you have any objection to turning over the  
21 agendas for the -- the agenda for the 2009 meeting  
22 of the NOM board of directors?

23 A. No.

24 Q. Unless there's some donor listed, which seems  
25 unlikely for an agenda.

1 A. No.

2 Q. Okay. I would ask you to do that. Are there any  
3 other documents that are prepared -- strike that.  
4 Are there minutes prepared of the board of  
5 directors meetings?

6 A. Yes.

7 Q. Who prepares them?

8 A. Typically Maggie Gallagher, I believe. I don't  
9 remember who last prepared them. We do not have a  
10 set secretary.

11 Q. Did the Maine campaign get discussed at the 2009  
12 board of directors meeting?

13 A. I believe it did.

14 Q. Do you have any objection to producing the minutes  
15 from the 2009 meeting of the board of directors?

16 MR. NEELEY: I think we already agreed that  
17 we would produce the minutes.

18 MR. KNOWLTON: Okay, the agenda and the  
19 minutes.

20 MR. NEELEY: Subject to the prior  
21 objections.

22 MR. KNOWLTON: All right.

23

24 BY MR. KNOWLTON:

25 Q. What do you understand the board's role to be at

1 NOM?

2 A. The board helps to guide our strategic focus,  
3 guide what outreach we're going to engage in over  
4 the year, help with fundraising by donating  
5 personally or helping to find others to donate,  
6 and that's the basic function.

7 Q. Does the board of directors ever take a vote?

8 A. Of course.

9 Q. Did they take any vote at the 2009 meeting?

10 A. They may have, yes. I believe that we did.

11 Q. What did the board vote on at the 2009 meeting?

12 A. I believe it was on salary -- salary issues.

13 Q. Does the board of directors approve the major  
14 projects of NOM?

15 A. With a board vote, no. We -- me as the executive  
16 director and Maggie Gallagher have quite a bit of  
17 leeway in looking at where we're going to focus  
18 our efforts. So as far as approving the major  
19 projects because of the nature of what we do and  
20 how quickly new projects arise, we have a lot of  
21 leeway in deciding where we are going to be  
22 involved and in what way.

23 Q. Do you have a written contract as executive  
24 director?

25 A. Well, not as president. As executive director I

1 believe I did. I should have one for president  
2 but I don't.

3 Q. So is the answer yes, you do have a written  
4 contract with NOM?

5 A. Well, you asked me as executive director. I  
6 believe that I do. I haven't seen my contract  
7 since I first -- since a long time ago but I did  
8 sign a contract.

9 Q. What was the term of the contract?

10 A. I believe it was -- we typically with employees  
11 have at-will termination. It included my salary,  
12 it included, I believe, health care benefits and  
13 it would be up to the board as far as any  
14 termination.

15 Q. Does the written contract set forth your duties or  
16 responsibilities?

17 A. Yes, it does.

18 MR. KNOWLTON: Any objection to producing  
19 that?

20 MR. NEELEY: I can't think of any. I'd  
21 like to see it first but --

22 MR. KNOWLTON: Okay.

23

24 BY MR. KNOWLTON:

25 Q. Mr. Brown, I take it from your testimony that you

1 don't have an annual renewal of this contract,  
2 that it has been quite some time since you last  
3 saw it or signed one?

4 A. Correct.

5 Q. Okay. Other than approving salaries, what else do  
6 you recall the board of directors voting on?

7 A. I don't recall another board vote other than I  
8 think we added board members at that meeting. I  
9 believe we added Brock Hiatt and Craig Cardon at  
10 that meeting. We also allow the board to vote by  
11 e-mail. So as far as -- the reason I say I don't  
12 recall is because we could have done that by  
13 e-mail. In our bylaws it allows for our board to  
14 vote by e-mail.

15 Q. Do the bylaws allow meetings to take place by  
16 e-mail?

17 MR. NEELEY: How would a meeting take place  
18 by e-mail?

19 MR. KNOWLTON: I'm trying to understand how  
20 the board could vote on something if there isn't a  
21 meeting or anything else pending.

22

23 BY MR. KNOWLTON:

24 Q. Could you just explain that?

25 A. Well, it's allowed and our lawyers have put in a

1 part in the bylaws that would allow this to occur  
2 given that for many of the people on the board  
3 it's quite difficult to get them together  
4 regularly in one place.

5 Q. How did it come to be that you were named to the  
6 board recently?

7 A. Well, there were discussions about -- there have  
8 been ongoing discussions about the difficulty of  
9 getting everyone together in one place, and in  
10 addition to that, my role is increasingly at a  
11 board level and it has been and so there were  
12 discussions that for both of those reasons it  
13 would make sense to have Brian on the board.

14 Q. And when you say there have been discussions,  
15 there hasn't been a board meeting since July of  
16 2009, has there?

17 A. There has not been a board meeting but as I said,  
18 we can vote by e-mail.

19 Q. I understand that you say the bylaws allow an  
20 e-mail vote. How were there discussions about  
21 whether or not Brian Brown should be made a member  
22 of the board of directors? What kind of  
23 discussions? Were they e-mail chatter?

24 A. No, we had our regular phone call in which some  
25 board members -- other board members who may not

1 be regular attendees at the executive committee  
2 calls are on the calls so there was discussion in  
3 that way, and then when there was general  
4 agreement, an idea that this would be a good thing  
5 to do, an e-mail was sent to all of the board  
6 members asking them whether they thought this was  
7 a good thing to do and requesting a formal vote.

8 Q. Has the board of directors approved the amount of  
9 money expected to be spent by NOM on any of its  
10 major projects?

11 A. Approved by a formal board vote?

12 Q. Correct.

13 A. I don't believe so.

14 Q. How does it come to be that -- let's just say for  
15 example that NOM decides it's going to contribute  
16 nearly two million dollars to the StandforMarriage  
17 Maine PAC during 2009, what role did the board of  
18 directors have in deciding that NOM would  
19 contribute such a large amount of money on a  
20 single campaign?

21 A. Well, there was general agreement from all of the  
22 calls and there was no one who would think we  
23 would do otherwise. It was clearly one of the  
24 more important marriage fights in the country, and  
25 so there were no objections. There was no formal

1 board vote.

2 Q. So you decided on your own that's what NOM would  
3 do in 2009?

4 A. No, I wouldn't say I decided on my own. There was  
5 general consensus among executive committee  
6 members on the call and there really wasn't any  
7 question that we would be involved and we would  
8 work to help fund the effort.

9 Q. Well, for example, when NOM decided to start the  
10 DOMA Defense Fund, did the board of directors have  
11 any role in that?

12 A. No.

13 Q. Did the board of directors have any role in NOM's  
14 formation of the, quote, Northeast Action Plan,  
15 closed quote?

16 A. Any role? I'm trying to think of any role. There  
17 was no formal approval. There was -- the only  
18 role that they would play is that they would --  
19 there was no opposition. This is under our mantel  
20 of what we do. So I'm trying to answer your  
21 question directly as far as any role. That's  
22 pretty broad. There was no formal vote on the  
23 Northeast Action Plan. There was no vote at all.

24 Q. So it sounds like -- let me see if I get this  
25 right. It sounds like you and three or more

1 members of the board of directors of NOM get on  
2 the phone once a week, correct?

3 A. Correct.

4 Q. You or other board members make proposals about  
5 how NOM should spend its money, correct?

6 A. Well, as far as proposals, typically not even --  
7 it wouldn't be an exact dollar figure because the  
8 situation is fluid in many of these fights. It  
9 wouldn't be a proposal for a certain amount of  
10 money.

11 Q. I didn't suggest that it was, but is it fair to  
12 say that you or other board members make proposals  
13 on how NOM is going to spend its money?

14 A. Yes.

15 Q. And if no one objects on the phone call, you  
16 execute the plan as executive director?

17 A. Correct.

18 Q. Okay. So it sounds like with respect to the Maine  
19 campaign it was discussed at weekly phone calls  
20 with three or more members of the executive  
21 committee during 2009, correct?

22 A. Correct.

23 Q. And since nobody objected, you decided on behalf  
24 of NOM to donate nearly two million dollars of its  
25 money to the StandforMarriage Maine PAC?

1 A. It wouldn't just be me. It would be all of the  
2 executive committee.

3 Q. Can I stop you for a second?

4 A. Sure.

5 Q. The executive committee doesn't have any power,  
6 right? That's just a made-up name. I'm not  
7 trying to be flip, but that's just a made-up name  
8 that you gave it. It doesn't have any power,  
9 correct?

10 A. Well, I need to look at the bylaws, but I don't  
11 believe so, no.

12 Q. Okay. So you get on the phone with three or other  
13 members of the board of directors and you decide  
14 how NOM is going to spend its money?

15 A. No. Again, in this plan clearly it lays out where  
16 our strategic focus is so we have a broad outline  
17 of what we're going to do, and as the situation  
18 changes, we have to adapt, and the situation is  
19 very fluid. So having -- the way that we operate  
20 and I'm familiar with other organizations and the  
21 way that many operate is that there's general  
22 consensus and the executive director implements  
23 the overall programs or president.

24 Q. And, again, when you say there's overall  
25 consensus, do you mean that when you and the three

1 other members of the board of directors got on the  
2 phone every week there was a general consensus as  
3 to what ought to be done?

4 A. Well, as I said, it's not only three or four. I  
5 mean, sometimes there are five or six.

6 Q. Why would there be five or six on a particular  
7 call?

8 A. Because the board members are always welcome to be  
9 on the call, any board member.

10 Q. I thought it was the executive committee that had  
11 a weekly phone call?

12 A. It is but any board member is always welcome to be  
13 on the executive committee call. It's not as  
14 though they're not allowed to be on the call.  
15 It's just that the executive committee tends to be  
16 those that have the most amount of time to be able  
17 to put in to regularly being on the calls, but  
18 that doesn't mean that other members aren't on the  
19 call and there's also regular communication one on  
20 one or other ways with other board members.

21 Q. Who decided who was going to be the executive  
22 committee?

23 A. It was actually pretty organic. The four people  
24 that were on the call -- the four people that are  
25 regularly on the call were the most active in the

1 sort of week-to-week operations of NOM.

2 Q. So am I understanding that you four decided that  
3 you would be the executive committee?

4 A. Well, again, my understanding -- the executive  
5 committee is just the most regularly participating  
6 board members.

7 Q. Is that a yes, that you four decided you would be  
8 the executive committee?

9 A. No, no, there was --

10 Q. Who did?

11 A. Well, there was general -- there was general  
12 agreement that these four would be on the call.

13 Q. General agreement among whom?

14 A. All the board members. There was no objection to  
15 that.

16 Q. Was there a vote?

17 A. I don't believe so, no.

18 Q. So the decision by NOM to form PACs in Rhode  
19 Island and New York was that voted on by the NOM  
20 board of directors?

21 A. No.

22 Q. Who decided that NOM would form a PAC in Rhode  
23 Island?

24 A. Maggie and I together decided that we were going  
25 to do that to again implement the vision of the

1 board.

2 Q. And where in the vision of the board did it  
3 suggest that a PAC need to be formed in Rhode  
4 Island?

5 A. Well, in board discussions it was clear that Rhode  
6 Island was a state in which there was a movement  
7 to redefine marriage; therefore, in Rhode Island  
8 there is no initiative or referenda and,  
9 therefore, the only way to sort of stop same sex  
10 marriage or pass a bill protecting marriage would  
11 be by there being a PAC. The PAC, though, is run  
12 by Christopher Plante, and --

13 Q. He's a NOM employee?

14 A. He's a NOM employee. It's separate from his work  
15 at NOM Rhode Island.

16 Q. Did the board of directors ever discuss the  
17 formation of a PAC in Rhode Island at its annual  
18 meeting?

19 A. No.

20 Q. Did it ever have a special meeting in which the  
21 board of directors discussed the formation of a  
22 PAC in Rhode Island?

23 A. No.

24 Q. Was there ever a vote by e-mail or otherwise in  
25 which the board of directors authorized NOM to

1 form a PAC in Rhode Island?

2 A. No, the PAC is not controlled by NOM.

3 Q. How about the decision to form a PAC in New York,  
4 how did that come to be?

5 A. In the same way. In the reality that in New York  
6 you weren't going to be able to have initiative or  
7 referenda, so clearly making sure that there were  
8 members of the legislature who would support our  
9 effort meant that we needed to create a PAC.

10 Q. And I'm going to get back to the PAC issues later  
11 when I get to that part, but I'll just leave that  
12 for now. You mentioned that there was a Rhode  
13 Island chapter of NOM. Are there any NOM chapters  
14 in any other states?

15 A. No, we didn't extend -- no, there are not. There  
16 are PACs but not chapters.

17 Q. Why aren't there chapters of NOM in any other  
18 states?

19 A. For a number of reasons, one, it's difficult to  
20 administer state chapters, state PACs, in  
21 different areas all around the country with a  
22 relatively small staff. Secondly, in many of  
23 these -- in many states we're able to issue  
24 advocacy, education and occasionally express  
25 advocacy to do what we need to do to protect

1 marriage so there isn't the need for a chapter.  
2 Rhode Island was particular -- it was a particular  
3 situation and it was relatively early on in which  
4 we wanted to try to have a chapter where there was  
5 someone in the state that would represent us and  
6 that was local, and so that's why we started the  
7 Rhode Island chapter.

8 Q. What was the impetus for forming the Rhode Island  
9 chapter of NOM?

10 A. Well, the impetus was that it was a deep -- it's a  
11 state that is in New England that does not have  
12 same sex marriage. It clearly was a -- on the  
13 front line of the movement for same sex marriage,  
14 so having a chapter was -- it made perfect sense.

15 Q. When did the chapter get formed?

16 A. In early 2008.

17 Q. Was there legislation pending at that time in the  
18 Rhode Island legislature concerning same sex  
19 marriage?

20 A. I believe there was, but the governor would have,  
21 I think all people agree, vetoed any legislation  
22 that reached his desk.

23 Q. All right. Then why was it so important that NOM  
24 form a chapter in Rhode Island if everybody agreed  
25 the governor would veto any same sex legislation

1           that came through the legislature?

2       A. Because the governor is leaving office and whoever  
3       is the next governor will have -- could redefine  
4       marriage by signing on to a legislative bill, and  
5       also because clearly we needed to do a lot of work  
6       in New England on the educational front. It was  
7       clear that the states -- Massachusetts and Vermont  
8       made clear that the states that were moving in the  
9       direction of redefining marriage were in the  
10      northeast and Rhode Island was a place where -- we  
11      had ties to Rhode Island and it made sense to open  
12      up a chapter there.

13     Q. Why did NOM have ties to Rhode Island?

14     A. I had been the executive director of the Family  
15      Institutes of Connecticut which is very close to  
16      Rhode Island, and I've known a number of people in  
17      Rhode Island that I thought would be good to run a  
18      chapter and also that were concerned about their  
19      state.

20     Q. What do you understand the duties of the president  
21      of NOM to be?

22     A. To manage, direct and implement our mission to  
23      protect marriage and the faith communities that  
24      sustain it by following the overall vision of the  
25      board but having the ability to -- to make crucial

1 decisions as to where funds and resources need to  
2 best be spent.

3 Q. How is that different from the job of the  
4 executive director?

5 A. Well, prior to the change from me moving to  
6 executive director and president, we were  
7 structured a little differently where Maggie was  
8 helping frame our overall strategic vision and  
9 look at opportunities but not in an operational  
10 mode. I would make most of the decisions as far  
11 as how we -- who we hire to do a certain, you  
12 know, ad or, you know, any of the decisions as far  
13 as tactically what we needed to do, you know, what  
14 educational outreach, what state we should focus  
15 in. Maggie was very involved in messaging and  
16 thinking through, you know, ideas, intellectual,  
17 and so it made -- the reason we altered our  
18 structure is it made a lot more sense for her to  
19 be chairman because generally the chairmen do more  
20 on the strategic vision, the broad outlines and so  
21 that's why I shifted to become president is  
22 because the title more closely resembled what I  
23 was actually doing.

24 Q. What did you mean by messaging when you described  
25 the kinds of things that Maggie Gallagher did

1 while she was president?

2 A. Messaging just has to do with conveying the truth  
3 about marriage in the best way possible and  
4 through the best media possible. So, for example,  
5 you know, the way -- the language that we use, the  
6 mode of communication that we use, where we use  
7 it, those are all parts of making a message that  
8 is a successful message. So it's basically the  
9 way we talk about what we do publicly.

10 Q. Are you saying that she made suggestions on how  
11 NOM would issue its public statements or she  
12 drafted them? I'm still not following.

13 A. Yes, she definitely would help with drafting our  
14 press releases, she would help draft much of our  
15 -- like the ideas or what the focus should be on  
16 a particular ad. When the Carrie Prejean incident  
17 happened, she was very quick to say that we need  
18 to make sure that we stand up for her and talk  
19 about the ways in which it's just wrong that  
20 someone says what they believe about marriage and  
21 then they are immediately punished for it. So the  
22 broader outlines of where we focus and, you know,  
23 the language that we use, Maggie is one of the  
24 best, you know, writers and thinkers on the issue  
25 of marriage.

1 Q. What does she -- I think you described her as a  
2 syndicated columnist?

3 A. She is a syndicated columnist and author.

4 Q. Is she involved in other boards -- excuse me -- in  
5 other organizations?

6 A. Yes. She also has had the Institute for Marriage  
7 and Public Policy. She served as president for  
8 the Institute for Marriage and Public Policy which  
9 focused -- it's a 501(c)(3) focusing on educating  
10 people on the social and practical reasons why  
11 marriage is and only should be the union of one  
12 man and one woman.

13 Q. And where was Ms. Gallagher located during 2008  
14 and 2009?

15 A. 2008 she was in New York.

16 Q. I don't recall NOM having an office in New York.

17 A. No, she was not regularly in the office. She was  
18 able to work from home.

19 Q. Okay, and in 2009 where did she work for NOM?

20 A. She moved to the Washington, D.C. area. She's in  
21 northern Virginia.

22 Q. So Ms. Gallagher worked out of her home for NOM  
23 during 2008/2009?

24 A. In the few days a week she was home. She traveled  
25 extensively around the country.

1 Q. For NOM?

2 A. Yeah, for NOM, also for speaking engagements of  
3 her own, for a variety of reasons but she did  
4 often for NOM.

5 Q. To whom did Ms. Gallagher report?

6 A. As president she reported to the board.

7 Q. Once a year at the annual board meeting?

8 A. No, there was regular communication to board  
9 members on our calls.

10 Q. Did Ms. Gallagher need the approval of the board  
11 of directors before she decided to spend the  
12 organization's money traveling and speaking across  
13 the country?

14 A. No, that's part of her job description. What she  
15 would do for NOM would be to go and speak and  
16 travel and also obviously fund raise.

17 Q. So was she a full-time employee of NOM in  
18 2008/2009?

19 A. She was.

20 Q. Is she still?

21 A. She is.

22 Q. You mentioned Neil Corkery as being a member of  
23 the board of directors, is that right?

24 A. Correct.

25 Q. He's also the treasurer of NOM, is that right?

- 1 A. Correct.
- 2 Q. Has he been the treasurer of NOM since the outset?
- 3 A. Yes, he has.
- 4 Q. What are his responsibilities as treasurer?
- 5 A. He oversees both our bank accounts, our
- 6 expenditures, as far as making sure that they
- 7 occur. Writing checks we generally go through
- 8 Neil, although we can also write checks out of our
- 9 office in certain emergency situations, but
- 10 generally all of the checks go through Neil. I
- 11 must approve them, Neil must approve them and then
- 12 the checks go out.
- 13 Q. In what capacity do you approve them? As
- 14 executive director?
- 15 A. As both executive director and now as president I
- 16 always approved all of our expenditures.
- 17 Q. Before you were president were you approving all
- 18 the expenditures of the organization?
- 19 A. I was.
- 20 Q. Okay, I'm sorry, what else does Mr. Corkery do?
- 21 A. Compile for end-of-the-year audit, he works
- 22 together with me and Justin Haas to get together
- 23 all the materials necessary for the 990, and gets
- 24 those to an independent accountant and then we
- 25 have our 990 submitted.

- 1 Q. Where is Mr. Corkery located presently?
- 2 A. Virginia, northern Virginia.
- 3 Q. Has he been located there during the entire time
- 4 he's been treasurer of NOM?
- 5 A. Correct.
- 6 Q. Is he employed by another entity other than NOM?
- 7 A. I believe he is.
- 8 Q. By whom is he employed?
- 9 A. I don't know. I believe he's an independent
- 10 contractor for numerous organizations. I don't
- 11 know how many, but serving as treasurer and
- 12 helping out with financial reporting.
- 13 Q. Who is Luis Tellez?
- 14 A. He is a board member.
- 15 Q. What does he do for a living?
- 16 A. He's president of the Witherspoon Institute.
- 17 Q. What is that?
- 18 A. The Witherspoon Institute is a nonprofit
- 19 organization devoted to protecting American
- 20 ideals, named after John Witherspoon of Princeton
- 21 University, that has lectures, symposia,
- 22 publications.
- 23 Q. And what was his position? I'm sorry, you said
- 24 president?
- 25 A. He's the president of Witherspoon Institute.

1 Q. How long has he been president of Witherspoon?

2 A. I don't know.

3 Q. What is Robert George's current role at NOM?

4 A. Board member and chairman emeritus.

5 Q. And I think you described him as being part of the  
6 executive committee?

7 A. Correct.

8 Q. So Mr. George participates in most of the weekly  
9 phone calls?

10 A. Yes, yes.

11 Q. And what does Mr. George do for a living?

12 A. I believe his title is Woodrow Wilson Professor of  
13 Jurisprudence at Princeton University.

14 Q. He's a tenured professor at Princeton?

15 A. Correct.

16 Q. How long has he been there, do you know?

17 A. I don't.

18 Q. For some time, for more than ten years probably?

19 A. Oh, more than ten years, yes.

20 Q. Is there a vice president at NOM?

21 A. I don't believe there is a vice president position  
22 that's filled. We could have a vice president  
23 according to our bylaws but we don't.

24 Q. Is there a secretary?

25 A. The treasurer is also the secretary, Neil

1 Corkery. That's my understanding.

2 Q. Has Professor George ever held an officer position  
3 at NOM?

4 A. He was chairman of the board.

5 Q. Other than being chairman of the board of  
6 directors was he president or anything like that?

7 A. No.

8 Q. And what has he done on NOM's behalf over the last  
9 two years, let's say, since the start of 2009  
10 other than participate on the weekly phone calls  
11 with you and two or three other board members?

12 A. Oh, he's helped -- he's helped promote NOM to the  
13 public on television, radio. He's traveled around  
14 and spoken at functions for NOM. Those are the  
15 two primary ways in which he's helped.

16 Q. Any other ways in which Mr. George has acted on  
17 NOM's behalf over the last two years?

18 A. Well, of course, as with all of us, fundraising,  
19 helping to connect us and introduce us to  
20 supporters, financial supporters included.

21 Q. Is he an effective fundraiser for NOM?

22 A. Well, I would say that most of what he does is  
23 introduce me or Maggie to a supporter and then we  
24 would be the ones who actually ask for donations  
25 typically.

1 Q. Are you and Ms. Gallagher typically the point  
2 persons for the fundraising on behalf of NOM?

3 A. Yes. Now that's changed somewhat because we have  
4 a director of development. We also have a  
5 fundraising firm that helps us, the Sterling  
6 Corporation, but in general, yes.

7 Q. How long has the Sterling Corporation been helping  
8 NOM with fundraising?

9 A. I don't know when we retained them. I can't  
10 remember. I think it's been for maybe seven or  
11 eight months, probably longer, a year.

12 Q. And what is their name again, the Sterling  
13 Corporation?

14 A. Correct.

15 Q. Where are they located?

16 A. They're located in Michigan.

17 Q. Is it E-R or I-R?

18 A. E-R.

19 Q. And your testimony is that they have been helping  
20 NOM for roughly 12 months?

21 A. I just don't recall when we retained them. They  
22 were active in the Proposition 8. The reason it's  
23 a little difficult is because they were active in  
24 the Proposition 8 case.

25 Q. Didn't that happen in 2008?

1 A. Yes, that happened in 2008 and I think it was like  
2 eight months until we started working with them  
3 when we initially retained them, but I don't  
4 recall the exact date.

5 Q. So when you say they were active in the  
6 Proposition 8 case, they weren't active on behalf  
7 of NOM?

8 A. No, no.

9 Q. Okay.

10 A. They were working for ProtectMarriage.

11 Q. Okay. Is there a contract between NOM and  
12 Sterling Corporation?

13 A. There is.

14 Q. What are the responsibilities that Sterling  
15 Corporation has in this contract?

16 A. General follow up with donors that we usually  
17 designate, helping to create a process by which  
18 NOM would effectively communicate with donors.

19 Q. What do you mean by follow up?

20 A. Well, effectively communicating with donors. At  
21 times -- Steve Linder is the principal, Steve  
22 Linder communicating with donors and at times  
23 creating a process and figuring out who is going  
24 to talk to who. General fundraising management is  
25 what they do.

1 Q. Are you saying that they give you and Maggie  
2 Gallagher advice as to how to approach potential  
3 donors?

4 A. No, it would be more trying to manage the overall  
5 process of development, the whole fundraising  
6 process as far as which supporters, you know,  
7 Maggie and I will be communicating directly with,  
8 which supporters they're communicating more  
9 directly and more regularly with.

10 Q. Are there some supporters that have been assigned  
11 to Sterling Corporation for solicitation purposes?

12 A. I don't know if I would say -- recently we've gone  
13 more in that direction, but I wouldn't say  
14 assigned. It would be more along the lines that  
15 some of our medium-level donors would have more  
16 communications with them but they're still getting  
17 communications from us. So I wouldn't say that  
18 they're -- it's not as though they're the only  
19 ones communicating with the donors.

20 Q. Is Sterling Corporation communicating with what  
21 NOM has called major donors and national  
22 organizations?

23 A. Some.

24 Q. How has it been decided by NOM which major donors  
25 or national organizations will be contacted by

1 Sterling Corporation?

2 A. I think what we've done is go down a list of our  
3 supporters and see who -- you know, which  
4 supporters we have more personal relationships  
5 with or which supporters we haven't contacted  
6 enough and decide in that way whether Steve Linder  
7 may have a prior relationship with them and then  
8 we would decide who should call or who should  
9 write.

10 Q. Is this strategy set out in some kind of document?

11 A. No.

12 Q. Well, how does Sterling Corporation know which of  
13 NOM's major donors it's supposed to contact?

14 A. Well, I think what we've most recently discussed  
15 is a certain prior donation level there would be  
16 more communications from them than from us.

17 Q. What was that level?

18 A. I think what we decided was somewhere around  
19 \$25,000 donors and below and that the higher level  
20 donors we would communicate directly with, Maggie  
21 and I.

22 Q. Let me see if I understand this. You're saying  
23 that for donors \$25,000 and above Sterling  
24 Corporation would not be the point of contact but  
25 rather it would be you or Maggie Gallagher?

1 A. Yes, unless there were some reason why that  
2 general principle shouldn't be applied, for  
3 example, Steve having a prior relationship with a  
4 supporter.

5 Q. Is this strategy set out in a letter or an e-mail  
6 or some communication between NOM and Sterling  
7 Corporation?

8 A. I don't know that it is. Most of this has been  
9 handled by -- I think almost all of it through  
10 phone calls and through discussions by phone or in  
11 person.

12 Q. Who at NOM has been handling the discussions with  
13 Sterling Corporation?

14 A. Both myself and David Monge.

15 Q. What's the payment arrangement between NOM and  
16 Sterling Corporation?

17 A. It's a contract, monthly retainer.

18 Q. What's the amount of the retainer?

19 A. It's -- I believe it's now -- do we really need to  
20 get into this?

21 MR. NEELEY: Actually, can we go off the  
22 record for a second?

23 MR. KNOWLTON: Sure.

24 (OFF RECORD)

25 BY MR. KNOWLTON:

1 Q. Mr. Brown, when we stopped you were testifying  
2 about the relationship between NOM and the  
3 Sterling Corporation with respect to NOM's  
4 fundraising. Does Sterling communicate with  
5 donors and potential donors by e-mail?

6 A. Yes, I believe so.

7 Q. Do you review their solicitations before they're  
8 made?

9 A. Generally they wouldn't make a solicitation in an  
10 e-mail. There would be communications but the  
11 solicitations would be either person to person or  
12 over the phone.

13 Q. Is that the same with regard to solicitation for  
14 donors of \$25,000 or more that those solicitations  
15 take place person to person usually?

16 A. Or over the phone, yeah.

17 Q. So first with respect to Sterling Corporation are  
18 there communications, either e-mail or letter,  
19 between Sterling and NOM donors?

20 A. Yeah, there would be communications between them.

21 Q. Do you get copies of all written communications?  
22 You, meaning NOM, does NOM get copies of all  
23 written communications between Sterling and NOM  
24 donors?

25 A. No, I wouldn't say we would receive all

1           communications.

2           Q. A follow-up question, by the way, in terms of  
3           these weekly telephone meetings you were  
4           describing involving other members of the board of  
5           directors, was anyone from StandforMarriage Maine  
6           PAC a party to those weekly telephone calls such  
7           as Bob Emrich?

8           A. No.

9           Q. Anyone from StandforMarriage Maine?

10          A. Well, I was on the executive committee so I wore  
11          two different hats, but other than me, no.

12          Q. Anyone other than members of the board of  
13          directors on those weekly calls?

14          A. Yes. Frank Schubert from Schubert Flint Public  
15          Affairs who serves as our general advice and  
16          campaign manager would be on the calls, not every  
17          week, and then sometimes Jeff Flint. There would  
18          be other board members.

19          Q. I'm sorry, Frank Schubert and Jeff Flint are they  
20          both in that organization you referred to?

21          A. Sterling Corporation?

22          Q. No, Flint Schubert?

23          A. Schubert Flint Public Affairs is their --

24          Q. Those are the principals obviously of that outfit?

25          A. Correct, correct.

1 Q. Where are they located, Schubert Flint?

2 A. Sacramento, California.

3 Q. And as long as we're on the subject of -- is it  
4 Schubert Flint or Flint Schubert?

5 A. Schubert Flint.

6 Q. All right, thanks.

7 MR. NEELEY: Flint Schubert is something  
8 else.

9 MR. KNOWLTON: All right.

10

11 BY MR. KNOWLTON:

12 Q. How did you describe them? As your campaign  
13 manager?

14 A. Well, I would say they give us general advice on  
15 lobbying and public affairs. They are public  
16 affairs managers.

17 Q. Did they provide advice to NOM about fundraising?

18 A. No. They have occasionally said something but  
19 that's not their role.

20 Q. Is their role how to deliver a message to voters  
21 in connection with a particular issue or campaign?

22 A. That's one of their roles, yes.

23 Q. What would their other roles be?

24 A. Well, actually there's a lot of -- there's a lot  
25 to operationalize any sort of ad buy, so as far as

1 -- when we decide to do an ad buy, we would go  
2 through them rather than trying to go to all of  
3 the stations, and that is a major part of what  
4 they do.

5 Q. So they take care of all the nitty-gritty of ad  
6 buys for NOM?

7 A. Correct.

8 Q. How long have they been doing that?

9 A. Since early 2009.

10 Q. I got off track a little bit here. You were  
11 talking earlier about the board of directors and  
12 these weekly meetings. Are there any formal  
13 committees of the board of directors at NOM?

14 A. No.

15 Q. Are there any other groups within NOM that have  
16 any authority other than the officers and the  
17 board of directors and the executive director?

18 A. Well, we have a -- any other -- again, Christopher  
19 Plante has delegated authority for Rhode Island  
20 but any major decisions that would be made as far  
21 as expenditures would have to go through me.

22 Q. And what would major decision mean?

23 A. Any sort of -- any sort of nonadministrative  
24 expenditure for an ad buy or anything over roughly  
25 \$5,000 would have to go through me. It would all

1       have to go through me for approval regardless, but  
2       I would have to see it ahead of time before  
3       anything major would happen. Any outlay that's  
4       made above \$1,000 has to go through me for  
5       approval.

6       Q. And is that a rule that's set out in some document  
7       or bylaw or is that just something you've made on  
8       behalf of NOM?

9       A. No, I believe that it's in our policies and  
10       procedures as far as how do we approve major  
11       expenses, and we do have a policy and procedure  
12       document.

13       Q. What else is in the policies and procedures  
14       document? How big is that document, how many  
15       pages roughly?

16       A. Well, I think it's up to about 20 pages and I  
17       think it deals with everything from answering  
18       phone calls -- well, I know that it deals with  
19       answering phone calls, how we process our mail,  
20       how -- how we -- what we need to do, for example,  
21       if someone comes to the office and asks for a  
22       990. There are a lot of regulations and  
23       compliance issues that even employees need to be  
24       aware of, and so that document continues to be  
25       developed and so I can't tell you everything

1           that's in it right now, but it keeps being added  
2           on to as we -- as we grow, but those are the basic  
3           parts of what it deals with.

4       Q. Does the policies and procedures manual address  
5           spending by NOM employees?

6       A. Well, it does. Our employees don't have credit  
7           cards or any means of directly debiting or writing  
8           checks so any sort of spending would have to be  
9           approved by me as far as a reimbursement for  
10          travel or gas or anything like that.

11      Q. Does Mr. Plante have a credit card for NOM to make  
12          expenditures on behalf of the Rhode Island  
13          chapter?

14      A. No, he does not. We may be changing that because  
15          it is a -- it makes things difficult for him, but  
16          as of now I do reimbursements.

17      Q. When you say you do reimbursements, what do you  
18          mean, that he cuts a personal check and you  
19          reimburse him on behalf of NOM?

20      A. No -- well, it depends but in general, we can  
21          write a check -- for any item he would need to buy  
22          we can write the check and he can send the check  
23          off to the vendor or we can pay the vendor  
24          directly, but as far as his own expenses for  
25          travel and anything he would put on a personal

1 credit card, we would have to approve a  
2 reimbursement.

3 Q. What does the policies and procedures manual say  
4 about fundraising?

5 A. I don't know that that's addressed in the policies  
6 and procedures manual at all. Our employees are  
7 not generally -- the lower level staff are not  
8 generally doing fundraising.

9 Q. Is the policies and procedures manual addressed  
10 only to nonmanagerial staff?

11 A. Well, I think primarily so, other than discussions  
12 about expenditures.

13 Q. What are employees at NOM instructed to do if  
14 someone comes to the office looking for a copy of  
15 NOM's 990?

16 A. Now to say that it's available on the internet. I  
17 think -- actually I think we also will provide it  
18 to them but to say that it's publicly available on  
19 the internet because I don't think that we're  
20 required now to continue to do this which was one  
21 of the -- became an issue as far as how many  
22 requests there were.

23 Q. Was NOM receiving numerous requests for copies of  
24 its 990?

25 A. Yes, and, in general, people coming to the office

1 and asking which is acceptable but it makes it  
2 difficult for people to continue to work when we  
3 have a small staff.

4 Q. Does NOM have members? Is that a term that has  
5 any meaning for NOM?

6 A. It does. It does have meaning.

7 Q. Who are members of NOM? How do you get to be a  
8 member of NOM?

9 A. Well, because we have a qualified nonprofit  
10 corporation status, QNC status under federal law,  
11 even before Citizens United we were allowed to do  
12 independent expenditures in federal elections.  
13 That means we could do express advocacy ads as  
14 long as we file the proper reports, the 24-hour  
15 reports, 48-hour reports, whatever was required.  
16 As a part of that -- well, this is -- you can do  
17 this without QNC status, I believe, but we were  
18 also a membership organization and we define  
19 membership currently, although this is going to  
20 change, as anyone who gives \$5 or more in a  
21 12-month period, and that's for federal -- for  
22 regulations governing what we can do with members  
23 we're allowed then to do unlimited advocacy to the  
24 members, like a union would be able to do to their  
25 members. So that -- that is the way in which

1 we're a membership organization.

2 Q. So if someone were to make a contribution -- if  
3 someone who weren't a member of NOM made a  
4 contribution of say \$100, is the first \$5  
5 considered to be a membership fee?

6 A. Correct.

7 Q. Roughly how many members does NOM have currently?

8 A. Roughly 23,000 to 25,000 because it's only a  
9 12-month period. It cuts off depending on, you  
10 know, what point we are at because you lose  
11 members every month and gain some.

12 Q. And how does that work? I'm sorry, I don't follow  
13 you.

14 A. Well, at the end of any 12-month period if someone  
15 hadn't donated within that 12-month period, they  
16 can no longer be members. So you lose part of  
17 your membership, ideally you're also gaining new  
18 members who are also giving \$5. So the actual  
19 number is always in flux.

20 Q. Okay. Depending on the number of contributors  
21 and/or members who pay five bucks for the previous  
22 month the membership fluctuates?

23 A. Correct.

24 Q. I understand that. So you would estimate roughly  
25 it's 23,000 to 25,000 presently?

1 A. Correct.

2 Q. And, again, understanding this is an estimate,  
3 roughly what was it in the beginning of 2010,  
4 January 1st, 2010?

5 A. Probably 20,000.

6 Q. And, again, I apologize, roughly what was it in  
7 the middle of 2009? By that I mean July 1st,  
8 2009, roughly how many members did NOM have?

9 A. Probably roughly 18,000, probably 19,000, 18,000  
10 to 19,000 thousand.

11 Q. And going back further to January 1st, 2009  
12 roughly how many members?

13 A. Roughly 15,000, 16,000.

14 Q. So it looks like the organization has been growing  
15 steadily since January 1, 2009?

16 A. Correct.

17 Q. And is that the same for all geographic locations  
18 of the country that NOM has been growing steadily  
19 since January 1, 2009?

20 A. I would -- I would say they're roughly  
21 equivalent. I wouldn't say we're gaining in any  
22 one region a lot more members than in another.

23 Q. One state or region isn't any better or worse for  
24 growth of NOM since January 1, 2009?

25 A. Maybe Iowa. We hadn't been very involved there.

1 Q. So when you say maybe Iowa, meaning Iowa is worse  
2 or better?

3 A. No, no, maybe Iowa we had more new members, but I  
4 can't think of another state in which we gained a  
5 lot more members, maybe New Jersey, but --

6 Q. Are there any states in which NOM has not grown by  
7 roughly the same amount since January 1, 2009?

8 A. Off the top of my head I can't think of any.

9 Q. All right. There isn't any reason why any state  
10 would be any worse than any others under that --  
11 excuse me -- there isn't any reason you can think  
12 of why any state would have grown at a less rate  
13 during that time?

14 A. Other than us not being involved. Yeah, I would  
15 say that in some states there are limitations on  
16 our direct mail. I think Utah might be one of  
17 them. So a state like Utah would be probably less  
18 growth.

19 Q. Does NOM prepare and distribute what it calls a  
20 newsletter, if that's the right term?

21 A. It does.

22 Q. Is that the right term?

23 A. Yeah.

24 Q. Starting when did NOM prepare and distribute a  
25 newsletter?

1 A. I think we've done it since 2008 at some point,  
2 mid 2008.

3 Q. To whom is the NOM newsletter sent?

4 A. The NOM newsletter is sent to all of our -- all of  
5 the e-mails from people who come and take any  
6 action or who donate.

7 Q. And what do you mean by "take any action?"

8 A. If someone joins our action center by sending an  
9 e-mail urging a congressman or a legislator to do  
10 something or not, then they would receive the  
11 e-mail.

12 Q. So if you have their e-mail address because  
13 they've done something that indicates to you that  
14 they're supportive of NOM's mission --

15 A. Correct.

16 Q. -- they get a newsletter?

17 A. Correct.

18 Q. What's the purpose of the newsletter?

19 A. Education, updating people with news, highlighting  
20 NOM's involvement in whatever state or national  
21 issue, those are the primary purposes.

22 Q. Are there different versions of the newsletter  
23 depending on what state or region you're sending  
24 it to?

25 A. There have been, yeah, but what's happened is

1 California or New York/New Jersey or Rhode Island  
2 have sort of -- because it's been so difficult to  
3 actually produce four different letters, they tend  
4 to be the same, other than in Rhode Island it  
5 occasionally is different, but generally they are  
6 all the same.

7 Q. So let me see if I understand you. There actually  
8 are different versions?

9 A. Well, we -- when we -- originally when we  
10 conceived of this we wanted to have each certain  
11 area have its own version, and so we did do that  
12 for a time, but increasingly because of just the  
13 staff burden, even though it says NOM California,  
14 typically there's no difference between -- I mean,  
15 in general there's no difference between that and  
16 the New York version.

17 Q. And what are the different versions? There's a  
18 California?

19 A. Um-hum.

20 Q. A New York/New Jersey?

21 A. Yes.

22 Q. A Rhode Island?

23 A. Yes.

24 Q. And then a general?

25 A. National.

1 Q. National is what you call it, okay. Any other  
2 versions?

3 A. No.

4 Q. All right. Is this distributed only by e-mail?

5 A. Yes.

6 Q. So NOM doesn't have a mailing list that it sends  
7 out by bulk mail postage, you know, the U.S. Post  
8 Office?

9 A. Not the newsletter, no.

10 Q. Okay. Who writes it?

11 A. Sometimes I write it and often Maggie writes it  
12 and I will review it and it will go out under my  
13 name and I'll make changes to it.

14 Q. So it comes from you?

15 A. Comes from me.

16 Q. But sometimes you didn't necessarily have all the  
17 original thoughts?

18 A. No, no, exactly.

19 Q. But you've blessed and approved the final version  
20 before it goes out?

21 A. And we've usually talked about -- we've  
22 communicated in order to figure out what we're  
23 going to talk about.

24 Q. And by "we" meaning you and Maggie?

25 A. Maggie and I.

1 Q. Are there other ways that NOM communicates with  
2 the public other than the newsletter?

3 A. Yeah, there are fundraising letters that regularly  
4 go out.

5 Q. Now, is that a form fundraising letter that goes  
6 out to everybody or are there individual  
7 fundraising letters that go out to each person on  
8 the NOM fundraising list?

9 A. Well, there are variable data so you'll see the  
10 person's name and, you know, it will be based upon  
11 their name and address, but in general one letter  
12 will be the same letter for whoever receives it,  
13 although there are sometimes different segments  
14 that might receive different letters in order to  
15 test certain letters, test how people respond to  
16 certain messages.

17 Q. How often -- first of all, with respect to the  
18 newsletter, how often has NOM been publishing what  
19 it calls a newsletter? What's the period? Is it  
20 monthly, weekly?

21 A. You mean the e-mail?

22 Q. Yes, the e-mail newsletter.

23 A. It's weekly. It's every Friday.

24 Q. Okay. I'm sorry, now I'm going back to the  
25 fundraising letter, how often do those go out?

1 A. Typically ten in a year.

2 Q. Are the fundraising letters geared towards  
3 particular campaigns that NOM may be interested in  
4 funding?

5 A. No, generally they'll mention -- they may mention  
6 where we're involved, but we have a policy of not  
7 accepting designated contributions for particular  
8 campaigns so the solicitation -- the body may  
9 mention a number of different places we're  
10 involved in but it will be for general support of  
11 NOM.

12 Q. Do those go out by e-mail or by U.S. mail?

13 A. Those are U.S. mail.

14 Q. Are there any other written communications that  
15 NOM has with the public on a regular basis?

16 A. Well, the newsletter is one side of our on-line  
17 outreach. The other side is either action alerts  
18 which we ask people to do -- do something, and  
19 then, secondly, occasionally we have explicit  
20 fundraising e-mails, and those would not be like  
21 the newsletter which is long and deals with a lot  
22 of different things. They would have a different  
23 format and usually are more concise and those  
24 occasionally go out also.

25 Q. And how frequently have action alerts gone out,

1 let's say, since January of 2009?

2 A. I would say probably three a month.

3 Q. Who writes action alerts?

4 A. Generally either I will do it or Joshua Baker who  
5 is not an employee but he's on contract to help us  
6 with some of this, and he also volunteers and will  
7 help do a draft after I communicate with him over  
8 the phone what I want done and then I'll change  
9 it.

10 Q. And I can't recall from looking through documents,  
11 have we been provided with some of what you would  
12 call action alerts?

13 MR. NEELEY: I believe that's correct,  
14 yes.

15 MR. KNOWLTON: Okay.

16

17 BY MR. KNOWLTON:

18 Q. How can you tell an action alert from a newsletter  
19 or a fundraising e-mail?

20 A. Well, first of all, it won't have NOM National  
21 News at the top. It will have some different  
22 title, and the only way to tell is to look at the  
23 text and the link will take you to our action  
24 center rather than a fundraising page.

25 Q. Those alerts get sent by e-mail not U.S. mail?

1 A. Correct.

2 Q. And with respect to the fundraising e-mails, those  
3 are obviously sent by e-mail?

4 A. Yes.

5 Q. How many of those have been disseminated since  
6 January 2009?

7 A. I'll probably say 40 or 50.

8 Q. And what's the difference between the purpose of a  
9 fundraising e-mail and a fundraising letter?

10 A. Well, sometimes we'll adapt the text of the e-mail  
11 to a letter occasionally, but many people -- some  
12 people who want to give by snail mail don't want  
13 to give on-line and vice versa. So it's just two  
14 different media to connect with our supporters.

15 Q. And I know you were estimating the numbers, but as  
16 I was doing the arithmetic, it sounded like there  
17 has only been about 15 fundraising letters since  
18 January 1, 2009? I think you said 10 a year?

19 A. Um-hum.

20 Q. And there's been 40 or 50 fundraising e-mails  
21 since that time?

22 A. Well, I was saying 40 or 50 either action alerts  
23 or fundraising e-mails.

24 Q. Okay, I misunderstood. I thought you said 3 per  
25 month roughly for action alerts which would get us

1 to -- that gets us to almost 50 actually since  
2 January 1 of 2009 if I did my arithmetic right, 12  
3 months times 3 is 36 plus another 5 months times 3  
4 is 15, 36 and 15 is 51.

5 A. Well --

6 Q. I'm just trying to get a sense of --

7 A. Yeah, maybe I'm off. There probably were less.  
8 Maybe there's only -- well, no, I think that's  
9 probably right. You're right, there would be less  
10 of the fundraising e-mails than the action alerts  
11 so I would say pure fundraising e-mail there's  
12 probably only two a month at most and most months  
13 there may only be one.

14 Q. Okay. Have we been provided with the -- any  
15 fundraising e-mail or action alert that mentions  
16 Maine?

17 MR. NEELEY: I believe you've been provided  
18 with all of them for 2009.

19 MR. KNOWLTON: All of both the action  
20 alerts and the fundraising e-mails?

21 MR. NEELEY: Right.

22 MR. KNOWLTON: Okay.

23 MR. KNOWLTON: And we addressed this  
24 earlier but obviously with respect to 2010 we're  
25 asking for the supplement.

1 MR. NEELEY: Sure.

2 MR. KNOWLTON: Okay, thank you.

3

4 BY MR. KNOWLTON:

5 Q. Are there any other communications, either e-mail  
6 or snail mail, that are regularly disseminated by  
7 NOM?

8 A. We did a newsletter, a hard-copy newsletter, but  
9 we only did one edition of that and we're looking  
10 at doing a second edition now.

11 Q. When was the hard-copy newsletter one edition  
12 done?

13 A. It was in August, I believe.

14 Q. Of?

15 A. Actually I don't know the exact month. I think it  
16 was around August of '09.

17 Q. Okay, and the August '09 paper newsletter had  
18 different content from the e-mail newsletter of  
19 that month?

20 A. It did. I mean, it wasn't all different. We took  
21 some of the text but it was adapted and changed.

22 Q. What was the purpose of the paper one-time  
23 newsletter?

24 A. To let people know all that NOM was doing, to let  
25 people know, you know, the successes we've had,

1           what fights are going on throughout the country.

2           Q. To whom was that paper newsletter sent?

3           A. I believe it was only sent to people who had given  
4           to donors.

5           Q. Any other written communications that have been  
6           prepared by NOM since January 2009?

7           A. To supporters, to public, anywhere?

8           Q. Anywhere.

9           A. We have thank you letters. If someone donates,  
10          there's a thank you letter. There's also a thank  
11          you e-mail.

12          Q. I was just going to say, for every donation is a  
13          thank you e-mail generated?

14          A. If they give on-line, they'll receive both a brief  
15          thank you e-mail and also a snail mail thank you,  
16          and then if they give by snail mail, they'll just  
17          receive a snail mail thank you.

18          Q. And I take it that everyone doesn't receive the  
19          same thank you letter, do they?

20          A. No, but because of -- yeah, I mean, not everyone  
21          receives the same thank you letter but most people  
22          receive the same thank you letter. The  
23          overwhelming majority of people receive the same  
24          thank you letter with slight -- you know, for  
25          larger donors there may be a personal note

1           appended by me and some of the larger donors we  
2           may change the text.

3       Q. And I think you referred earlier to a \$25,000  
4           cutoff in terms of Sterling Corporation. Roughly  
5           speaking, how many donors larger than \$25,000 does  
6           NOM have in 2010?

7       A. Oh, man.

8       Q. Roughly speaking.

9       A. Larger than 25 for the last 12 months?

10      Q. I was just thinking about calendar 2010 actually.

11      A. Okay. We've only had six months. I would say --  
12           I don't know. I would guess 20, maybe more, 30.

13      Q. Okay, 20 to 30?

14      A. Yeah.

15      Q. Similarly for 2009 for the whole year?

16      A. I would guess 40 or 50.

17      Q. And I think the document you brought today has  
18           some of this data in it, but I haven't had a  
19           chance to read what was marked as Exhibit 3.

20           MR. NEELEY: It's on page 29, but it would  
21           not be through the entire year I don't think.

22           MR. KNOWLTON: Right. It was only through  
23           August of '09 in any event, okay, great. How are  
24           we doing on time anyway? What time is it?

25           MS. GARDINER: It's 4:00.

1 MR. KNOWLTON: Let's go off the record.

2 (OFF RECORD)

3

4 BY MR. KNOWLTON:

5 Q. All right, Mr. Brown, I want to ask you a little  
6 bit about some of the other NOM organizations that  
7 I've seen some reference to in some of the  
8 documents that have been provided to us. I saw  
9 some reference to what I think was called the NOM  
10 education fund. Is that a separate entity?

11 A. It is a 501(c)(3) organization that is a trust of  
12 the (c)(4).

13 Q. Trust of NOM?

14 A. It is a trust of NOM, but it is -- and, therefore,  
15 it is controlled by a trustee.

16 Q. Who is the trustee?

17 A. Neil Corkery.

18 Q. What's the purpose for the NOM education fund?

19 A. Well, first of all, it can receive IRS --  
20 donations designated by the federal government as  
21 tax deductible for IRS purposes and, therefore,  
22 its mission is to focus on educational outreach on  
23 the issue of marriage.

24 Q. When was it formed roughly?

25 A. At the same time as the (c)(4) in 2007, June of

1 2007.

2 Q. And why was it formed other than it can accept  
3 donations that are tax deductible to the donor?

4 A. This is a common structure for any organization  
5 like ours on either side of this issue because the  
6 501(c)(4) has different rules governing donor  
7 contributions not only in tax deductibility but  
8 the purposes by which it's going to be used. So  
9 it makes more sense to have educational activities  
10 put into an organization whose purpose under the  
11 IRS code is for educational activities. So that's  
12 why it -- this would be the common way to set up  
13 an organization like NOM to have -- so that there  
14 would be a 501(c)(3) and a 501(c)(4).

15 Q. Does it have an executive director?

16 A. I serve as executive director.

17 Q. Does it have a board of directors? And by "it"

18 I'm referring to the NOM education fund. Does it  
19 have a board of directors?

20 A. Well, the trustee -- the trustee is under the  
21 board of directors of NOM, but technically in the  
22 law, my understanding of a trust is that the trust  
23 is controlled by the trustee, and that it's not --  
24 that he then answers to the board of directors of  
25 NOM.

1 Q. So the NOM education fund doesn't have its own  
2 separate board of trustees but rather your  
3 understanding is that Neil Corkery as the trustee  
4 reports to the NOM board of directors with respect  
5 to the NOM education fund?

6 A. Correct.

7 Q. Does the NOM education fund have any employees?

8 A. No, it does not.

9 Q. Does it have any officers?

10 A. No, it does not. It pays -- as is common, any  
11 activities that the 501(c)(3) -- that is a  
12 501(c)(3) type of activity it would -- either NOM  
13 can pay for or it could pay for itself. NOM can  
14 pay for the activities of a 501(c)(3) if it so  
15 chooses.

16 Q. What do you mean by it can pay for the activities  
17 of a 501(c)(3)? I'm not sure I understand what  
18 you're saying.

19 A. Well, a 501(c)(4) organization can still engage in  
20 educational activities. There's no prohibition on  
21 that. There's a higher standard for donations so,  
22 therefore, it's acceptable for it to engage in  
23 educational activities if it so chooses. So  
24 501(c)(4) could pay for the office space or  
25 whatever else of the (c)(3) whereas that couldn't

1           happen in the opposite direction.

2       Q. And is that, in fact, what happens? Does NOM pay  
3           for any expenses of the NOM education fund?

4       A. Generally we don't. Generally we try and separate  
5           the two as much as possible and to have the (c)(3)  
6           pay for its own expenses.

7       Q. What expenses does the (c)(3) have?

8       A. The portion of our salaries that would be focused  
9           on educational activities would be an expense that  
10          the (c)(3) would need to pay for.

11      Q. Do you draw a salary from NOM education fund?

12      A. I do not.

13      Q. Do any NOM employees draw?

14      A. Do not, no.

15      Q. Okay, then I'm not following you. I thought you  
16          were talking about salaries that were being paid  
17          for by NOM education fund.

18      A. It doesn't pay me a salary. It reimburses NOM for  
19          the portion of my salary, whatever it is on a  
20          monthly basis, that is focused on educational  
21          activities.

22      Q. And what percentage is that?

23      A. It changes by month but it's roughly 10 percent.

24      Q. Does the NOM education fund have fundraising  
25          separate and apart from NOM's fundraising?

1 A. It does not have a -- up until quite recently it  
2 hasn't had its own sort of direct mail or e-mail  
3 fundraising. It would be more major donors and  
4 individuals or foundations that supported its  
5 mission that would give to it, and that would  
6 happen through, again, personal contact and we  
7 have not done much foundation fundraising where  
8 you would put in proposals, although we could do  
9 that, but typically this would be from donors who  
10 have a focus on educational activities and want to  
11 give to educational activities and may have a  
12 family foundation and, therefore, they want to  
13 support our educational activity.

14 Q. Is the NOM education fund a membership  
15 organization?

16 A. It is not.

17 Q. Did the NOM education fund file a Federal Form 990  
18 for 2008?

19 A. I believe that it did, yes.

20 Q. And I assume it hasn't filed one yet for 2009?

21 A. No.

22 Q. Can we find it on-line, the 2008 990?

23 A. I believe that you can. There has been issues  
24 with the -- you know, we've heard that the IRS --  
25 there are certain filings that they don't have,

1 but we have them and they're on our web site so I  
2 believe that's corrected.

3 Q. And do you and Maggie do the fundraising for NOM  
4 education fund?

5 A. Most of it, yes. Until -- again, until recently  
6 we've had -- we've had a change in which we've  
7 worked together with another organization called  
8 the Ruth Institute which also focuses on marriage,  
9 and we've taken them under our umbrella as a  
10 project of NOM through our (c)(3). So there's  
11 increasing (c)(3) activity that there's actual  
12 funding for. The Ruth Institute is a project of  
13 the NOM Education Trust.

14 Q. Tell me more about this project.

15 A. It focuses on education and college students and  
16 youth outreach. It's called the Ruth Institute  
17 and, therefore, we have been looking at doing that  
18 more ourselves, but we decided instead of creating  
19 something new to help fund and take under our  
20 umbrella an existing organization.

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

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.

1 Q. That's from trying.

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?

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.

12 Q. All right. Have any of these NOM PACs -- I'll  
13 call them all generically NOM PACs. I'm referring  
14 to the four that you've described so far, the  
15 state PACs. Have any of these challenged the  
16 state's authority to regulate in that area as NOM  
17 has done in Maine?

18 A. No.

19 Q. Why not?

20 A. We may potentially and NOM has done so in the  
21 ProtectMarriage versus Bowen case, but you asked  
22 me specifically about the PACs. These are  
23 candidate PACs, not -- not lobbying activity which  
24 is supporting an initiative or referenda. So in  
25 those states we haven't -- we haven't had a need

1 to.

2 Q. Okay.

3 A. So far.

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

5 A. Because that's the only way in New York to support

6 or oppose candidates.

7 Q. You mean under New York law?

8 A. Under New York law.

9 Q. And is that the same answer as to why NOM formed a

10 Rhode Island PAC?

11 A. NOM didn't form a Rhode Island PAC. The NOM Rhode

12 Island PAC is under the control of the treasurer,

13 Chris Plante. In Rhode Island NOM can't have a

14 corporate -- corporately controlled or board

15 controlled PAC.

16 Q. All right. Then I --

17 A. But that will be -- that will be challenged.

18 Q. So there isn't -- I want to clarify this. There's

19 a chapter --

20 A. There's a chapter.

21 Q. -- of NOM in Rhode Island?

22 A. Correct.

23 Q. It's not a separate entity. It's just Christopher

24 Plante --

25 A. Um-hum.

1 Q. -- working for NOM in Rhode Island?

2 A. Um-hum.

3 Q. And what you called a NOM Rhode Island PAC isn't  
4 really a PAC; it's just another name for the  
5 chapter in Rhode Island?

6 A. No. In Rhode Island -- my understanding of Rhode  
7 Island law, it's typical for individuals  
8 associated with organizations to head up these  
9 chapters but -- I'm sorry -- head up these PACs  
10 but the individual has to be vested with decision  
11 making power in having the PAC. It's not  
12 corporately controlled. So there are -- that's my  
13 understanding of state law. So there are other  
14 PACs named, for example, Planned Parenthood PAC  
15 but the person that controls the PAC is whoever  
16 the treasurer is.

17 Q. So there is a NOM Rhode Island PAC, a separate  
18 entity?

19 A. It is a separate entity, completely separate.

20 Q. And it's run by Mr. Plante?

21 A. Christopher Plante.

22 Q. And he has sole authority over the actions of NOM  
23 Rhode Island PAC?

24 A. He does.

25 Q. Is there a board of directors of NOM Rhode Island

1 PAC?

2 A. There is no board of directors for any of the  
3 PACs.

4 Q. Who is in charge of the New York PAC?

5 A. I am.

6 Q. What is your title, the executive director?

7 A. No, for each of the PACs it's almost always  
8 treasurer.

9 Q. So you are the treasurer of NOM PAC NY?

10 A. Correct.

11 Q. And that gives you the authority to make decisions  
12 as to what that PAC does?

13 A. Correct.

14 Q. And you are the treasurer of NOM PAC NJ?

15 A. Correct.

16 Q. With the same authority you have in New York?

17 A. Correct.

18 Q. Are you the treasurer of NOM California PAC?

19 A. No.

20 Q. Are you --

21 A. I'm the chairperson of that.

22 Q. Okay. You have authority over the California PAC?

23 A. I do.

24 Q. Who do you report to with respect to the  
25 California PAC activities?

1           MR. NEELEY: To clarify, which of the  
2 California organizations are we talking about?

3           MR. KNOWLTON: Thank you for clarifying.

4

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

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.

19 Q. Speaking of California, the deposition you're

20 giving tomorrow is that in the ProtectMarriage.com

21 versus Bowen lawsuit?

22 A. (Deponent nods affirmatively.)

23 Q. Are you giving another 30(b)(6) deposition or is

24 it in your personal capacity or both, do you know?

25 A. It's not in my -- it's representing NOM.

1 Q. Okay. Like today?

2 A. Like today.

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.

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

3 A. For federal candidates, yes.

4 Q. All right.

5 MR. KNOWLTON: This might be a good place  
6 to stop before we launch into a different  
7 subject.

8 MR. NEELEY: Okay.

9 MR. KNOWLTON: We're obviously continuing  
10 this deposition until Mr. Brown is able to return  
11 back to our fair state, and we will send you an  
12 e-mail, Josiah, about what we think we are still  
13 looking for and what we think you have agreed to.

14 MR. NEELEY: Okay.

15 (Whereupon, the deposition was recessed on May 26,  
16 2010 at 4:20 p.m.)

17

18

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24

25

1 June 23, 2010

2 9:15 a.m.

3 MR. NEELEY: As last time, I'd like to  
4 designate the deposition as confidential pursuant  
5 to the protective order, and then when we get the  
6 transcript we can look through and designate  
7 individual pieces of it as protected by the  
8 order.

9 MR. KNOWLTON: Okay.

10 EXAMINATION

11  
12 BY MR. KNOWLTON:

13 Q. Good morning Mr. Brown.

14 A. Good morning.

15 MR. NEELEY: Don't forget about the  
16 documents, the authenticity. You wanted to put  
17 that on the record.

18 MR. KNOWLTON: Sure, I'm going to get to  
19 that in a second. Thank you.

20  
21 BY MR. KNOWLTON:

22 Q. What have you done to prepare for today's  
23 deposition since you were last here in Maine in  
24 May?

25 A. Awhile back I reread through some of the

1 complaints, but I haven't done much. In the last  
2 few days I haven't done anything.

3 Q. When you say you reread some of the complaints,  
4 what are you referring to? The filed pleadings in  
5 this case?

6 A. Yes.

7 Q. The Complaint and the First Amended Complaint and  
8 the proposed Second Amended Complaint?

9 A. Correct, correct.

10 Q. Okay. What else have you done since you were last  
11 here?

12 A. I haven't done anything particular in preparation  
13 for this.

14 Q. All right. Since you were last here you gave a  
15 deposition in another lawsuit, is that correct?

16 A. That is correct.

17 Q. In the California litigation?

18 A. Correct.

19 Q. Is that the ProtectMarriage.com v Bowen matter?

20 A. Correct.

21 Q. During that deposition did you testify about NOM's  
22 activities in 2009?

23 A. Yes, some activity. Most of the activity was in  
24 2008 because that's when the actual vote was in  
25 California.

1 Q. But during your deposition did you also testify  
2 about activities in 2009?

3 A. I testified about harassment in 2009, if that  
4 counts as activities.

5 Q. That was my next question. Did you also testify  
6 about the evidence of threats, harassment or  
7 reprisals leveled at either NOM or yourself?

8 A. I did.

9 MR. KNOWLTON: We'd like a copy of his  
10 deposition.

11 MR. NEELEY: The transcript isn't finished  
12 yet but when it is, and I don't know -- I'll have  
13 to check with the other attorneys because there  
14 may be a protective order in that case too, but  
15 anything that isn't subject to that we'll get you  
16 a copy of.

17 MR. KNOWLTON: Okay. Let's go off the  
18 record for a second.

19 (OFF RECORD)

20

21 BY MR. KNOWLTON:

22 Q. Mr. Brown, I noticed on the NOM web site that  
23 there's a reference to the NOM Legal Defense  
24 Fund. Are you familiar with that?

25 A. Yes.

1 Q. What is that?

2 A. It is a part of our 501(c)(3) to help fund  
3 litigation involving NOM.

4 Q. What do you mean it's part of your 501(c)(3)?

5 A. It's a fund that's under our 501(c)(3), the NOM  
6 Education Trust. It isn't a separate legal  
7 entity.

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 --

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 ? That's the account number.

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

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 number [REDACTED], this is a March 2010 statement.  
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

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 check be deposited in account [REDACTED]?

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 get deposited in account [REDACTED]?

22 A. Yes.

23 Q. But no check payable to NOM will get deposited in  
24 account [REDACTED], is that your testimony?

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.

11 Q. There's also a link on the NOM web site that talks  
12 about sponsoring a NOM TV ad. Are you familiar  
13 with that link?

14 A. Correct.

15 Q. If someone donates money in response to that link,  
16 what happens to their funds? Which account is it  
17 put in?

18 A. It goes into our (c)(4) account.

19 Q. And is it spent on a TV ad?

20 A. We have records of any donation that comes in and  
21 when someone donates, it says this isn't  
22 designated for a political activity. As far as a  
23 television ad, we do attempt to but we're not  
24 bound to spend the money that we raise either on  
25 the radio button or the TV button to do general

1 ads, but those aren't -- those are issue-type ads,  
2 so if the question is whether that's a political  
3 -- designated political expenditure, no.

4 Q. My question is actually much more narrow than  
5 that. When someone pushes the button that says  
6 sponsor a NOM TV ad and gives NOM money to sponsor  
7 a NOM TV ad, does NOM spend that money on a TV  
8 ad? That's my question.

9 A. Yes.

10 Q. And how does NOM account for the funds that are  
11 contributed for the purpose of paying for a NOM TV  
12 ad? How does NOM make sure the money gets spent  
13 on a NOM TV ad?

14 A. All donations on-line have source codes, and so we  
15 can tell, and in that particular instance we can  
16 -- we can identify that they clicked on through  
17 that link in order to give. That's not always the  
18 case, but in that case in the TV ad question,  
19 that's the case. Also we spend so much money on  
20 issue-type ads throughout the country that the  
21 amount of money that we've received we know  
22 through that link is much, much, much, much less  
23 than any money we've spent on ads.

24 Q. Is there a specific bank account designated to  
25 deposit contributions for the NOM radio ad or the

1           NOM TV ad?

2           A. No.

3           Q. It just goes into the main NOM account which is

4           ██████████?

5           A. Correct.

6           Q. So if I looked at a donation on the bank account

7           statement for that account there would be no way

8           for me to know whether or not the person was

9           giving NOM that money to pay for a TV ad?

10          A. No.

11          (Whereupon, Deposition Exhibits #7 & #8 are

12          marked.)

13

14          BY MR. KNOWLTON:

15          Q. I'm showing you what's marked as Defense Exhibit

16          7. It's the Plaintiff's Response to Defendant's

17          First Request for Production. Have you seen

18          Exhibit 7 before?

19          A. Yes.

20          Q. Who at NOM reviewed Exhibit 7?

21          A. I did.

22          Q. Anyone else?

23          A. Our lawyers did.

24          Q. Anyone else at NOM other than you?

25          A. I believe that I forwarded it to members of our

1 board.

2 Q. And who would those persons be? Maggie Gallagher?

3 A. Correct.

4 Q. Robbie George?

5 A. Correct.

6 Q. Luis Tellez?

7 A. Correct.

8 Q. Anyone else?

9 A. I think I may have -- I'm not certain, but I think

10 I may have sent it to other board members also.

11 Q. Could you give me their names?

12 A. I believe I may have sent it to Charles Stetson,

13 Ken Von Kohorn, Craig Cardon and Neil Corkery.

14 Q. Were you the person at NOM who was responsible for

15 coordinating the collection of documents that were

16 responsive to Exhibit 7?

17 A. Well, I worked with our lawyers to do that.

18 Q. But your lawyers don't have access to the

19 documents, correct, you do?

20 A. Well, I do and my staff does and our staff helped

21 supply many of the documents the lawyers asked

22 for.

23 Q. That's what I'm trying to get at. How did you

24 make sure that NOM had responded completely to

25 Exhibit 7 by producing all of the documents that

1           were responsive? Did you follow up with Maggie  
2           Gallagher?

3           A. I did.

4           Q. Did you ask her whether she had reviewed all her  
5           e-mails to make sure she had provided all the  
6           e-mails that might be responsive to Exhibit 7?

7           A. I did.

8           Q. And what did she say?

9           A. She said that she had.

10          Q. That she had reviewed her e-mails?

11          A. Um-hum.

12          Q. Did she tell you that?

13          A. Yes, she did.

14          Q. How about Mr. George, did you ask Mr. George  
15          whether he had reviewed his documents, including  
16          his e-mails, to make sure that he had provided all  
17          the documents that were responsive to Exhibit 7?

18          A. I did.

19          Q. And what did Mr. George say?

20          A. Yes.

21          Q. And did you ask the other members of the board  
22          whether they had reviewed their files, including  
23          their e-mails, to make sure that they had provided  
24          you or NOM with all the documents that were  
25          responsive to Exhibit 7?

1 A. Not each and every board member because there was  
2 not any -- there weren't board members involved in  
3 -- in -- in the sort of questions that you're  
4 asking here. There wasn't communications with me  
5 and many of the board members via e-mail or among  
6 themselves. I did send out a general e-mail  
7 stating that we needed e-mails relating to Maine,  
8 and I believe that was sent out to all of the  
9 board members, but those board members weren't  
10 involved in the day-to-day activities of Maine or  
11 many times in the fundraising for NOM in general.

12 Q. Is Mr. Tellez involved with fundraising for NOM?

13 A. Yes.

14 Q. Did you ask him to provide all the documents that  
15 were responsive to Exhibit 7?

16 A. What I asked for are all e-mails related to Maine  
17 and after talking with the lawyers, what they  
18 asked me to ask them. I don't know that I said  
19 responsive to Exhibit 7. I gave a list of e-mails  
20 that I needed, and I asked for them to respond to  
21 them.

22 Q. What list did you give them? What did your list  
23 say? What e-mails were they supposed to give you?

24 A. Well, I believe by e-mail I asked them for any  
25 correspondence that had to do in each of these

1 with a reference to Maine, anything at all that  
2 has to do with Maine if you would send forward and  
3 then our lawyers looked over any of those e-mails  
4 and then they responded by forwarding.

5 Q. Have e-mails been provided to you that haven't  
6 been provided to us?

7 A. I'm not aware of that. I don't know the answer to  
8 that question.

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

19 MR. NEELEY: That's correct.

20 MR. KNOWLTON: And, similarly, with respect  
21 to the bank account records, NOM stipulates that  
22 the bank account records that have been provided  
23 to the defendants are authentic business records  
24 of NOM. They are going to reserve their  
25 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.

4

5 BY MR. KNOWLTON:

6 Q. Mr. Brown, when NOM responded to Exhibit 7 was  
7 Exhibit 3 identified as a document that was  
8 responsive?

9 A. I don't recall. I gave this to -- I believe that  
10 it was. I think that's why you have it.

11 Q. But do you have any explanation as to why we  
12 didn't get it until May 2010 instead of at the  
13 time that responsive documents were due?

14 A. I don't. There were -- I believe that there were  
15 two versions of this. I thought that we sent  
16 forward the initial version, but I don't know  
17 about the time line.

18 Q. Let me show you what's marked as Defendant's  
19 Exhibit 8 which is the Plaintiff's Response to the  
20 Defendant's Second Request for Production. I'll  
21 just ask you whether you've seen Exhibit 8. Have  
22 you seen Exhibit 8?

23 A. Yes.

24 Q. Were you the person at NOM who was responsible for  
25 collecting the documents that were responsive to

1 the Defendant's Second Request for Production?

2 A. Yes.

3 Q. We've received a number of bank statements  
4 recently from NOM in response to the Second  
5 Request for Production. Have we received all the  
6 -- strike that. Have we received statements from  
7 all accounts in which NOM has the authority to  
8 withdraw or deposit funds for 2009 forward?

9 A. I'm looking at the specific request.

10 Q. Sure. Why don't you look at specific request #1  
11 in Exhibit 8.

12 A. On or after 2008 is specified in request #1. Also  
13 it specified that NOM had the authority to deposit  
14 or withdraw funds. I'm a personal treasurer for a  
15 number of state PACs in which NOM does not have  
16 control, there isn't corporate control of the  
17 state PACs, therefore, those would not be  
18 responsive.

19 Q. So is it your testimony that you haven't provided  
20 any bank account statements for NOM PACs?

21 A. No, that isn't my testimony.

22 Q. Okay. Which NOM PACs have you produced bank  
23 account statements for and which haven't you?

24 A. Well, I've --

25 MR. NEELEY: I have a list. Can we go off

1 the record?

2 MR. KNOWLTON: Sure.

3 (OFF RECORD)

4

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

9 MR. NEELEY: I believe there's an account  
10 [REDACTED] which I have as being an account for NOM  
11 Rhode Island PAC, and there is an account [REDACTED]  
12 which I don't have here down in my notes whether  
13 it's California or New York.

14 THE DEPONENT: I believe that's New York.

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

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

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

24 MR. KNOWLTON: I don't believe we do, but  
25 let's take this up at a break.

1 MR. NEELEY: All right.

2

3 BY MR. KNOWLTON:

4 Q. So Mr. Brown, has the account statement -- strike  
5 that. Have the documents from any particular NOM  
6 PAC purposefully not been provided to the  
7 defendants for some reason?

8 A. No.

9 Q. Okay. Including the NOM California PAC bank  
10 account statements, those have been provided to  
11 the defendants as well?

12 A. Well, the only reason would be legally as to  
13 whether it's a corporately controlled PAC or not,  
14 and the honest answer right now is I don't -- the  
15 California PAC I'd have to review what the law is  
16 governing that PAC. There wasn't any -- until  
17 very recently there was no activity in that PAC,  
18 and I'm just not sure what the state -- how the  
19 state defines that PAC, whether it's independent  
20 of NOM or NOM controlled.

21 Q. So I take it your testimony is that the defendants  
22 have not been provided with any bank account  
23 statements for the California PAC as of this date,  
24 is that correct?

25 A. I don't believe they have.

1 Q. Are there any other PACs as to which the  
2 defendants have not been provided with the bank  
3 account statements?

4 A. I'm not aware of them. I'm trying to answer given  
5 the PAC that is in control -- that NOM is in  
6 control of. It asks "that NOM has the authority  
7 to deposit or withdraw funds." So I'm not aware  
8 of a PAC in which we have the authority to deposit  
9 or withdraw funds that we have not provided  
10 information. I believe that we have provided  
11 information for all the PACs that NOM has  
12 corporate control of.

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.

3 Q. When you came for the first part of the deposition  
4 in May you brought with you Defendant's Exhibit 5  
5 which were e-mails concerning evidence of threats,  
6 harassment or reprisal in NOM's view. Are you  
7 familiar with Exhibit 5?

8 A. Yes.

9 Q. Are there any other documents in NOM's possession  
10 that mention Maine or Question 1 or same sex  
11 marriage in Maine as to which NOM contends were  
12 threats, harassment or reprisals leveled at NOM or  
13 anyone at NOM?

14 A. Well, I still have my staff going back through all  
15 of the e-mails. We received thousands of e-mails,  
16 so I can't say that there aren't anymore  
17 documents. We have not been able to identify up  
18 to this point other documents but they may exist.  
19 We're still trying to get them, and as I said,  
20 we've had some issue with the phone messages not  
21 being able to keep messages from further back in  
22 time, and we're trying to figure out a way to get  
23 those.

24 Q. Did you ever receive any threats, harassment or  
25 reprisal as a result of NOM's efforts to support

1 Question 1 in Maine?

2 A. I believe that there was at least one phone  
3 message and at least one e-mail message that  
4 specifically mentioned Maine, and I -- but I don't  
5 recall the full content of it. I just remember  
6 that we received a message and it mentioned --  
7 there was some mention of Maine and it was, you  
8 know, fairly serious.

9 Q. When did you receive this phone message?

10 A. I don't recall.

11 Q. What month?

12 A. I believe it was sometime in the early part of  
13 this year.

14 Q. 2010?

15 A. Yes.

16 Q. Tell me all that you can remember about the phone  
17 message?

18 A. All I can recall is what I've just said. It was  
19 in general. I recall getting a message that had  
20 to do with Maine. We receive so many of these  
21 that I don't recall specifics, not particular to  
22 Maine but so many different types of calls.

23 Q. What was the threat or harassment that was made in  
24 this phone call that you're referring to?

25 A. I don't -- all I -- all I know is that I recall

1 receiving a call that had to do with Maine that  
2 was at a level of not death-threat-type level but  
3 more at a harassing, you know, foul language, but  
4 I don't recall the specifics of it and that's why  
5 we're working to try and retrieve lost phone  
6 messages. It's very difficult to remember a phone  
7 message.

8 Q. Did you ever get a phone call that wasn't a  
9 message or any kind of communication that you  
10 believe amounted to a threat, harassment or  
11 reprisal as a result of your or NOM's efforts in  
12 Maine?

13 A. I believe our office did. I did not listen to  
14 it. I know that there was mention of specific --  
15 that they had received phone calls that were  
16 specifically mentioning Maine, not just one, but I  
17 did not listen to it and so I do not know the  
18 specifics of it. I would have to talk to them and  
19 get a listing of, you know, anytime that we have  
20 anything that we have that they can recall that we  
21 don't have documentation for. What I've provided  
22 was everything that we have documentation for.

23 Q. How many phone calls did NOM receive in which the  
24 caller mentioned Maine and made something that NOM  
25 contends was a threat, harassment or reprisal?

- 1 A. I don't know.
- 2 Q. More than five or fewer than five?
- 3 A. I would say probably fewer than five that  
4 specifically mentioned Maine.
- 5 Q. And what was the content of any of those phone  
6 calls?
- 7 A. I don't recall.
- 8 Q. Can you tell me anything about any of the phone  
9 calls that you just referred to?
- 10 A. No, other than that the staff told me that they  
11 had received a call and when I asked later on if  
12 it mentioned Maine, they said yes, and I believe  
13 that there were maybe one or two of those. There  
14 were not many that specifically mentioned Maine.
- 15 Q. And what was the nature of the threat or  
16 harassment in any of those phone calls?
- 17 A. Well, I think they were -- they were at the level  
18 of more harassment and not sort of death threat  
19 level calls. So that's why -- one of the reasons  
20 why there wasn't -- that we usually don't have a  
21 lot of follow up on a call that is just a  
22 harassing call and not something at a higher  
23 level.
- 24 Q. And what do you mean by a harassing call? Give me  
25 an example of what you referred to as a harassing

1 call.

2 A. I don't know. In here I probably could -- I don't  
3 know, something like page -- it would be much  
4 shorter, this is an e-mail, but just something  
5 that says, you know, at the level of get out of  
6 our -- you know, quit what you're doing, we think  
7 you're, you know, blankety-blank, whatever, and  
8 maybe some level of an attempt to harass but no  
9 clear death threat like if you don't stop, we'll  
10 stop you, something like that.

11 Q. Again, I just want to make sure I have all the  
12 evidence on this issue that NOM is aware of. Have  
13 you told me now every communication, whether it  
14 was a phone call or any other kind of  
15 communication, leveled at NOM or any employee or  
16 member of the board of directors or associated  
17 with NOM in which the caller or speaker somehow  
18 mentioned Maine or NOM's efforts in Maine? Have  
19 you told me everything now that you know that has  
20 been leveled at NOM?

21 A. Everything that I can recall looking back and that  
22 we have -- that we have physical evidence for.

23 Q. And have you asked the folks in your office?

24 A. I have; I have, yup.

25 Q. Okay. Who does the fundraising for the NOM PACs?

1 A. Well, each PAC is different. NOM Rhode Island PAC  
2 is under Christopher Plante. He's the treasurer  
3 for NOM Rhode Island PAC, and he does the  
4 fundraising for the PAC. We've never -- I don't  
5 believe NOM has ever sent out an e-mail  
6 solicitation for that PAC because of rules in this  
7 state that don't allow corporate contributions.  
8 In New York that's a different type of PAC. We  
9 can -- NOM can -- we can send out e-mails,  
10 individuals can raise money, you know, I've asked  
11 people for money, but most of the fundraising for  
12 the PACs occurs and is more e-mail based or  
13 letters because obviously there are limits.

14 Q. So NOM raises money and has raised money for the  
15 New York PAC?

16 A. I believe we have and then any e-mail that's sent  
17 out is an in-kind contribution or a contribution  
18 to the PAC depending on how the state regulates  
19 it.

20 Q. Are --

21 A. I know we have sent out e-mails. I know we have  
22 sent out e-mails for New York PAC and for I  
23 believe New Jersey PAC also.

24 Q. Are funds raised by NOM ever used by the New York  
25 or New Jersey PAC?

1 A. Well, if -- funds raised by NOM? Well, NOM can  
2 make a contribution directly in I believe both the  
3 states, so in that sense, yeah, but they would be  
4 from NOM's general treasury. I could be wrong  
5 about New Jersey but I'm pretty certain, and again  
6 this is a matter of law, that in New York you can  
7 have corporate contributions to a PAC. You can do  
8 that and in that case NOM could make a  
9 contribution to any PAC, including the NOM New  
10 York PAC.

11 Q. What is APP?

12 A. The American Principles Project.

13 Q. What is the relationship between APP and NOM?

14 A. Well, there is no formal relationship. We work  
15 together on some of the same issues. Professor  
16 Robert George is the founder of APP and also has  
17 served as our board chairman and board member, but  
18 there isn't a formal relationship where -- we work  
19 together on issues when we can. We have a common  
20 interest.

21 Q. Are you on the board of APP?

22 A. I am not.

23 Q. Are you affiliated at all or have any role in APP?

24 A. No.

25 Q. What's the relationship between APP and the other

1 plaintiff in this lawsuit, APIA?

2 A. I believe APIA -- again, you're asking me -- I  
3 don't know. You're asking me to -- my  
4 understanding is that it's a 501(c)(4)  
5 organization connected with a 501(c)(3)  
6 organization, so that APIA is a 501(c)(4) and APP  
7 is a 501(c)(3).

8 Q. Are funds raised by NOM ever contributed to APP or  
9 APIA?

10 A. This is a question of who we donate to.

11 MR. NEELEY: It's a question of -- can we  
12 go off the record?

13 (OFF RECORD)

14

15 BY MR. KNOWLTON:

16 A. We have made -- we have made at least one  
17 contribution to APP.

18 Q. How large?

19 A. Well, I believe actually -- I don't know.

20 THE DEPONENT: Can I talk to you?

21 MR. NEELEY: Yes.

22 (OFF RECORD)

23

24 BY MR. KNOWLTON:

25 A. What we did, we did do a loan back and forth but

1       there was no money that I'm aware of that was  
2       actually a contribution. We did not give a  
3       contribution. We had a loan in which we repaid --  
4       they loaned us money and then we repaid it, and  
5       the reason why I originally said contribution is  
6       because in PAC circumstances that's often  
7       considered a contribution, but between the (c)(4)s  
8       it was just a loan that we repaid. They loaned us  
9       money and then we repaid money to them.

10      Q. What was the size of the loan to NOM from APP?

11      A. I don't recall.

12      Q. Was it more than \$100,000?

13      A. It could have been between 50 and 100.

14      Q. Why was there a loan made?

15      A. Because we're friendly -- you know, we're friendly  
16         organizations, we work together and we were going  
17         through a period where we knew a big donation --  
18         we knew a donation was coming in but it wasn't yet  
19         in, and so in order to deal with immediate needs,  
20         we asked for a loan.

21      Q. When was that loan made?

22      A. Well, recently they helped us with a loan,  
23         probably two weeks ago, and I don't know if they  
24         did something earlier. I can't recall whether we  
25         had asked them and then we didn't need it or

1           whether they actually did come through with the  
2           loan. Now that I think about it, I think what  
3           might have happened is we asked for a loan and we  
4           didn't end up needing it, but I don't recall, and  
5           it would have been probably, I don't know, a year  
6           ago.

7           Q. So is it your testimony that you've only received  
8           -- strike that -- is it your testimony that NOM  
9           has received only one loan from APP and that it  
10          was sometime in 2010?

11          A. I don't recall if they gave us a loan in 2009. I  
12          know this just happened that they gave us a loan a  
13          few weeks ago.

14          Q. And how big was the size of the loan that APP just  
15          gave you a few weeks ago?

16          A. \$100,000.

17          Q. And what was the size of the loan that NOM asked  
18          for in 2009?

19          A. I think it may have been \$50,000.

20          Q. Was it in the August and September 2009 time  
21          frame?

22          A. I don't believe so.

23          Q. What month in 2009 do you believe that NOM asked  
24          for a \$50,000 loan from APP?

25          A. I don't recall. I don't recall the exact date. I

- 1 thought it was earlier in the year.
- 2 Q. Can you give me your best estimate of what month  
3 in 2009 NOM asked APP for money?
- 4 A. I literally do not -- I do not remember and I  
5 don't recall if they -- and, in fact, I don't  
6 think that there ever was a loan. I believe we  
7 asked, but I'm not sure whether it ever came  
8 through.
- 9 Q. Are there any documents memorializing the \$100,000  
10 loan that NOM just received from APP?
- 11 A. Yeah, that would be in our bank statements.
- 12 Q. Is there a note?
- 13 A. No.
- 14 Q. What are the terms of the loan?
- 15 A. Well, it's -- basically they trust us to give back  
16 the \$100,000. They're giving it to us and then  
17 we're giving back \$100,000 when we get our  
18 donations in.
- 19 Q. Is there any interest that's going to be paid on  
20 this loan?
- 21 A. No, no.
- 22 Q. Is there any document at all that memorializes the  
23 fact that APP just loaned NOM \$100,000?
- 24 A. No.
- 25 Q. Is there an e-mail that discusses the loan?

1 A. No, no.

2 Q. Who at APP authorized the loan?

3 A. Frank Cannon.

4 Q. And how did it come about?

5 A. I called and asked.

6 Q. Has NOM borrowed money from any other entity since  
7 January 1, 2009?

8 A. No.

9 Q. I want to make sure I have the universe of the NOM  
10 PACs for a second and make sure we understand. It  
11 sounded like from your testimony before that your  
12 sense was that NOM had corporate control over the  
13 New Jersey and the New York PACs. Is that the  
14 gist of what you were testifying before?

15 A. Yes, that's my understanding.

16 Q. And your initial sense was that NOM perhaps did  
17 not have corporate control over the Rhode Island  
18 and California PACs?

19 A. Rhode Island I'm sure of, California I believe --  
20 in California I believe NOM may have corporate  
21 control of that PAC but that PAC is not -- there's  
22 been no money in the PAC since it was started  
23 until about two or three weeks ago.

24 Q. Are there any other --

25 A. Actually a month ago.

1 Q. Are there any other PACs out there that haven't  
2 been mentioned? NOM PACs I'm referring to.

3 A. No, not that I'm aware of. I personally am the  
4 treasurer for other PACs.

5 Q. But those other PACs that you're referring to have  
6 no affiliation whatsoever to NOM other than the  
7 fact that you happen to be treasurer, is that your  
8 testimony?

9 A. That's correct.

10 Q. I'm going to switch gears a little bit and ask  
11 about some record keeping matters for NOM.

12 A. Um-hum.

13 Q. Who are the employees or officers of NOM that  
14 currently keep track of NOM's revenues and its  
15 expenditures?

16 A. Our treasurer, Neil Corkery, our director of  
17 administration, Mary Haas, our director of  
18 operations, Justin Haas, and myself. There are  
19 other employees involved in, you know, data bank  
20 management in which there would be inputting  
21 information or processing mail donations.

22 Q. Were those the same people who were keeping track  
23 of NOM's revenues and expenditures in 2009?

24 A. Yes.

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

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..

9 Q. And what software does NOM use to help the record  
10 keeping with respect to its revenues?

11 A. Kintera.

12 Q. Tell me about Kintera.

13 A. Kintera is an on-line donation processing company  
14 that also does constituent relationship management  
15 and database management.

16 Q. So it sounds like Kintera is an independent third  
17 party with whom NOM has a business relationship?

18 A. Correct.

19 Q. What does Kintera do for NOM currently and, if  
20 different, what did they do in 2009 for NOM?

21 A. Well, it's more of a platform that allows us to  
22 receive donations on-line and to have a database  
23 of our donors in one centralized form so they  
24 serve as both a fundraising platform and a  
25 constituent relationship management and database

1 platform.

2 Q. What do you mean by they serve as a platform?

3 A. Well, they work with a number of nonprofits and  
4 it's a software application primarily. It has  
5 customer support but what it really is is a  
6 software application in which when donations occur  
7 certain information we're able to gather and keep  
8 about the donation and the donor and the address  
9 and they are paid a processing fee for the credit  
10 card donation, and so it's not -- it's not -- you  
11 know, there's not a person with Kintera that's  
12 actually doing this for us. It's a whole company  
13 and it's a platform that we use.

14 Q. What sort of constituent relations -- I think that  
15 was the phrase you used -- does Kintera do for  
16 NOM?

17 A. Well, that's what they are. They're a constituent  
18 relationship management software which means if  
19 someone takes an action, for example, contacts a  
20 congressman or contacts a state legislator, it's a  
21 platform that makes it very easy for people to do  
22 that. So we don't need to create a software that  
23 attaches people's addresses to their elected  
24 representatives. That's all done by them on a  
25 state-by-state basis and on a federal basis, and

1 the software keeps track and gives us data on how  
2 people respond and how many people have responded  
3 and ties that data into their -- into their  
4 profile.

5 Q. In terms of the contributions, is there a ceiling  
6 above which Kintera doesn't perform any services  
7 for NOM? In other words -- I didn't say that very  
8 well, let me say it differently. Is there a  
9 certain dollar amount of contribution that Kintera  
10 is supposed to be handling for NOM?

11 A. Well, just as a practical reality, larger donors,  
12 you know, a \$20,000 or even a \$10,000 donor isn't  
13 in general going to give on-line with a credit  
14 card, but there's nothing stopping that from  
15 happening.

16 Q. So any on-line credit card donations go through  
17 Kintera?

18 A. If someone goes onto our web site and attempts to  
19 donate to us it's going to go through Kintera.

20 Q. Are there any communications that are associated  
21 with these on-line donations?

22 A. Yes, there are thank you notes. If someone gives,  
23 they receive a thank you note.

24 Q. Who writes that? Is it generated automatically by  
25 Kintera?

1 A. It's generated automatically with the text that I  
2 would put in. Then the e-mails that we send out  
3 go through Kintera.

4 Q. All e-mails that NOM sends out to its mailing  
5 lists go out through Kintera?

6 A. Correct.

7 Q. And someone at NOM tells Kintera which mailing  
8 list to send a particular e-mail out to?

9 A. Yes.

10 Q. And what are the various kinds of mailing lists  
11 that exist?

12 A. Well, we can -- it can be -- depending on the  
13 information, it could be anything. It could be by  
14 city, it could be -- there's no -- there's very  
15 few -- there's not a real limit on the variations  
16 you could have as far as who you would target an  
17 e-mail towards.

18 Q. Could you send one to all donors?

19 A. Yes.

20 Q. Could you send one to all donors who have given  
21 more than \$10,000?

22 A. Yes.

23 Q. Are there any communications to NOM possible with  
24 these on-line donations?

25 A. Could you restate the question?

1 Q. Sure. What I'm trying to ask is when someone does  
2 an on-line contribution and gives their credit  
3 card, is there also a way for the donor to write  
4 an e-mail message at the same time?

5 A. It would have to be a separate action.

6 Q. Does that happen?

7 A. Occasionally I'll get people that when I send a  
8 thank you to them, they will respond and say no  
9 thank you, but in general people wouldn't --  
10 people don't in general take two actions. I mean,  
11 if they donate, they donate; if they want to  
12 write, they write. It would be -- it wouldn't be  
13 difficult but it would take some work to tie it up  
14 when I received an e-mail from when the donation  
15 came and say, well, it happened at the same time  
16 or nearly the same time that they donated.

17 Q. Does Kintera provide NOM with any kind of report  
18 periodically?

19 A. No, we have to do our own reports, and we would  
20 have to -- we would have to create the parameters  
21 for whatever report we wanted created.

22 Q. How much does NOM pay Kintera?

23 A. I would just be guessing because part of it is  
24 based upon how many e-mails you send out so every  
25 year it's different. Probably last year we

1           probably spent \$40,000.

2           Q. So as a rough order of magnitude, NOM paid Kintera  
3           about \$40,000 in 2009?

4           A. I would say that's accurate. It could be a little  
5           more actually. Part of it comes because Kintera  
6           also takes processing fees and that's a little  
7           more difficult. I mean, we could figure it out  
8           but processing fees are taken out of any donation  
9           that's made on-line.

10          Q. Does Kintera track how much money is contributed  
11          in response to a particular e-mail that NOM sends  
12          out?

13          A. It can, and, you know, one of the things we worked  
14          on is to be better at being able to track that,  
15          but you have to put a source code -- you have to  
16          do something to make that -- make that happen. So  
17          automatically, no, I don't believe we can. We  
18          have to do something in order to know where each  
19          donation comes from and that's our practice now  
20          but it hasn't always been.

21          Q. When did NOM start following that practice?

22          A. I don't know the exact date. I asked for us to do  
23          this probably two years ago, but it wasn't always  
24          done because it takes a lot more -- it takes more  
25          work if you want to get an e-mail out quickly, so

1           even now sometimes the source codes don't go in  
2           but ideally they would always go in.

3       Q. Were the source codes put in NOM's 2009 e-mail  
4       solicitations?

5       A. Only for a part of them and I -- I don't believe  
6       that we had the ability to do -- they are two  
7       separate issues, and so I want to be clear about  
8       this. We can -- we can sort out by the e-mail  
9       what donations we receive by someone clicking  
10      anywhere on the e-mail to donate, so we know  
11      that. Source codes have to do with the particular  
12      button or words that people would be clicking on  
13      in order to donate, and so that's what I'm saying  
14      we now are able to do and we do, but it probably  
15      was a year ago. I don't -- you know, I asked us  
16      to get on this process two years ago, maybe a year  
17      ago we started being able to use source codes for  
18      the actual links. So the answer is yes, we can --  
19      we can through the Kintera platform figure out who  
20      donated to what e-mails. That's my understanding,  
21      and I have to add on that it's not always perfect  
22      but that's in general what we can do and now we  
23      can always figure out what links people are  
24      donating to us by clicking.

25      Q. And does NOM have that data for the 2009 e-mail

1           solicitations?

2           A. Not for the -- not for the actual links until  
3           later in the year.

4           Q. What do you mean by later in the year?

5           A. I really don't know the date at which we started  
6           being able to do that. I would have to talk to  
7           folks in the office.

8           Q. What services are provided to NOM by Thomas  
9           Conlan?

10          A. He serves as our accountant.

11          Q. What does that mean?

12          A. Well, he basically prepares our 990s, and that's  
13          the extent of what he does for us.

14          Q. So he prepared NOM's form 990 for 2008?

15          A. Yes.

16          Q. And is he going to prepare NOM's 990 for 2009?

17          A. Yes.

18          Q. Did he prepare NOM's audited financial statements  
19          for 2008?

20          A. Yes, that is true.

21          Q. And is he going to prepare NOM's audited financial  
22          statements for 2009?

23          A. Yes, he is.

24          Q. Who works with Mr. Conlan? Mr. Corkery?

25          A. Correct.

1 Q. Did you or anyone else at NOM prepare a budget or  
2 other document that included NOM's projected  
3 receipts and revenues for 2009?

4 A. The closest thing to that would be the National  
5 Strategy for Winning the Marriage Battle.

6 Q. Which is Exhibit 3?

7 A. Correct.

8 Q. So other than Exhibit 3, no one at NOM prepares a  
9 document that lays out the expected revenues and  
10 expenditures for the organization for the  
11 following year?

12 A. Well, we're a new organization. If we -- there's  
13 no -- there would be no way we would know that we  
14 would have grown this much in a year.

15 Q. Is that a no, nobody does that document to  
16 estimate the revenues and expenditures for the  
17 year?

18 A. Well, this year we are going to do that but for  
19 last year, no.

20 Q. What do you mean this year?

21 A. Well, we -- we're working on creating a document  
22 for our next board meeting in which we would lay  
23 out and have a more formal process for an  
24 estimated budget, but the National Strategy for  
25 Winning the Marriage Battle essentially served

1 that function for 2009.

2 Q. So there is no budget of NOM's estimated revenues  
3 and expenditures for 2010 other than Exhibit 3?

4 A. Well, that includes two years' worth of projected  
5 activity. Other than a basic understanding that  
6 we're going to, you know, raise a certain amount  
7 of money and that's what we expect, no, there's  
8 not a projected budget based on all of the  
9 channels by which people donate to us.

10 Q. Where is that basic understanding that you're  
11 going to raise a certain amount of money  
12 memorialized?

13 A. It isn't. It's through our conference calls and  
14 discussions by phone.

15 Q. As 2010 progresses, how does NOM plan how much  
16 it's going to spend in different states?

17 A. Well, part of what we do, again, is within the --  
18 is laid out in our -- in document 3, Exhibit 3,  
19 but much of what we do is based upon circumstances  
20 that change rather quickly. So to project beyond  
21 that, there are opportunities that arise and we  
22 have discussions and figure out where we're going  
23 to make our priority and we act in that way. Most  
24 of the -- you know, while much of our activity and  
25 projected activity we've done and that is in

1 Exhibit 3, other parts of it we have not done, and  
2 so that's one part of what we do; and then another  
3 part of what we do is that different -- different  
4 issues arise on a month-to-month basis and we have  
5 discussions and we figure out, you know, what is  
6 good opportunity and what is not.

7 Q. When you say "we have discussions", who are you  
8 referring to?

9 A. Well, our executive committee and then the more  
10 over-arching strategy would be the entire board;  
11 but as far as month to month, week to week, that  
12 would be our executive committee.

13 Q. How many different banks or financial institutions  
14 does NOM have accounts in?

15 A. Only two if you count the New Jersey PAC during --  
16 Marriage PAC NJ was with PNC Bank, but we  
17 transferred that over to Citibank in order to all  
18 be in one bank, and that only happened a few  
19 months ago.

20 Q. What is the purpose for NOM having more than one  
21 account into which its funds are deposited?

22 A. Well, NOM, the (c)(4), has two accounts. One of  
23 them is a money market account and money is not  
24 deposited into that account in general, it's  
25 deposited into a regular bank account, but then

1           because of the low level of interest in a regular  
2           bank account the money is shifted into a money  
3           market account so that we can have some return on  
4           that capital.

5       Q. Who at NOM has the authority to withdraw or  
6       transfer funds from account to account?

7       A. Between the two accounts? Our treasurer, Neil  
8       Corkery.

9       Q. Does anyone else have the authority at NOM to move  
10      funds from one NOM account to another?

11      A. I do but I don't generally do that; in fact, I've  
12      never done that.

13      Q. So when I'm reviewing the various bank account  
14      statements that have been provided to the  
15      defendants and I see transactions in which funds  
16      are moved back and forth between accounts, are  
17      those transactions being effected by Neil Corkery?

18      A. He would not be able to actually expend any money  
19      without the approval of me, but as far as  
20      transferring money between the two accounts, yes,  
21      he can do that at any time in order to get a  
22      larger amount of money into the money market  
23      account and also allow us to continue our  
24      operations.

25      (Whereupon, Deposition Exhibit #9 is marked.)

1 BY MR. KNOWLTON:

2 Q. Let me show you what's marked as Defendant's  
3 Exhibit 9. It's a bank account statement for  
4 January 2009 for account [REDACTED]. Is the account  
5 designated on Exhibit 9 the main bank account for  
6 NOM, meaning the principal bank account for NOM?

7 A. I don't know without seeing the other -- the -- I  
8 don't have the account number memorized so there's  
9 no way for me to know without seeing the other  
10 account.

11 Q. Why are there two different checking accounts in  
12 the name of NOM at Citibank -- strike that, let me  
13 say it differently. Why is there more than one  
14 checking account at Citibank in the name of NOM?

15 A. I don't know. There should be only one.

16 MR. NEELEY: Is the money market not  
17 officially a checking account?

18 THE DEPONENT: I don't -- I mean, I'm  
19 calling it a money market account because it gets  
20 higher interest. I don't know what it says on the  
21 actual sheet.

22

23 BY MR. KNOWLTON:

24 Q. Let's look at Exhibit 9 for a moment to make sure  
25 we're using the same lingo, Mr. Brown. What do

1           you think Exhibit 9 depicts?

2           A. This depicts our checking account.

3           Q. And what does the last page of Exhibit 9 depict  
4           where it refers to I-M-M-A. It looks like that's  
5           a money market account, do you agree?

6           A. Correct.

7           Q. So it looks like Exhibit 9 depicts two related  
8           accounts under the number [REDACTED] -- strike that.  
9           If you look at the last page of Exhibit 9, there's  
10          a different number under the money market account,  
11          do you see that?

12          A. Correct.

13          Q. So it looks like Exhibit 9 depicts two different  
14          accounts, a checking account which is [REDACTED],  
15          and a money market, which is [REDACTED], do you  
16          agree?

17          A. Correct.

18          Q. Okay. I prefer not to mark this next document  
19          just because I didn't make a lot of copies of it  
20          but could you just look at what's another Citibank  
21          account for the same period in the name of NOM,  
22          and I'll mark it if we need to, but could you just  
23          explain to me why there's another Citibank account  
24          in NOM's name for the same period?

25          A. Yes, this is NOM Rhode Island. I'm sorry, NOM

1 Rhode Island does have a separate account under  
2 NOM.

3 Q. So account number [REDACTED] is the bank account for  
4 NOM Rhode Island?

5 A. Correct.

6 Q. Thank you, and here's another one for account  
7 [REDACTED], another Citibank account in the name of  
8 NOM. Could you tell us what that is?

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

18 Q. So account [REDACTED] is the account designated by  
19 NOM for contributions to the DOMA Defense Fund?

20 A. Correct.

21 Q. Thank you.

22 A. Um-hum.

23 Q. If you'd look at Exhibit 9 for a moment, please,  
24 Mr. Brown.

25 A. Um-hum.

1 Q. On the third page, for example, of Exhibit 9 about  
2 four lines down there's a reference to a transfer  
3 credit of \$20,000. Do you see that?

4 A. On page 3?

5 Q. Yes, page 3 of Exhibit 9.

6 A. Yes.

7 Q. And this is the type of transaction that occurs  
8 frequently in the NOM bank account statements.  
9 Could you just explain what the purpose is of the  
10 transactions back and forth between various  
11 accounts, for example, this one?

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,

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.

4 Q. And Neil Corkery would be the person who is  
5 responsible for the transactions that are listed  
6 in Exhibit 9?

7 A. Correct. Generally I do ask for transfers if  
8 something is coming up, you know, if there's going  
9 to be a big event in Rhode Island in which we need  
10 more money in the account, then I will ask Neil to  
11 do that, but for payroll purposes, he's able to  
12 transfer the money between the accounts. There  
13 would be one other example of transfers for -- if  
14 NOM would spend money on (c)(3) activity through  
15 NOM, the (c)(3) would then reimburse NOM if it was  
16 purely (c)(3) activity. So you'd see a transfer  
17 from the (c)(3) to the (c)(4).

18 Q. Could you give me an example of that?

19 A. If we run a educational ad that doesn't have  
20 anything to do with any sort of issue advocacy or  
21 piece of legislation, that would be a 501(c)(3)  
22 ad, and then the -- if NOM paid for it, the (c)(3)  
23 would reimburse the (c)(4).

24 Q. All right. I'd like to shift gears away from the  
25 bank account statements for a second and get to a

1 little more macro ideas. I can show you the  
2 reference in the Amended Complaint if you want,  
3 but there's a statement in the Amended Complaint  
4 that says NOM is a national organization active in  
5 all 50 states. Are you familiar with that  
6 statement in your Amended Complaint?

7 A. Yes.

8 Q. And that Complaint was filed in December of 2009?

9 A. Correct.

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

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

18 Q. Do you recall roughly how much money NOM spent in  
19 2008?

20 MR. NEELEY: Clarify, 2008 or 2009?

21 MR. KNOWLTON: 2008.

22

23 BY MR. KNOWLTON:

24 A. I don't recall. It would be -- I don't recall in  
25 2008.

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 DEONENT: 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

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

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.

12 Q. Was NOM active in Maine in 2008 at all?

13 A. We were active only in sending e-mails and  
14 communications to supporters. We may have sent --  
15 you know, you may find something, we sent so many  
16 e-mails, that I don't recall but it was not a -- I  
17 don't -- it would only be at the end of 2008, if  
18 there was anything at all. I don't recall us  
19 having a concerted effort in Maine in 2008.

20 Q. You can't think of any issue that would have drawn  
21 NOM's attention to Maine in 2008, correct?

22 A. Well, I'm trying to thing through the time line of  
23 when the vote -- the vote occurred in April, and I  
24 believe that we -- we became engaged in January or  
25 February when we thought a vote was coming.

1 Q. Okay. So NOM got active in Maine whenever the  
2 same sex marriage bill began to make its way  
3 through the Maine Legislature, is that fair to  
4 say?

5 A. Correct, other than our national supporters who  
6 were here, yes.

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

10 A. I think seven and a half million dollars.

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

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

15 Q. So NOM spent roughly eight million dollars during  
16 2009?

17 A. (Deponent nods affirmatively.)

18 Q. And we know that NOM spent some of this money in  
19 Maine and we'll get to that in a second. Where  
20 else did NOM spend money during 2009?

21 A. Well, we spent money on national television ads  
22 that ran across the country, spent nearly a  
23 million dollars on ads that were just general  
24 national ads.

25 Q. And what were those ads? Can you tell me just a

- 1           little about those, please?
- 2           A. I need to get all my time lines down. I think
- 3           that was the Carrie Prejean ad.
- 4           Q. So one of the ads that you're referring to is the
- 5           ad concerning the Miss America contestant?
- 6           A. Yes, Miss California.
- 7           Q. What other national ads did NOM run during 2009?
- 8           The Gathering Storm ad, is that a 2009 ad?
- 9           A. Yes.
- 10          Q. And what was that about?
- 11          A. That was about the religious liberty consequences
- 12          of passing same sex marriage.
- 13          Q. Were there any other national TV ads that NOM ran
- 14          in 2009 that you can recall? Feel free look at
- 15          the exhibit if that would help refresh your
- 16          recollection.
- 17          A. Yeah, I'm trying to remember when the Gathering
- 18          Storm actually went out. I think you're right,
- 19          yes, it was early in 2009. As far as other
- 20          national ads, no, those would be the two.
- 21          Q. Did NOM spend money in New York in 2009?
- 22          A. Yes.
- 23          Q. Did NOM spend money on some candidate races in New
- 24          York in 2009?
- 25          A. I don't believe so. I believe -- I believe what

1 we did in New York was there was a focus on the  
2 vote in the New York Senate and we did television  
3 ads focusing on the senate vote.

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

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.

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.

22 Q. What was NOM's efforts in Washington, D.C.  
23 directed at?

24 A. First of all, encouraging voters to contact their  
25 city council members to stop passage of same sex

1 marriage through the city council. Secondly, we  
2 made direct contributions to a referenda and  
3 initiative committee which ended up being multiple  
4 referenda and initiative committees because as the  
5 courts denied each attempt, we had to create a new  
6 -- there had to be a new committee created. So I  
7 think there were three committees that we have  
8 helped fund and I think there was one in 2009, if  
9 I'm not mistaken.

10 Q. And what was the purpose of those initiative  
11 committees?

12 A. To allow a vote on the part of the people to --  
13 first of all, a referendum to overturn the city  
14 council decision, and then when that was denied,  
15 an initiative committee.

16 Q. Roughly how much did NOM spend in connection with  
17 the D.C. initiative efforts?

18 A. Well, in 2009 -- this all spilled over into 2010,  
19 so in 2009 it would have been relatively -- you  
20 know, I think there may have been \$20,000 but,  
21 again, it was on the cutoff between December and  
22 January. Since that time we've spent  
23 significantly more, 150,000.

24 Q. So during 2010 NOM has spent roughly \$150,000 in  
25 connection with initiative efforts in D.C.?

1 A. Both initiative efforts and the referenda effort  
2 continued, yes. Then in New York -- did we  
3 discuss New York already?

4 Q. We discussed --

5 A. Dede Scozzafava is a separate -- I mean, that's a  
6 federal issue but we were also very involved in  
7 2009 in state legislative issues in New York.

8 Q. Please elaborate on that. What do you mean?

9 A. Well, in 2009 there was a move to introduce a same  
10 sex marriage bill and, again, I can't recall  
11 whether we launched television ads or not, but I  
12 know we were active in New York in 2009, and I  
13 believe it was 2009 in which -- yeah, that the  
14 bill was defeated, and so there was a significant  
15 amount of money spent in New York.

16 Q. Let's turn to NOM's efforts in Maine in 2009.

17 MR. NEELEY: I think there's at least one  
18 more state.

19 MR. KNOWLTON: Okay. I didn't mean to cut  
20 you off.

21

22 BY MR. KNOWLTON:

23 Q. Was there another state that NOM was active in  
24 other than Maine, before we get to Maine, in 2009?

25 A. Yes, Connecticut.

1 Q. What did NOM do in Connecticut in 2009?

2 A. We did automated calls and encouraged supporters  
3 and voters to contact their legislators to support  
4 a religious liberty amendment to the same sex  
5 marriage bill, which was ultimately successful.

6 Q. What was successful?

7 A. The religious liberty amendment was amended onto  
8 the same sex marriage.

9 Q. So Connecticut passed a same sex marriage Bill in  
10 2009?

11 A. No, the court forced same sex marriage and then  
12 the legislature sort of created a bill that in  
13 their minds, you know, put statutory approval upon  
14 what the court had done. In that process there  
15 was no religious liberty exemption or clause and  
16 that was eventually amended onto that bill.

17 Q. What do you mean by a religious liberty exemption  
18 clause?

19 A. That religious organizations and individuals  
20 wouldn't be punished for their belief that  
21 marriage is the union of a man and a woman in the  
22 form of denial of -- of benefits from the federal  
23 government -- I'm sorry -- from the state  
24 government. Another part of it was, you know, no  
25 church could be punished or lose part of its, if

1       it was doing charitable work, tax exempt status  
2       because of its support for marriage as a union of  
3       a man and a woman. I think there were four  
4       different parts to it, but it was an attempt to  
5       put some religious liberty exemptions into the  
6       Connecticut statute.

7       Q. Roughly how much did NOM spend in connection with  
8       its Connecticut efforts in 2009?

9       A. I would estimate half a million dollars, 400,000.

10      Q. And what was that money spent on? I'm sorry if  
11      you've already explained that.

12      A. I may be overstating that. I remember we spent a  
13      significant amount of money, but it may be 200. I  
14      may be way off. We did radio ads, we did  
15      full-page newspaper ads, we did automated calls to  
16      a huge amount of people.

17      Q. Okay. Let's turn to Maine now. Just to make sure  
18      we're talking about the same amount of money,  
19      roughly how much money did NOM spend in 2009 in  
20      support of the same sex marriage referendum  
21      question?

22      A. What is it, 1.7 million? Am I confusing my  
23      states?

24      Q. I'm sorry, I'm not trying to trick you. Your  
25      recollection is it's roughly 1.7 or 1.8 million,

1 does that sound about right?

2 A. Yes, yeah.

3 Q. And that money was spent by making contributions  
4 to a PAC?

5 A. Correct.

6 Q. And the PAC was named StandforMarriage Maine?

7 A. Correct.

8 Q. Did NOM spend any money in support of the same sex  
9 marriage initiative in Maine other than by making  
10 contributions to the StandforMarriage Maine PAC?

11 A. Well, I think that there's a point of contention  
12 in some of the e-mails that we sent out that maybe  
13 two could be interpreted as being designated for  
14 this but it would be an insubstantial amount of  
15 money below the \$5,000 reporting threshold.

16 MR. NEELEY: You're asking about money  
17 spent?

18

19 BY MR. KNOWLTON:

20 Q. Right now I'm asking about spending, Mr. Brown.

21 A. Oh, okay. Well, even with those, though, that  
22 also has to do with if we spent money on the  
23 e-mails and they're viewed as designated for  
24 Maine. So there would be some amount of money but  
25 it would be below the \$5,000 threshold.

1 Q. What was the nature of those sorts of expenditures  
2 other than any expenditures associated with those  
3 e-mails you were referring to?

4 A. We don't agree with this but the fact that we  
5 merely mention Maine, the Maine Initiative effort,  
6 I think there's been a claim that that could be  
7 designated as a contribution to further Question 1  
8 in a newsletter, something of that nature, but  
9 then my understanding is that that would only be  
10 if those were mailed into Maine which relatively  
11 few were. So there were -- you know, we -- we  
12 were careful not to do this and make any  
13 contributions directly to StandforMarriage Maine.

14 Q. Could you just go back to the beginning of NOM's  
15 involvement in Maine and just explain when NOM  
16 first considered getting involved on the same sex  
17 marriage issue in Maine and what NOM did at that  
18 time?

19 A. Well, when the bill came up for a vote and when it  
20 looked like the bill was going to come up for a  
21 vote, we, you know, contacted our supporters, we  
22 sent out e-mails saying call your representatives,  
23 and I don't know that -- I don't think we did any  
24 television advertising or anything of that  
25 nature. It was more encouraging our people to

1 contact their legislators and the governor.

2 Q. Did NOM do anything else at the outset other than  
3 asking its members and supporters to call their  
4 legislators or the governor?

5 A. I believe we may have made a donation to a state  
6 PAC at some point, but I don't recall when it was  
7 but I think it was early 2009.

8 Q. Which state PAC was that?

9 A. I believe it was -- I believe Bob Emrich was the  
10 treasurer -- well, I know he was the treasurer. I  
11 just can't recall the name of it. I think it was  
12 Save Marriage Maine PAC or something. I think it  
13 was about \$2,000.

14 Q. After the same sex legislation was signed by the  
15 Governor in May 2009, what did NOM do?

16 A. Well, I think even before that, you know, we were  
17 -- we were in a lot of states, but there had been  
18 the idea -- we were aware that there was a  
19 possibility of doing a referendum, and I think  
20 really that probably was in April, you know, that  
21 that would be a possibility. So after passage, we  
22 started to talk more about this and wanting to  
23 work with people on the ground to have a  
24 committee, and those members eventually did create  
25 a committee called StandforMarriage Maine PAC in

1       which Marc Mutty, Bob Emrich and myself were all  
2       on the executive committee of the PAC, and we got  
3       legal counsel on how best to be involved in a  
4       referendum committee effort in Maine and a few  
5       months later we created the PAC all together and  
6       that's -- that's how it was formed.

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

1 as 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

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.

23 Q. Were there e-mail communications between or among  
24 you and the other board members about the need to  
25 increase the amount of money that NOM was going to

1 give to StandforMarriage Maine?

2 A. I don't believe so. We handled all of this on our  
3 executive committee calls.

4 Q. There's a reference I think in the 20 million  
5 dollar strategy document, it may be in another  
6 document, in Exhibit 4 that the total budget for  
7 the Maine campaign was three million dollars.

8 When it says that, what does it mean? Is that  
9 referring to the budget of StandforMarriage Maine?

10 A. Correct.

11 Q. It's not in Exhibit 3, but if I see a reference  
12 somewhere to a three million dollar total budget  
13 for Maine, that's referring to the  
14 StandforMarriage Maine budget not the NOM budget?

15 A. Correct. I can say with absolute certainty that  
16 we never said we were going to raise three million  
17 dollars.

18 Q. Okay. Actually it is at the end of Exhibit 3, the  
19 last page, which is entitled Maine Marriage  
20 Referendum Campaign Budget, Draft 6, August 1,  
21 2009, and in the bottom lower right it looks like  
22 it says total budget 3.5 million dollars. Do you  
23 see that?

24 A. That's correct.

25 Q. That's not NOM's total budget?

1 A. No.

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

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

14 Q. So in terms of New Jersey, would you look at that  
15 for a second, the very last page of Exhibit 3, it  
16 refers to a total budget of 1.6 million dollars  
17 for the NOM New Jersey budget?

18 A. Um-hum.

19 Q. Is that the amount of money that NOM spent?

20 A. No. We didn't end up spending that much money and  
21 also this is -- this is just a budget of the full  
22 -- what we thought the full effort would require,  
23 not only what NOM was doing. Under the PAC side,  
24 that's not NOM, that's other people doing that.

25 Q. So this included not only what NOM might spend but

1           what other people contributed either to a PAC or  
2           some other effort that was being made in New  
3           Jersey in 2009 would spend?

4           A. Correct.

5           Q. All right. I need to take a short break. Is that  
6           all right, take a five-minute break?

7                       MR. NEELEY: Yes.

8                                       (OFF RECORD)

9

10          BY MR. KNOWLTON:

11          Q. Mr. Brown, a couple of clarifying questions about  
12          the budget for the Maine campaign. Who came up  
13          with the three million dollar budget for the Maine  
14          campaign for 2009?

15          A. This was from Schubert Flint Public Affairs who  
16          managed the campaign, and we just took what they  
17          had done and put it into the victory strategy.

18          Q. So the numbers come from Schubert Flint?

19          A. Well, yes. I think there was consultation but I  
20          don't recall a lot of it. I think he primarily --  
21          Schubert Flint Public Affairs and Frank Schubert  
22          made up this budget.

23          Q. Did Frank Schubert consult with you or with Bob  
24          Emrich or with both of you?

25          A. Yes. I mean, there was -- there was

1           consultation. I don't recall how much we spoke  
2           about it, and I don't know what version this is  
3           although it says version draft 6, so there was  
4           definitely discussion based on what we thought,  
5           you know, was a possible number to be raised.

6           Q. When you said there was discussion, by that you  
7           mean discussion between or among you, Mr. Schubert  
8           and Mr. Emrich?

9           A. Correct, and Marc Mutty.

10          Q. I want to show you what's marked as Defendant's  
11          Exhibit 11 which is the later version of the  
12          National Strategy for Winning the Marriage  
13          Battle.

14                 MS. GARDINER: I think you already have an  
15          11.

16                 MR. NEELEY: Yes, an e-mail.

17                 MR. GARDINER: The April 21 e-mail.

18                 MR. KNOWLTON: Thank you. We're going to  
19          call that Exhibit 12 then.

20                 (Whereupon, Deposition Exhibit #12 is marked.)

21

22          BY MR. KNOWLTON:

23          Q. Exhibit 12, a December 2009 version of the  
24          National Strategy for Winning the Marriage  
25          Battle. First of all, who wrote Exhibit 12?

1 A. Well, it was from the earlier version of the  
2 marriage strategy. I don't recall who made the  
3 changes, but it came from the earlier version in  
4 which many of us worked on, Maggie Gallagher  
5 primarily, but myself and also Frank Schubert were  
6 involved in creating it and also actually Luis  
7 Tellez.

8 Q. The second to last page has another copy of that  
9 Maine Marriage referendum campaign budget, do you  
10 see that?

11 A. Yes.

12 Q. It's the same draft 6 from August 1, 2009?

13 A. Yes.

14 Q. Are there any later drafts?

15 A. I'm not aware of them. There may be.

16 Q. Have you seen drafts 1 through 5?

17 A. I probably have but if you're asking me the  
18 numbers on them, I have no idea. I'm sure I saw  
19 each of the drafts, and I recall seeing multiple  
20 drafts, but I don't recall the differences between  
21 this and prior versions.

22 Q. Directing your attention to page 29 in Exhibit 12,  
23 there's a column for 2009 expenditures?

24 A. Yes.

25 Q. Do you see that column?

1 A. Correct.

2 Q. The column totals 4,200,000, do you see that?

3 A. Correct.

4 Q. I believe your testimony earlier was that NOM  
5 spent roughly eight million dollars in 2009?

6 A. Correct.

7 Q. What was the other 3.8 million dollars spent on  
8 and why isn't it reflected in Exhibit 12?

9 A. Well, because this only refers to those projects  
10 that are itemized in this proposal. There are  
11 many other projects and national efforts, Ruth  
12 Institute, NOM Rhode Island that we didn't  
13 highlight in the proposal that are still a part of  
14 our overall budget.

15 Q. Would you please list the other items other than  
16 expenditures on NOM Rhode Island and expenditures  
17 on the Ruth Institute?

18 A. Well, we spent money in 2009 on Iowa, and it -- it  
19 is not included in here.

20 Q. Why not?

21 A. That's a good question. We did spend money in  
22 Iowa. I think that may just be a mistake on this  
23 and even NOM Rhode Island is listed here and, you  
24 know, we didn't highlight it. I think that that  
25 is -- I think that's a mistake, the District of

1 Columbia too. So I think the problem was -- if I  
2 recall, I think what we did was getting the total  
3 numbers, either they were smaller and including  
4 them in didn't make that much sense, or we -- I  
5 think that's true for the District of Columbia. I  
6 don't know why we didn't include Iowa. I don't  
7 have a good answer for why those aren't included,  
8 but even those listed here, though, as I said,  
9 Ruth Institute is not listed on here, our general  
10 operating expenses are not listed on here, all of  
11 our overhead. Let me think of other projects.

12 MR. NEELEY: Can I clarify? At the top of  
13 the document it says budget and fundraising, July  
14 2009 to December 2010. Is it possible that the  
15 2009 expenditures are from July forward?

16 THE DEPONENT: Yeah, you're -- yeah, you're  
17 probably right.

18

19 BY MR. KNOWLTON:

20 Q. Are you saying that column only reflects the last  
21 half of 2009 expenditures?

22 A. I think that's right because we didn't want to  
23 claim --

24 THE DEPONENT: Yeah, Josiah, thank you.

25

1 BY MR. KNOWLTON:

2 A. We started the proposal in July of 2009, so we  
3 couldn't account for things that -- we didn't want  
4 to account for expenditures that occurred before  
5 we ever had the strategy and included the  
6 strategy. So this goes from July 2009 to December  
7 2010.

8 Q. Did the expenditures in the District of Columbia  
9 and Iowa occur during the first six months of  
10 2009?

11 A. The District would have been a smaller number so I  
12 think, as I said before, that's the reason why we  
13 didn't include that.

14 Q. I think you said that was at the end of the year?

15 A. Yeah, yeah, but it -- that's true, we were  
16 involved earlier -- the litigation in D.C. got  
17 dragged out. We were involved from the beginning  
18 all the way through, but there were different  
19 times we spent money but it was not a huge -- in  
20 2009 it was not a large sum of money, as I said  
21 earlier, well, relatively speaking. Iowa was  
22 early in the year because I think that's when they  
23 voted and that's when we did the automated calls.  
24 Still, we spent money on Rhode Island and that's  
25 not listed here.

1           MR. NEELEY: And the document is dated  
2           December 15th, 2009.

3

4           BY MR. KNOWLTON:

5           Q. So it couldn't account for expenditures that  
6           happened after December 15th, 2009, I guess, is  
7           that what you're saying?

8           A. No, I -- yes.

9           Q. Was there another version of Exhibit 12 prepared  
10          after December 15th, 2009?

11          A. I need to read through this again and look at it  
12          because I think this may be a draft version and I  
13          think that -- I don't see how that date makes  
14          sense.

15          THE DEPONENT: How does this being December  
16          15th, 2009 make sense to saying what we actually  
17          expended?

18          MR. NEELEY: Can we take a break? Do you  
19          want to talk to me?

20          THE DEPONENT: Yes.

21                               (OFF RECORD)

22

23          BY MR. KNOWLTON:

24          A. It's my fault. This is right. I was thinking  
25          December 15, 2008 for some reason.

1 Q. Is there a more recent version of Exhibit 12?

2 A. I don't think so.

3 Q. NOM hasn't prepared a document that updates the  
4 fundraising to date and/or the expenditures to  
5 date at any time after December 15, 2009?

6 A. I have not worked on this for the last four or  
7 five months so I -- this is the last version that  
8 I know of, and I haven't talked with the executive  
9 committee about reworking it.

10 Q. Why was Exhibit 12 prepared?

11 A. Just as the earlier versions, to highlight our  
12 strategy to show what we've done and what we  
13 followed through with and where we're at.

14 Q. Was it designed to help in NOM's fundraising  
15 efforts?

16 A. Well, for people to know what we're doing, you  
17 know, they need to know what we're spending money  
18 on, so, yeah, but there's not a -- that's not --  
19 I'm not sure that's its primary function. I would  
20 say the primary function is to highlight  
21 everything we're doing and also to raise money  
22 because many of the people that we distribute this  
23 to are not potential major donors or donors at  
24 all.

25 Q. To whom was Exhibit 12 or its predecessor Exhibit

1 3 sent?

2 A. It was -- there were not thousands created. I  
3 mean, I think we're talking about a few hundred  
4 were created and they were -- you know, they were  
5 close friends. They weren't distributed in places  
6 where we were having fundraisers or other events.  
7 They were also distributed to interested people,  
8 you know, religious leaders who may not be donors,  
9 just so that people would know what our strategy  
10 is.

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.

3           Q. Did NOM always have the money when  
4           StandforMarriage Maine asked for it in September  
5           or October of 2009?

6           A. We could go back and look through the bank  
7           statements. In general, we either had the money  
8           -- I think throughout the time we either had the  
9           money or we had commitments, you know, just as we  
10          do now, we have commitments from monthly donors  
11          for a certain amount of money so we know a certain  
12          amount of money is coming in at certain times. So  
13          throughout the entire period we had some major  
14          donors that were supporters before that were -- we  
15          had a set budget and we knew money was going to  
16          come in, and so we may have -- we may have not had  
17          money in the bank at the particular time there was  
18          an ask but we knew that money was coming in. In  
19          general, I think we had quite a bit of money in  
20          the bank from the beginning point throughout. I'm  
21          trying to think about September and October. I  
22          think you're right. In September and October I  
23          think there was a point where we may have had like  
24          \$600,000 or \$700,000 in the account, but I need to  
25          look through the statements.

1 Q. Let me show you the October 2009 statement.

2 A. Um-hum.

3 Q. Which I'm going to mark as Defendant's Exhibit  
4 13.

5 (Whereupon, Deposition Exhibit #13 is marked.)

6

7 BY MR. KNOWLTON:

8 Q. Looking through Exhibit 13, Mr. Brown, roughly how  
9 much money did NOM raise in October of 2009?

10 A. Where is the -- I see an ending balance and a  
11 starting balance.

12 Q. Let's start on page 2. There's a \$300,000 wire  
13 transfer, do you see that?

14 A. Yes.

15 Q. On page 3 there's a million dollar wire transfer  
16 on October 5th, do you see that?

17 A. Yes.

18 Q. On page 4 there's a \$225,000 transfer credit, do  
19 you see that?

20 A. Yes.

21 Q. On page 5 there's a \$400,000 wire transfer, do you  
22 see that?

23 A. Yes.

24 Q. Lower on page 5 there's a \$500,000 wire transfer,  
25 do you see that?

1 A. Yes.

2 Q. And then another \$100,000 wire transfer also on  
3 page 5?

4 A. Um-hum.

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.

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 Q. All right. I want to move on for now to the 2010  
22 projects that NOM has been engaged in.

23 A. Um-hum.

24 Q. Roughly how much has NOM spent to date in 2010?

25 A. Probably seven million, six million.

- 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.

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?

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.

16 MR. KNOWLTON: Am I saying it right, do you  
17 know?

18 MR. NEELEY: I don't know how to pronounce  
19 it, but that's as good a guess as any. If  
20 necessary, I can apologize for you.

21 MR. KNOWLTON: Thank you.

22

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

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.

18 Q. In what other states has NOM spent a hundred  
19 thousand or more so far in 2010?

20 A. Minnesota.

21 Q. What has that money been spent on?

22 A. Roughly \$300,000 highlighting the position of  
23 three or four gubernatorial candidates who are all  
24 DFL politicians who support same sex marriage.

25 Q. Tell me what DFL means.

1 A. In Minnesota they've got two parties that united  
2 together, the Democrat Party and the Farm -- I  
3 guess I don't --

4 MR. NEELEY: Farm Labor, the Democratic  
5 Farm Labor Party.

6

7 BY MR. KNOWLTON:

8 A. Yup.

9 Q. And, I'm sorry, did you say that these three or  
10 four candidates support same sex marriage?

11 A. Correct.

12 Q. In what other states has NOM spent a hundred  
13 thousand or more in 2010 so far?

14 A. I can't think of other state-specific-type  
15 initiatives.

16 Q. How about New York?

17 A. We haven't spent significant money in New York.

18 Q. Virginia?

19 A. Well, no.

20 Q. Okay. I'm just trying to get a rough sense on  
21 where the remainder of the six to seven million  
22 has been spent to date.

23 MR. NEELEY: You had mentioned earlier the  
24 District of Columbia.

25 BY MR. KNOWLTON:

1 A. Yes, we've spent money in the District of  
2 Columbia.

3 Q. Roughly how much in 2010 can you estimate?

4 A. \$200,000 and most -- maybe 250 and most of that  
5 would have gone to the legal fees and other costs  
6 associated with the initiative and the referenda.

7 Q. When you say the legal fees, paying the lawyers  
8 who are trying to do what in connection with the  
9 initiative and referenda?

10 A. We have a case before the District Court to allow  
11 the voters to vote on the same sex marriage issue.

12 Q. Can you think of any other state in which NOM has  
13 spent \$50,000 or \$100,000 so far in 2010?

14 A. We -- we did make a direct contribution to the NOM  
15 California PAC of \$200,000.

16 Q. For what purpose?

17 A. It's a direct contribution to an independent  
18 expenditure committee, and that committee is  
19 allowed to make independent expenditures in any  
20 races they so choose.

21 Q. What races has it chosen to make independent  
22 expenditures in so far?

23 A. Five races, state legislative races, one senator,  
24 I think three or four assembly races and for the  
25 attorney general's race.

1 Q. All right. Let's turn to Maine. In the Amended  
2 Complaint that was filed in 2009, December 2009,  
3 NOM alleged that it intended to run ads in  
4 connection with the 2010 candidate elections in  
5 Maine?

6 A. Um-hum.

7 Q. As of 2009, as of December of 2009, which  
8 candidates or which races did NOM intend to get  
9 involved in?

10 A. We didn't have a specific list of races. It was  
11 much too early in the campaign season to know who  
12 has viable opponents. There were ideas. There  
13 would obviously be people who supported redefining  
14 marriage but there was no --

15 Q. Who were the people as of December of 2009 that  
16 NOM was considering supporting or opposing?

17 A. I don't know. Again, there would be a big list of  
18 everyone who supported same sex marriage and then  
19 there weren't any opposing candidates yet so  
20 there's no way to know. It depends on who's  
21 running against them.

22 Q. As the primary approached, again, the primary was  
23 in June, correct?

24 A. Yes.

25 Q. As the primary in Maine approached, which races

1 did NOM intend to get involved in?

2 A. Well, we couldn't -- there wasn't -- there wasn't  
3 -- the idea was -- I mean, we weren't going to do  
4 that because of this lawsuit and because of the  
5 rules in Maine. So we didn't expend any time or  
6 energy. There were people who obviously asked us  
7 to do things but there was no --

8 Q. Who asked you to do things?

9 A. Well, you know, individuals from Maine would, you  
10 know, say are you going to get involved in this  
11 race, the governor's race and a number of races,  
12 but we didn't do anything and there was no list  
13 that we created as a target list because we  
14 decided not to do anything until we moved through  
15 this suit.

16 Q. So as we sit here today, what races does NOM  
17 intend to get involved in in Maine?

18 A. We can't get involved in races because of the  
19 state law. Until the state law is changed, we're  
20 not going to expend precious resources creating a  
21 list of targeted races.

22 Q. Well, if yesterday afternoon the court had entered  
23 a preliminary injunction enjoining the defendants  
24 from enforcing this law, what races would NOM get  
25 involved in?

1 A. We would get involved in any races -- we would do  
2 a quick analysis of all the races and see which  
3 candidates were most viable and then we would  
4 choose based on viability and likelihood of  
5 success.

6 Q. As of this date, June 23rd, has NOM identified --  
7 has NOM identified a single candidate in any Maine  
8 race that it would plan to either support or  
9 oppose?

10 A. We -- no, we haven't identified any list of  
11 candidates that we've decided to support or  
12 oppose.

13 Q. How much money has NOM spent so far for the 2010  
14 Maine candidate elections?

15 A. Zero.

16 Q. How much money has NOM raised for purposes of  
17 spending in the 2010 Maine candidate elections?

18 A. Zero.

19 Q. Has NOM communicated with any Maine candidates in  
20 2010 about supporting their efforts?

21 A. No.

22 Q. Has Maine -- excuse me -- has NOM communicated  
23 with any political parties in Maine about any race  
24 in 2010?

25 A. No, we wouldn't do that anyway.

1 Q. Has NOM communicated with any PACs or any other  
2 persons concerning the Maine candidate elections  
3 upcoming for November 2010?

4 A. Yes.

5 Q. With whom has NOM communicated?

6 A. I've spoken with Bob Emrich about races that he  
7 thinks are important races in private  
8 conversations. So we've discussed in general some  
9 candidates and some individuals.

10 Q. Is Mr. Emrich running?

11 A. He is running.

12 Q. Does NOM plan to spend money to support Mr.  
13 Emrich's candidacy?

14 A. We don't plan on supporting anyone's -- if -- if  
15 -- if we win the lawsuit, then possibly yes.

16 Q. Does NOM have a budget for spending on 2010 Maine  
17 candidate elections?

18 A. No.

19 Q. Have the Maine candidate elections ever been  
20 discussed in any of your weekly telephone calls  
21 with the NOM executive committee?

22 A. Yes.

23 Q. How many times?

24 A. Two or three times.

25 Q. What was the nature of those discussions?

1 A. That we would like to be able to do independent  
2 expenditures in Maine and then discussions with  
3 counsel about whether we're able to do that and me  
4 coming back to the board and discussing why we  
5 can't do that.

6 Q. Have there been any e-mails between or among any  
7 of the board members or anyone at NOM concerning  
8 the 2010 Maine candidate elections?

9 A. No.

10 Q. Has NOM identified any sources of funds in the  
11 event that it spends money in connection with the  
12 2010 candidate elections in Maine?

13 A. No.

14 Q. Has NOM contacted any vendors in connection with  
15 any advertisements NOM plans to run in connection  
16 with the 2010 Maine candidate elections?

17 A. Yes.

18 Q. Whom has NOM contacted?

19 A. Schubert Flint Public Affairs.

20 Q. When did NOM contact Schubert Flint about the 2010  
21 Maine candidate elections?

22 A. I spoke to Frank Schubert immediately after -- I  
23 would say within a few weeks after passage of  
24 Question 1, and, again, these are general  
25 discussions, not based on specifics candidates,

1 about the need for us to be able to support  
2 candidates that support protecting marriage. We  
3 then talked about a draft script. We did bring up  
4 at that time I believe -- that was awhile back --  
5 one candidate that we wanted to be involved with  
6 and she was one of the key sponsors of the bill.  
7 That may have been a few months after. I don't  
8 recall the exact date at which we discussed doing  
9 and running an ad.

10 Q. Who was that candidate?

11 A. Oh, I can't even remember her name. I think -- I  
12 think it's in the documentation we put forward. I  
13 think it was in one of the Complaints, maybe not.  
14 Okay, well, there was a candidate that we were  
15 discussing. We discussed -- I don't recall  
16 discussing more than one candidate.

17 Q. The "we" that was discussing it was you and Frank  
18 Schubert?

19 A. Yeah.

20 Q. Back in November or December or 2009?

21 A. I think it was later that we started discussing an  
22 actual candidate and after talking -- we then  
23 spoke with -- I did, I spoke to counsel and it was  
24 clear that there would be hurdles to doing  
25 anything.

1 Q. Have you had any further conversations with Frank  
2 Schubert or any other third party about running  
3 ads in connection with the 2010 Maine candidate  
4 elections?

5 A. Yes.

6 Q. Other than counsel.

7 A. Yes, I've spoken with APP, I've spoken with Brian  
8 -- I've spoken with Brian Souchet, who is a  
9 friend here in Maine, but these are more general  
10 inquiries on what are you going to do, not on  
11 specific candidates.

12 Q. You mean APP asked you what is NOM planning to do  
13 in Maine in 2010?

14 A. No, no. APP is a separate issue. You asked me if  
15 I discussed ads with any other people, and I have  
16 discussed them with APP and I also discussed them  
17 with individuals we knew in Maine, Brian Souchet.

18 Q. Who is Brian Souchet? What does he do?

19 A. He was a supporter of Question 1. I believe I've  
20 also had discussions with Marc Mutty, just  
21 questions on what our plans are, if we're going to  
22 be involved in the elections.

23 Q. What did you tell Marc Mutty about NOM's plans to  
24 get involved in the candidate elections in 2010 in  
25 Maine?

1 A. Well, I said that we currently have a lawsuit  
2 pending and the ultimate decision on this will  
3 decide how involved we can be in Maine.

4 (Whereupon, Deposition Exhibits #14, #15, #16 &  
5 #17 are marked.)

6

7 BY MR. KNOWLTON:

8 Q. I'm showing you what's marked as Exhibits 14, 15  
9 and 16. They're the three ads, I believe, that  
10 were attached to the Amended Complaint that was  
11 filed in December of 2009. Could you look at  
12 them, please?

13 MR. KNOWLTON: Did I give you two of 16?

14 MR. NEELEY: Let's see. You only gave me  
15 three documents. I think you may have stapled two  
16 of them together. That's what it is.

17 MR. KNOWLTON: Oh, okay, thank you.

18

19 BY MR. KNOWLTON:

20 Q. So for the record, Mr. Brown, Exhibit 14 is  
21 entitled National Organization for Marriage  
22 Candidate X's Public Service Broadcast  
23 Communication. Do you see that?

24 A. Correct.

25 Q. Who wrote Exhibit 14?

1 A. This was Schubert Flint Public Affairs.

2 Q. Did you have any input into it?

3 A. I had -- I had input only in -- I don't recall  
4 going back and forth on this ad. I asked for an  
5 ad that we could run and it would be a general  
6 idea of what we would want to run in Maine.

7 Q. Exhibit 15 is entitled Consequences. Do you see  
8 that?

9 A. Correct, yup.

10 Q. Who wrote Exhibit 15?

11 A. Schubert Flint Public Affairs. It was Frank  
12 Schubert.

13 Q. And the same for Exhibit 16 which says "that you  
14 candidate Y." Who wrote that?

15 A. Frank Schubert.

16 Q. And were these all -- strike that. Did you have  
17 any input into Exhibits 15 or 16?

18 A. I believe that I asked for a consequences type ad,  
19 so the type of ad but not input into the final.

20 Q. At some point NOM decided to revise these ads?

21 A. Yes, I believe so.

22 Q. Why?

23 A. I can't remember why we did this. I'd like to see  
24 the -- but I think you have an answer.

25 Q. I have questions. I'm not sure if I have any

1           answers about these. This is Exhibit 17, and it  
2           has all three ads in one exhibit I think.

3           A. I think that we -- you haven't asked a question.

4           Q. Why were they changed?

5           A. I think what we wanted to do was to have an ad  
6           that addressed some issues in Maine election law  
7           so that these were issue advocacy grassroots  
8           lobbying type ads, because in other states we have  
9           the ability to do grassroots lobbying issue  
10          advocacy ads, and the inability to do that is a  
11          real -- if we are unable to do that, it would be  
12          very difficult for us to operate in Maine.

13          Q. And would you just confirm Exhibit 17 are the  
14          three ads that NOM is presently planning to run if  
15          it runs any ads in Maine in 2010?

16          A. We would like to be able to run these ads, yes.

17          Q. Are there any other ads that NOM is considering  
18          running other than the ones contained in Exhibit  
19          17?

20          A. I don't recall any other revisions to these.

21          Q. So the first ad in Exhibit 17 which refers to  
22          legislator X's public service, do you see that?

23          A. Correct.

24          Q. Is legislator X going to be someone who is running  
25          for re-election this November?

1 A. Most likely, yes.

2 Q. In what geographic regions is NOM planning on  
3 running the broadcast communication that's the  
4 first page of Exhibit 17?

5 A. Wherever the legislature's district is -- the  
6 legislator's district is.

7 Q. And with respect to the first ad on Exhibit 17,  
8 the ad entitled legislator X's public service, is  
9 it fair to say that NOM's purpose in running this  
10 ad is to persuade voters in legislator X's  
11 district not to vote for legislator X?

12 A. No, I don't think it's fair to say that that's the  
13 purpose. The purpose is that this person pushed  
14 same sex marriage, we want to educate the voters  
15 on that and encourage them to call him or her  
16 because this issue could come up again. That may  
17 also hurt his or her chances for re-election and  
18 so you could say that's also a purpose, but what  
19 this is doing is educating voters. It's clearly  
20 an issue-type ad.

21 Q. So you're saying -- I mean, is it fair to say that  
22 it -- it has two purposes, is that fair? One is  
23 to tell voters that legislator X helped push same  
24 sex marriage through the legislature, that's one  
25 purpose, correct?

1 A. Correct.

2 Q. But you're not running this ad six months before  
3 the election or nine months before the election.  
4 You're going to run this ad right before the  
5 election, correct?

6 A. Correct.

7 Q. And so another purpose for the ad is to persuade,  
8 hopefully from your standpoint, Maine voters not  
9 to vote for legislator X, right?

10 A. But the nature of democratic politics is those two  
11 are always inseparable. In this case the fact  
12 that the legislator hears from his or her  
13 constituents right before an election is going to  
14 have a much greater effect on their potential vote  
15 for or against same sex marriage in the future  
16 than an ad that didn't run closer to an election.  
17 So the fact that voters in the district are  
18 hearing about this legislator's support for same  
19 sex marriage close to an election is a part of  
20 democratic politics and it's a part of them  
21 listening to their constituents. So I don't know  
22 that you can say there are two purposes. The two  
23 things are tied together. The primary purpose is  
24 to ensure that -- ensure that marriage remains the  
25 union of a man and a woman in Maine but other

1 things follow from that, and the way to do that is  
2 both to educate voters before they go in to vote  
3 and to make sure that the legislator knows that  
4 the constituents know what he or she is doing.

5 Q. So I thought you almost agreed with me. You said  
6 that the two purposes are inseparable. I think  
7 you said the purpose is educating voters as well  
8 as --

9 A. The possibility of defeat in an election. I mean,  
10 part of educating voters on a particular issue is  
11 that the voters once they know the position of the  
12 legislator are more likely to vote your way. I  
13 mean, those two things are connected. I mean,  
14 that's my view of it.

15 Q. And would your answer be the same for the other  
16 two ads that are in Exhibit 17?

17 A. Well, the final ad is more a thank you. I mean,  
18 it's -- this is encouraging people to thank their  
19 legislator. For voters that support traditional  
20 marriage, if they weren't aware of their  
21 legislator's position on this, of course they're  
22 going to be more likely to vote yes for him, so  
23 yes.

24 Q. So it sounds like what you're saying is there are  
25 two inseparable purposes, education, slash,

1 persuasion, and that the two are an inseparable  
2 part of democratic politics as you put it?

3 A. Correct.

4 Q. Where does NOM plan to run the consequences ad in  
5 Exhibit 17? In which districts?

6 A. Most -- in places where a legislator -- most  
7 likely in places where candidates or sitting  
8 legislators have either voted for or against or  
9 it's been an issue in an election, but this one,  
10 you know, we could -- again, because we haven't  
11 analyzed, you know, the state of affairs, where  
12 we've run this is hard for me to tell you. This  
13 one, you know, we could run this anywhere. It  
14 could be a statewide ad. Any of these could be.

15 Q. Well, the consequences ad refers to legislator Z.

16 A. Yeah.

17 Q. So if it were a statewide ad, who would be  
18 legislator Z?

19 A. Well, you could say -- you're right, you could  
20 change that very easily to governor,  
21 gubernatorial. These are models that can be  
22 adapted, but, yeah, you're right, this one would  
23 again be in a place where a legislator had voted  
24 for same sex marriage.

25 Q. Has StandforMarriage Maine been active in Maine

1 during 2010 at all?

2 A. No, not that I'm aware of.

3 MR. NEELEY: I don't want to interrupt your  
4 train of thought but it's about 12:30. I don't  
5 know what you're --.

6 MR. KNOWLTON: Like two more minutes and  
7 then we'll take a lunch break, is that all right?

8 MR. NEELEY: That's fine.

9

10 BY MR. KNOWLTON:

11 Q. Has NOM been doing any fundraising to help retire  
12 StandforMarriage Maine debts?

13 A. No. As I said from the beginning, our fundraising  
14 is for our general treasury. We don't do  
15 designated gifts. We have -- you know, we have --  
16 we have given, I believe, \$30,000 to help retire  
17 part of that debt and we're hoping that the rest  
18 of the debt is retired by other donors.

19 Q. Does StandforMarriage Maine still have significant  
20 debts as of today?

21 A. I think they have about \$31,000 in debt.

22 Q. StandforMarriage Maine is still active, it still  
23 exists?

24 A. Yeah, I think they would have to exist no matter  
25 what for an audit. I'm not sure how it works in

1 Maine but I think that's the case.

2 MR. KNOWLTON: Let's take a break for  
3 lunch.

4 (LUNCH RECESS)

5

6 BY MR. KNOWLTON:

7 Q. I just want to close the loop on a couple of  
8 things you were testifying about, Mr. Brown,  
9 before we broke. You made a reference to a  
10 discussion in late 2009 I think about a particular  
11 woman candidate that you couldn't remember?

12 A. Yes.

13 Q. Was that Hannah Pingree who was affiliated with  
14 the No On 1 group to some extent? Does that name  
15 sound familiar?

16 A. I think it may have been, yeah. That sounds  
17 familiar.

18 Q. She was the speaker of the House of  
19 Representatives at the time, is that correct?

20 A. That sounds right.

21 Q. Okay, and Exhibit 12, which is the national  
22 strategy document, the December 15th, 2009  
23 version, is it fair to say that that is an  
24 accurate picture of NOM's intended activities for  
25 the 18-month window provided for in that document?

1 A. Yes, although it's not meant to be comprehensive.

2 Q. You refer to the fact that some basic expenses  
3 weren't listed in there, overhead I think and  
4 other administrative expenses of NOM, but the  
5 significant projects that NOM was planning are all  
6 listed in Exhibit 12, is that fair to say?

7 A. That is fair to say.

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 --

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?

- 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.
- 16 Q. You testified earlier about the way that the  
17 Kintera platform provides a fair amount of  
18 information about on-line donations, correct?
- 19 A. Correct.
- 20 Q. How does NOM keep track of donations that it gets  
21 through wire transfers or through snail mail or  
22 any other way?
- 23 A. Wire transfers are typically larger sums of money,  
24 and I would be aware of those coming in and Neil  
25 Corkery is constantly monitoring, so if someone

1        were to do a wire transfer and we didn't know  
2        about it, we would find out about it and track  
3        down who did it, but that would be a good problem  
4        to have. So as far as snail mail donations, we  
5        have a company called -- now we have a company  
6        called DMP and I believe we contracted with them  
7        in 2009 to process the mail so that while we still  
8        get some mail directly at our office, most of the  
9        mailings go to a P.O. box and then a company helps  
10       keep track of all that because it's quite -- you  
11       know, it's intensive and they open the mail, they  
12       sort the mail, they give us a report and they also  
13       do the thank yous.

14      Q. What kind of report does DMP give you?

15      A. They send to Mary Haas a basic report on how many  
16       donations we received, what the dollar amounts  
17       were and the dates.

18      Q. What does DMP do with the correspondence and  
19       checks?

20      A. Everything is kept. They have a very  
21       state-of-the-art facility. They do this for many,  
22       many organizations and it's kept in a secure place  
23       where the copies of the checks and the original  
24       reply form, just as we would keep, those are all  
25       saved.

1 Q. Does DMP deposit the checks on NOM's behalf?

2 A. It does.

3 Q. It has the authority to do that?

4 A. Yes, it does.

5 Q. Does DMP provide NOM with copies of the  
6 correspondence accompanying donations?

7 A. Well, we -- we give them the text and then the  
8 text of any -- oh, the correspondence coming in, I  
9 see. Yes, they save all the correspondence.

10 Q. But do they send it to you is I guess what I'm  
11 asking.

12 A. Yes, they -- I believe they do send any  
13 accompanying notes to Mary Hass. It's not in a  
14 physical format. I believe it's e-mailed to her.

15 Q. They send Mary Hass like a PDF --

16 A. PDF, yes.

17 Q. -- of the letter if a letter came with a check to  
18 NOM?

19 A. Correct.

20 Q. What else is in the report that DMP provides NOM?

21 A. Well, the report is primarily for our revenue  
22 tracking so it doesn't -- we've -- it doesn't  
23 include all of the donor information I don't think  
24 because they, themselves, enter that into a  
25 database and then all of the information is then

1 uploaded into our database. So they do all of the  
2 data work as far as the name, the address.

3 There's a code on every donation so we know if the  
4 person is a prior donor or not. There's a code  
5 for what sort of mailing it was.

6 Q. DMP does all that data work and then uploads it  
7 into the NOM database?

8 A. Correct.

9 Q. How often do these reports get provided to NOM  
10 that you referred to?

11 A. Every two weeks typically.

12 Q. Did you say every two weeks?

13 A. Yes, yes. We often ask for more but it would  
14 automatically send it to us every two weeks and  
15 then occasionally if we need to know something, we  
16 ask.

17 Q. When you say that the data is uploaded into NOM's  
18 database by DMP, are you saying that it is -- is  
19 the data on donations from DMP collated with the  
20 data on on-line donations that Kintera helps you  
21 organize?

22 A. Well, they only -- they don't do any data entry  
23 for on-line giving. They would only do the data  
24 entry for the snail mail giving and then they --  
25 originally they were entering it directly into our

1 database, but I believe what they do now because  
2 we were having some errors is they send us the  
3 file and then we do it ourselves. So I'm not sure  
4 how we're doing it right now, whether the  
5 mechanism is them doing it or just forwarding us  
6 the file and we do it.

7 Q. I'm getting at a slightly different issue which is  
8 to say that regardless of whether DMP does it  
9 directly or you guys do it, is the result that  
10 this data about the snail mail donations now  
11 collated with the data about all the on-line  
12 donations?

13 A. Yes.

14 Q. So it's a unified database?

15 A. Yes.

16 Q. And is the information from wire transfers also  
17 included in that database?

18 A. Yes, it is supposed to be. At times it doesn't  
19 work the way it's supposed to but --

20 Q. That's the plan anyway?

21 A. That is the plan.

22 Q. So that in theory, at any moment you're able to  
23 see all of NOM's donors for the previous month,  
24 the previous six weeks, in a single database?

25 A. Correct.

1 Q. You can organize it alphabetically if you wanted  
2 to or by donation or by any other method that the  
3 computer would allow you?

4 A. Correct.

5 Q. NOM refers to what it calls major donors and  
6 national organizations in the Amended Complaint  
7 and the Complaint. Are you familiar with those  
8 phrases?

9 A. Yes.

10 Q. What's the difference between those two things?

11 A. Well, I think in that context one are individuals  
12 and others are organizations. Either can give to  
13 us.

14 Q. So a donor is a person?

15 A. Person.

16 Q. And an organization is an entity?

17 A. Yes.

18 Q. Okay. Roughly how many major donors and national  
19 organizations gave to NOM in 2009?

20 A. Let me make sure my numbers are right. It's  
21 listed in here. I believe we listed it in here.  
22 About a hundred.

23 Q. What page are you looking at in Exhibit 12?

24 A. Page 31.

25 Q. So it looks like NOM is defining major donor to be

1 any person or entity that gives 5,000 or more?

2 A. Correct.

3 Q. Okay, and on page 31 of Exhibit 12 there's just  
4 one category called major donors, and I assume  
5 that includes both persons and entities?

6 A. Correct.

7 Q. So 66 plus 30 is 96, plus 11 is 107, plus 3 is  
8 110. It looks like there's 110 major donors in  
9 2009?

10 A. Correct.

11 MR. NEELEY: If I can clarify.

12 MR. KNOWLTON: Yes, Mr. Neeley.

13 MR. NEELEY: Does the 66 include the 30  
14 25,000 plus or is that in addition to?

15 THE DEPONENT: It's in addition to.

16 MR. NEELEY: Okay.

17

18 BY MR. KNOWLTON:

19 Q. Okay. So the categories would be, I guess to be  
20 clear, 5,000 to 24,999 there would be 66 of those,  
21 25,000 to 99,999 there would be 30 of those --  
22 sorry, I'll talk more slowly -- from 100,000 to  
23 999,999 there would be 11 of those?

24 A. Yes.

25 Q. And three for a million or more?

1 A. Yes, but this goes over all of the donors that  
2 we've had since our inception, not just 2009.

3 Q. Okay.

4 A. I still think, though, that we would be roughly  
5 around 100 for 2009.

6 Q. Okay.

7 A. There may be -- you know, it could be down to 70  
8 or, you know, I would need to go and look to get  
9 the exact figures, but it's somewhere around  
10 there.

11 Q. Okay, and I'll ask but is NOM willing to identify  
12 any of the major donors or national organizations  
13 that gave it money in 2009?

14 A. No.

15 Q. This is sort of a broader question. Let's just  
16 start in general broad principles. How did NOM go  
17 about raising funds in 2009, and in your answer  
18 could you identify all the NOM people who were  
19 involved in that effort and in general terms what  
20 they did? And then I'll ask some follow-up  
21 questions.

22 A. Well, we have relationships with a number of  
23 people because of, you know, the successes that  
24 we've had, and the larger donors would be through  
25 those relationships, people that we would follow

1 up with on the phone.

2 Q. Can I stop you for a second?

3 A. Yes.

4 Q. Are the relationships specific to particular  
5 people at NOM? For example, do you personally  
6 have relationships with certain major donors and  
7 Maggie Gallagher has relationships with certain  
8 major donors and Robbie George the same so that  
9 the relationships at least started from a personal  
10 nature?

11 A. Well, most of the major donors we would all know  
12 so it's not just segmented to Maggie, myself or  
13 Robbie. As far as starting as a personal nature,  
14 the relationship starting in a personal nature, I  
15 think most -- if I look at the major donors, I  
16 mean, many of them I would both consider friends  
17 but also they support us because they believe in  
18 what we're doing, and I might have come to know  
19 them through donating to other organizations that  
20 -- you know, I was the head of another  
21 organization or through a variety of ways, but I  
22 think for most it would be initially through  
23 donations rather than personal friends.

24 Q. So after relationships are formed with donors, NOM  
25 seeks to try to cultivate and cement those

1 relationships on an ongoing basis?

2 A. Correct.

3 Q. How does NOM do that?

4 A. Well, phone calls primarily, visits, events.

5 Q. What kind of events?

6 A. Well, we've had a number of events. We've had a  
7 marriage summit in New York City where we had a  
8 number of our supporters together there. We have  
9 smaller events at people's homes.

10 Q. For example, do you have fundraising dinners at  
11 people's homes where you might go and invite other  
12 either donors or potential donors?

13 A. Not really. That wouldn't be the -- I mean, what  
14 we would typically do would be to have an event at  
15 -- you know, have an event where there's a key  
16 speaker in someone's home or at a hotel or some  
17 where of that nature and, you know, usually it's  
18 an event rather than just having a dinner or  
19 something like that.

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

1 a 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.

13 Q. Who is Chuck Stetson?

14 A. He's a board member.

15 Q. Has he been involved in fundraising?

16 A. He, as a board member, has given personally but I  
17 don't know that he's been involved in asking other  
18 people for money for us. If he has, it's been  
19 very limited.

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 --

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.

11 Q. Is there anybody else at NOM who was doing the  
12 asking as to particular donors?

13 A. Well, we also work with Steve Linder at the  
14 Sterling Corporation and he would also do asks but  
15 typically one of us would follow up.

16 Q. I thought -- maybe I got this wrong. I thought  
17 you testified that Mr. Linder doesn't do the ask.

18 A. Well, that's what I'm saying in general, but if  
19 you ask -- he has asked for money for us.

20 Q. Okay.

21 A. So there's not a -- when I think back and I think  
22 about our major donors, especially in 2009, I --  
23 there may have been a few that he did an ask with  
24 but even then I would follow up. He's done more  
25 lately. So it's true that the relationship has

1 changed, and he's doing more for us so I would say  
2 he's done more asks over the last few months than  
3 before.

4 Q. Why has it changed?

5 A. Oh, just -- well, because the organization has  
6 grown and there are many more people and there's  
7 mid-level donors that we can't always be on the  
8 phone with and speak with, and so he does -- he's  
9 doing more and more of that.

10 Q. Is there a dollar range within which Mr. Linder is  
11 designated to have more responsibility for and  
12 more regularly do the ask?

13 A. Well, there is but it's not set in stone. I would  
14 say in general you're talking about \$25,000,  
15 around that, those level donors and below, and  
16 even with those we would go through and we would  
17 decide, you know, who is going to call and speak,  
18 but that doesn't mean that he doesn't also speak  
19 to our major donors because he's developed  
20 relationships with them too.

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

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

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.

25 Q. So would it have been less for internet in 2009?

1 A. Internet and snail mail, yeah.

2 Q. Okay. In the initial Complaint that NOM filed --  
3 let me show it to you and mark it if I can find  
4 it.

5 (Whereupon, Deposition Exhibit #18 is marked.)

6

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?

17 Q. Yes.

18 A. We used Kintera to estimate how many people  
19 clicked on that e-mail.

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

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.

17 Q. Did you look to see whether there was a time lag  
18 between the date of the e-mail and the date of the  
19 on-line donation?

20 A. Yes, we did, and there was often a time lag but  
21 that's frequent that people don't open their  
22 e-mails until later. So that wasn't assessed in  
23 estimating it. If they clicked on, then we  
24 included them.

25 Q. So are you able to look at the date they clicked

1 on it and the date of the donation?

2 A. I don't know.

3 Q. Okay, but in any event, anybody that clicked on  
4 the donation -- excuse me -- anyone that clicked  
5 on the e-mail and then made a donation was counted  
6 as donating as a result of a particular NOM  
7 e-mail?

8 A. Correct.

9 Q. Did NOM try to review the snail mail donations and  
10 determine whether or not any of those were given  
11 in response to any of the e-mails or other NOM  
12 communications?

13 A. Well, any snail mail donation that has a reply  
14 device on it, usually when you send out the --  
15 there's a perforation and you pull off the reply  
16 device, whether it's a small sheet or eight and a  
17 half by eleven, it doesn't matter, and on that is  
18 a code that tells us what mailing they're  
19 responding to. The only way that we would have no  
20 idea is if someone just sends in a donation, you  
21 know, in an envelope with nothing on it and then  
22 that is -- we call it white mail donations,  
23 someone sent it in but everything else we can  
24 track.

25 Q. My question is did you track the snail mail

1 donations and determine whether or not they were  
2 given in response to particular NOM  
3 communications?

4 A. Only snail mail, not e-mail because there's no way  
5 for us to do that. There's no way for us to know  
6 if a person is responding to an e-mail. There's  
7 no reply device.

8 Q. You confused me for a second there. I thought I  
9 understood what you were saying. I thought you  
10 said you could track the e-mail contributions by  
11 figuring out whether someone had clicked --

12 A. We can.

13 Q. -- on and then you estimated those were given in  
14 response to an e-mail?

15 A. Correct.

16 Q. Now, for a snail mail contribution, people send a  
17 check and they send along some NOM communication  
18 when they donate. What typically do people send  
19 in along with the check when they donate by snail  
20 mail?

21 A. The reply device from the snail mail. My answer  
22 is in response to you asking for a general NOM  
23 communication, meaning both e-mail and snail  
24 mail. If someone were to respond to an e-mail by  
25 writing a check and sending it in, there's no way

1 for us to gauge that.

2 Q. I understand.

3 A. Okay.

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 --

1                   THE DEPONENT: Yes, yes, yeah, the source  
2                   code will tell us that.

3

4                   BY MR. KNOWLTON:

5                   Q. A bar code somewhere?

6                   A. There's no bar code. It's just a string of  
7                   numbers and letters.

8                   Q. Okay. What else did Sterling Corporation do for  
9                   NOM with respect to its fundraising in 2009 and  
10                  2010 other than what you've told us about Steve  
11                  Lindner or Linder?

12                  A. Linder.

13                  Q. Okay.

14                  A. Well, he's helped us meet with contacts that he  
15                  has that he may know, folks that would be  
16                  interested in supporting us. So I would fly out  
17                  to meet them or usually if it's someone that, you  
18                  know, we thought would likely support us and had  
19                  the -- had the ability to do so, I'd fly out to  
20                  meet them. So he introduced us to many people.  
21                  Well, introduce, I mean, we may already know them  
22                  but he may -- you know, just helping with  
23                  connections with more people, help manage our  
24                  direct mail program.

25                  Q. What does that mean?

1 A. Well, if we send out 13 letters a year, say, or 15  
2 letters a year, we have to manage what copy is  
3 going to go out, you know, who's the signer, what  
4 it's going to say and keeping everyone on schedule  
5 for that he has helped to do.

6 Q. When you have a phone conversation with a donor,  
7 do you take notes of that phone call?

8 A. No.

9 Q. Does Maggie or Robbie George keep notes of their  
10 phone calls with donors?

11 A. I don't know.

12 Q. What about Mr. Tellez, does he keep notes of his  
13 phone calls with donors?

14 A. I don't know.

15 Q. What kind of a record do you make after you have a  
16 phone call with a donor and ask for money?

17 A. Well, in general, there may be a to-do action that  
18 I need to do and I would put that in my to-do  
19 list, but most of the time if it's at that point  
20 it's just a question of -- I would say it's  
21 accurate to say most of the time at that point  
22 it's a question of, you know, when we're going to  
23 receive the money and there's no follow up. The  
24 end of the call is usually I'm willing to give  
25 this much money, where do I send it, so --

- 1 Q. You don't take notes or send e-mails to other  
2 board members letting them know that I spoke with  
3 donor X and he or she has agreed to generously  
4 give us \$500,000?
- 5 A. Well, I have done that before but typically I  
6 would do that on our Monday calls and let everyone  
7 know that way.
- 8 Q. Do you have a to-do list or other agenda for your  
9 Monday calls?
- 10 A. No, not generally. We do occasionally if there's  
11 a specific item, like if we're launching a bus  
12 tour, but generally we don't. Generally it  
13 follows the same format where I give a general  
14 update on our activities and then issues that need  
15 to be addressed are addressed that other members  
16 of the executive committee need to bring up.
- 17 Q. And I think you said this already but in response  
18 to any donor, but particularly donors that give  
19 \$5,000 or more, does NOM send a thank you?
- 20 A. Yes.
- 21 Q. Is it personalized?
- 22 A. Generally, yes.
- 23 Q. Who writes them?
- 24 A. I do generally but for major donors, if Maggie or  
25 someone else did the ask, they might send their

1           own thank you but generally I would send it.

2           Q. Do you have copies of all your thank you or  
3           acknowledgment letters to donors in 2009 and 2010?

4           A. I would hope all but most. We save all of those.  
5           I believe we save all of those.

6           Q. So it sounds like that NOM had a group of major  
7           donors and national organizations to whom it could  
8           look for donations when it needed funds for  
9           particular campaigns or particular projects?

10          A. No, that's not generally how it works with our  
11          major donors. Many -- I mean, we're very clear  
12          that we don't accept designated funds with donors,  
13          and I've been scrupulous about that, and so donors  
14          typically -- I would say larger donors, you know,  
15          one or two make commitments over the course of a  
16          year and say they're going to give this much and  
17          some may be automatic, every month they give a  
18          certain amount, or often it's back loaded to the  
19          end of the year. A lot of our giving happens at  
20          the end of the year. It's just the nature of --  
21          even though contributions are not tax deductible,  
22          if we get a commitment over the course of the year  
23          to give, say, a million dollars, it will be -- it  
24          could be every month, it could be different every  
25          month, but there's a general commitment and that

1       commitment isn't to a specific campaign. That  
2       doesn't mean we don't talk about campaigns or  
3       questions don't come up about what we're doing.

4       Q. I mean, I was going to say that I assume your  
5       donors want to know what their money, generally  
6       speaking, is going to be used for, right?

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

19     Q. Let's talk about Prop 8 for a second. When NOM  
20     was trying to raise money for the Prop 8 effort,  
21     wasn't NOM mentioning the Prop 8 campaign in its  
22     discussions with donors?

23     A. Well, we raised a lot more money for Prop 8 than  
24     the money that went through NOM California. We  
25     encouraged many people to give directly to the

1 campaign, which they did, you know, probably  
2 another 1.8 million dollars or more. So --

3 Q. But even of the money that NOM received directly,  
4 I mean, isn't it -- it just seems intuitive that  
5 you or other board members would be mentioning an  
6 important event like the Prop 8 campaign when  
7 you're asking for money?

8 A. Yeah, we would mention Prop 8 but I made it very  
9 clear to all of our board members and anyone who  
10 is going to ask anyone for any money that we don't  
11 accept any designated gifts, that any donation in  
12 which the person wants to designate it for  
13 California, which we did do, we -- it was to go to  
14 the ballot committee and the 1.8 million dollars,  
15 all of that was public. That's part of the reason  
16 why we have the -- that's the reason we have the  
17 lawsuit in California because so many people  
18 suffered because of that. So those donors --  
19 those asks that had to do specifically with Prop 8  
20 went directly to the primarily formed ballot  
21 initiative committee.

22 Q. And those are the donations that got disclosed  
23 publicly?

24 A. Correct.

25 Q. What about the people that gave to NOM -- not the

1           separately formed committee -- that gave to NOM  
2           I'll say after a conversation in which NOM  
3           mentioned the importance of Prop 8?

4       A. Well, they could give to NOM as much as they  
5       wanted as long as they didn't -- they didn't  
6       designate it for Prop 8. We made clear to all of  
7       the donors and all of our communications for Prop  
8       8 were very strictly segmented out so that our  
9       mailings that talked about, you know, we need to  
10      be able to win this fight, give money to Prop 8,  
11      those were all mailings for NOM California not for  
12      NOM, but that doesn't preclude NOM from mentioning  
13      Prop 8 as long as we don't specifically attempt to  
14      raise money for it. That's the distinction.

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

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?

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.

21 Q. Let me ask you about --

22 A. Can I add another point on that?

23 Q. Sure.

24 A. The amount of money we've spent on the DOMA issue  
25 far outweighs any money that was raised through

1 the DOMA Defense Fund. So part of the question is  
2 moot because we've spent so much more money  
3 through NOM, and that would be the same for NOM  
4 Rhode Island and also for the Ruth Institute.

5 Q. Elaborate on what you just said. Are you saying  
6 that NOM has spent more on, for example, the DOMA  
7 Defense Fund than it has received in donations  
8 earmarked for that purpose?

9 A. Again, on the web site itself it says that these  
10 aren't earmarked, but even if you accepted that,  
11 the amount of money that NOM has used in its  
12 general funds to advocate against the repeal of  
13 DOMA is much higher than any donations received on  
14 the web site.

15 Q. Let me show you an undated e-mail that I'm going  
16 to mark Exhibit 19. It -- I believe it was in  
17 April or May 2009, but I would ask you to confirm  
18 that. That's my first question. It has to do  
19 with the Carrie Prejean issue. What's the date of  
20 Exhibit 19?

21 MR. NEELEY: This is one of the e-mail  
22 solicitations?

23 MR. KNOWLTON: We got it from you guys  
24 early on.

25 MS. GARDNER: It was provided in discovery

1 with a lot of e-mail newsletters.

2 (Whereupon, Deposition Exhibit #19 is marked.)

3

4 BY MR. KNOWLTON:

5 Q. It refers to a press conference with Miss  
6 California next week. So can you first tell me,  
7 roughly speaking, what's the date of this e-mail  
8 that's Exhibit 19?

9 A. It's in 2009, I think early in 2009. It might  
10 have been April of 2009.

11 Q. Okay. So roughly speaking, April of 2009. How  
12 many donors received Exhibit 19?

13 A. Well, I don't know.

14 Q. So if it says "Dear NOM Donor," what is that  
15 mailing list?

16 A. Well, this is an early draft. This is not a sent  
17 e-mail. I would have to look and see the actual  
18 e-mail that we sent. This is not actually --  
19 nothing would have gone out in this form.

20 Q. Do you see the third paragraph from the bottom  
21 where it says "the bottom line is that we need to  
22 raise one million dollars in the next week for  
23 this ad to have its greatest effect -- half will  
24 go to the ad and half will go to the call to  
25 action program." Do you see that?

1 A. Correct.

2 Q. Did you send out an e-mail solicitation that  
3 contained that same sentence?

4 A. I'm not -- I don't know. I don't know. I would  
5 have to look at around this time and see what we  
6 sent out.

7 Q. Do you agree that NOM was telling donors that half  
8 of the funds raised would go to a particular ad  
9 and half were going to go to another program?

10 A. Yes, but this isn't -- yes, I would agree if we  
11 sent this out that that's the case but, again,  
12 this isn't for a political purpose. It was not  
13 designated or earmarked for a political purpose.

14 Q. It's earmarked for another purpose?

15 A. It's --

16 Q. Right?

17 A. -- lobbying activity, yes.

18 Q. Okay.

19 A. I would have to see if we sent this out. We send  
20 out so many e-mails that I would have to check to  
21 see if this actually did get sent.

22 (Whereupon, Deposition Exhibit #20 is marked.)

23

24 BY MR. KNOWLTON:

25 Q. Well, let me ask another question about

1           designating or earmarks. Exhibit 20 is an e-mail  
2           dated March 17th, 2009. Did this e-mail get sent?

3           A. Yes, it did.

4           Q. And right next to the donate button there's a line  
5           that says "will you help fund our Northeast Action  
6           Plan," do you see that?

7           A. Yes.

8           Q. So if someone used that hyperlink and made a  
9           donation of a hundred dollars in response to NOM's  
10          request to help fund your Northeast Action Plan,  
11          did that donation actually help fund NOM's  
12          Northeast Action Plan?

13          A. Well, again, the amount of money that NOM spent  
14          far outweighed any contributions that we would  
15          receive; and, secondly, there are a number of  
16          different states so it's not being designated for  
17          any one state's political purpose.

18          Q. So is that a no or a yes to my question that the  
19          funds given in response to this solicitation were  
20          designated for the Northeast Action Plan?

21          A. If they would have gone to the donate site, they  
22          would have received the same disclaimer that it's  
23          not reserved or designated for any political  
24          purpose.

25          Q. Could you answer my question?

1 A. I don't know how to answer it. If the money we  
2 had already spent was much larger than any  
3 donations we received, those donations would have  
4 just gone to cover the general overhead of running  
5 all this and wouldn't have been specifically --  
6 because the amount of money is so much larger that  
7 we already spent, you're not creating a separate  
8 account called the Northeast Action Plan. It just  
9 went into our general treasury account to cover  
10 funds that had already been spent.

11 Q. So that's a no, I take it, that the funds that  
12 were contributed in response to Exhibit 20 were  
13 not designated for any particular purpose but were  
14 rather just put in NOM's general treasury?

15 A. They were. They were put in our general treasury.

16 Q. Now, you said that you and other members of the  
17 board have been really careful to tell donors that  
18 NOM doesn't accept designated donations, but you  
19 don't mean that donors don't sometimes specify  
20 what they would like their money to be used on, do  
21 you?

22 A. Well, if they do that and there is an organization  
23 set up like in California, who say give to NOM  
24 California -- in Maine I did have people calling  
25 and saying that they would want to give but they

1 don't want their names disclosed, and I said in  
2 those instances that we can't do that. We don't  
3 accept designated contributions, and I believe we  
4 also have a letter somewhere that we sent forward  
5 to this effect when we received a letter like  
6 this.

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

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

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

3 Q. I've seen references to various projects or plans  
4 in the materials and I want to ask you about them  
5 and just let me know whether or not any funds were  
6 designated for those particular endeavors. I  
7 think you've already addressed a couple of them.  
8 The DOMA Defense Fund, are people who give money  
9 in which they ask it to be restricted to the DOMA  
10 Defense Fund, I think your answer was no, that NOM  
11 doesn't do that but rather it goes into either the  
12 general treasury or into a bank account that's set  
13 up for the DOMA Defense Fund but can be used for  
14 any purpose?

15 A. Yeah, the DOMA Defense Fund goes into our general  
16 treasury bank account. There is no separate bank  
17 account.

18 Q. You told me that there was a separate bank  
19 account.

20 A. Oh, I'm sorry, you're right, you're right, I was  
21 thinking two million for Marriage. I'm sorry,  
22 you're right, DOMA Defense Fund there is a  
23 separate bank account, I'm sorry.

24 Q. Okay. The Northeast Action Plan you just talked  
25 about.

1 A. There is no separate bank account on that.

2 Q. The Reclaim Iowa Project?

3 A. No separate bank account.

4 Q. So if someone clicks on the hyperlink that says  
5 support the Reclaim Iowa Project, their money just  
6 goes into the general treasury?

7 A. Correct.

8 Q. The Gathering Storm ad?

9 A. Correct, general treasury.

10 Q. Okay. Would you please look at Exhibit 13 which  
11 is the October 2009 account statement for the  
12 principal NOM bank account?

13 A. I no longer have that.

14 MR. NEELEY: I have one.

15 MR. KNOWLTON: Here it is.

16 THE DEPONENT: Sorry, thank you.

17

18 BY MR. KNOWLTON:

19 Q. I want to ask you about a few of the wire  
20 transfers that are reflected in Exhibit 13. The  
21 \$300,000 transfer on October 1st, I want to first  
22 ask you some questions about that. Who from NOM  
23 was involved in obtaining that donation?

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

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?

- 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

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

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?

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

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

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

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.

16 Q. Okay. Has NOM's fundraising practices changed at  
17 all in 2010 from what you testified to?

18 A. Other than as I discussed earlier, Steve Linder  
19 being more involved. We have also hired a  
20 development director, David Monge, so those are  
21 two changes but other than that they've -- you  
22 know, we've remained structurally the same.

23 Q. Who is Matthew Malek, M-A-L-E-K?

24 A. He is someone who has helped us in reaching out to  
25 more contacts, especially in California, and he is

1 -- has been under contract to help us reach out  
2 to more people and to introduce us to like-minded  
3 donors who we may not know.

4 Q. So NOM has a contract with Mr. Malek?

5 A. We don't currently, no. I said we have but he is  
6 not -- he doesn't do asks for us. He introduces  
7 us to and helps us with relationships we have with  
8 existing donors and with potentially new donors.

9 Q. Did all funds contributed to NOM in 2009 and 2010  
10 get deposited in this main account [REDACTED]?

11 A. No. The DOMA -- there's the DOMA Defense Fund,  
12 there is NOM Rhode Island.

13 Q. Do you need a break for a minute?

14 A. No, I'm fine. There's NOM Rhode Island. There  
15 was nothing like the California Ballot Initiative  
16 Committee. I'm trying to think if there were any  
17 other accounts, NOM Rhode Island, DOMA Defense  
18 Fund and then there's the money market account but  
19 we wouldn't deposit money into that account. It  
20 would be transferred over.

21 Q. If someone was giving money to NOM, why would it  
22 get deposited into the NOM Rhode Island account or  
23 vice versa if someone was giving money to NOM  
24 Rhode Island, why would it get deposited in the  
25 principal NOM account?

1 A. In general it wouldn't. I'm just saying that NOM  
2 -- those are NOM's accounts. We give different  
3 names to them but those are all NOM's accounts.  
4 Those are all under our general treasury. We do  
5 it as a matter of, as I said earlier, organizing  
6 where the money is put and also because there's a  
7 chapter-type model with Rhode Island, but if  
8 someone wrote a check to NOM Rhode Island, it  
9 would go into that account.

10 Q. The reference to I-M-M-A at the end, is that some  
11 kind of money market designation to your knowledge  
12 at the end of Exhibit 13?

13 A. Yes.

14 Q. Do you know what the I stands for or the A?

15 A. It's money market account. I think it's interest  
16 bearing money market account or something of that  
17 nature.

18 Q. And you testified before that's why substantial  
19 amounts of money often got moved into the I-M-M-A  
20 account because that generated a little bit of  
21 interest?

22 A. Correct.

23 Q. And the checking account generated no interest or  
24 a very small amount of interest perhaps?

25 A. Very small, if any. I think it does generate some

1 small amount.

2 Q. But in any event, that was the reason the money  
3 got moved back and forth for the most part?

4 A. Correct.

5 Q. In Exhibit 13 can you identify an example of when  
6 BNP provided funds that it had received on behalf  
7 of NOM via snail mail? Is there a reference to  
8 BNP in there anywhere or what would the  
9 designation be in the bank account statements?

10 A. Well, there's a miscellaneous deposit.

11 Q. What page are you?

12 A. I'm sorry, there's a -- well, there's a deposit in  
13 10/08, there's a deposit -- there's two deposits  
14 on 10/08.

15 Q. Can I stop you for a second?

16 A. Yes.

17 Q. So you can't tell from the bank account statement  
18 whether or not it's a BNP-related issue?

19 A. No, I can't.

20 Q. Okay. You can tell there's a reference to Kintera  
21 on the bank account statements?

22 A. Correct.

23 Q. Any time Kintera deposited money in NOM's account  
24 on its behalf there's a reference in the account  
25 statement, agreed?

1 A. Correct.

2 Q. Okay. Is there a contract between NOM and  
3 Kintera?

4 A. Yes.

5 Q. Does Sterling Corporation provide NOM with a  
6 report of its activities on NOM's behalf?

7 A. We're in constant contact with Steve Linder. He  
8 is typically on the executive committee calls so  
9 we get a report back in that way. I don't know  
10 that I have a physical report from Steve. We're  
11 in fairly constant communication.

12 Q. So it sounds like the answer to that question is  
13 no, that neither Steve Linder nor Sterling Corp.  
14 provides a written report to NOM of its activities  
15 on NOM's behalf?

16 A. It may have in the past. I just don't -- I don't  
17 recall that being -- it's not something that I  
18 remember, and he may have done that but that's not  
19 the way that we monitor his activity.

20 Q. So the only record of what Mr. Linder does for NOM  
21 is phone calls that he participates in on a weekly  
22 or biweekly basis?

23 A. Well, there's a contract and, yes, the way that we  
24 manage our relationship with Steve Linder is  
25 through phone calls.

1 Q. How do you keep track of how much money he's  
2 raising on NOM's behalf?

3 A. Well, that's not generally what he does. He  
4 introduces us to people in which we're the ones  
5 who make the ask and we obviously know if that's  
6 productive based upon whether they give  
7 contributions or not.

8 Q. But I think you testified that in more recent  
9 times, the last four or five months I assume you  
10 mean by that or six months, he's doing more of the  
11 asks for donors of \$25,000 or less?

12 A. He is, but that is going through a process in  
13 which he calls and -- he calls the donors and  
14 there's a follow-up package, direct mail package  
15 that's sent to them, and so we know what the  
16 response is based on the reply to the -- it's  
17 called a major donor direct mail package. We know  
18 based on the response to that.

19 Q. Does the major donor direct mail package come from  
20 NOM or from Sterling Corp.?

21 A. From NOM.

22 Q. So he lets you know when he's made a call to a  
23 particular donor and then NOM follows with the  
24 major donor direct mail package?

25 A. No, we would have a list of folks that he had

1 called or attempted to get a hold of, a whole list  
2 that we're going to direct mail, and he may get a  
3 hold of some and not a hold of others, and then he  
4 helps manage the process where the packages are  
5 sent out in bulk. You know, we've sent out  
6 hundreds. I think at certain times when we  
7 started this he actually was sending these out of  
8 his own office but it's all on NOM letterhead.  
9 Now we manage that internally.

10 Q. Are there any other outside fundraisers that NOM  
11 has used in 2009 or 2010 other than Sterling  
12 Corp.?

13 A. In 2010 we've used American Philanthropic for  
14 advice and help in creating fundraising letters  
15 primarily, and also in helping to write grant  
16 applications for foundations for our 501(c)(3).  
17 So that's called American Philanthropic.

18 Q. Do they actually draft letters for NOM?

19 A. Yes.

20 Q. To major donors?

21 A. No, no, they mostly help with drafting or giving  
22 us ideas for new solicitations and copy for our  
23 regular letters and helping us to keep on a  
24 schedule of having more letters going out.

25 Q. Are there any other outside fundraisers that NOM

1 has used in 2009 or 2010?

2 A. Well, also James Stabile who's like Matt Malek.

3 He's not doing asks but helping us to connect with  
4 donors in which we do the ask.

5 Q. What was that name, I'm sorry?

6 A. James Stabile, S-T-A-B-I-L-E.

7 Q. And how is Mr. Stabile compensated?

8 A. He has a monthly retainer.

9 MR. KNOWLTON: Can we take a five-minute  
10 break? Is that all right?

11 MR. NEELEY: Sure.

12 (OFF RECORD)

13 (Whereupon, Deposition Exhibit #21 is marked.)

14

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.

9 Q. Let me show you a document marked Exhibit 21.  
10 It's three pages, a cover letter from a donor it  
11 looks like, a copy of a check and then a letter  
12 from you. Would you just confirm what Exhibit 21  
13 contains?

14 A. Yes. Is it a gift from a foundation in which they  
15 attempt to designate it for Maine.

16 Q. Is this the first time that this particular donor  
17 had given to NOM?

18 A. I think we may have received an earlier gift.

19 Q. Did the earlier gift also contain a restriction or  
20 a request on the use of the funds?

21 A. No.

22 Q. Do you know what prompted this particular donor to  
23 give and to refer to the fight to preserve  
24 marriage in Maine?

25 A. Yeah, I believe that there was a -- I believe that

1 Steve Linder had a discussion with the donor, and  
2 I don't know if I followed up or not. I don't --  
3 I don't recall. I believe actually that I did,  
4 and I -- actually I did, not directly with the  
5 donor, I think with the staff, and I made it clear  
6 that we don't accept designated contributions but  
7 this check still came, and I don't know if the  
8 donor was clear -- or obviously wasn't clear that  
9 we couldn't accept these sorts of designated  
10 contributions.

11 Q. So you're saying that before September 15th, 2009  
12 you had a conversation with the staff at this  
13 foundation and made clear that NOM didn't accept  
14 designated donations?

15 A. I believe so, yes.

16 Q. Did you talk about the same sex marriage  
17 referendum in Maine?

18 A. I believe that we did as one of the things that we  
19 were engaged in and doing and I think there were  
20 questions. It was a relatively, if I remember  
21 right, short conversation and, again, I don't even  
22 recall whether I talked directly to them or  
23 whether Steve did after I contacted him and after  
24 there was -- after there was discussion between  
25 us.

1 Q. Did this letter, which is the first page of  
2 Exhibit 21, get handled by that three letter  
3 organization you referred to? The name escapes me  
4 at the moment.

5 A. No, no, DMP.

6 Q. DMP.

7 A. Did not handle this letter, no.

8 Q. Why not?

9 A. Because it was sent directly to our offices. It  
10 wasn't sent in response to any direct mail  
11 solicitation. It was sent to our office I believe  
12 in Washington, D.C., but I could be wrong.

13 Q. It was sent to a P.O. box in Philadelphia, right?

14 A. Okay. Well, at this point I'm not sure whether  
15 we'd retained DMP, but I know that this wasn't  
16 handled by DMP because I talked to staff about  
17 receiving this, and when I saw the letter, I said  
18 that we can't -- we can't cash this check.

19 Q. How often in 2009 did NOM receive a letter like  
20 this where someone mentioned a particular use for  
21 the funds or designated their use?

22 A. It was very rare. I don't recall receiving a  
23 letter like this other than this particular  
24 letter.

25 Q. Really? This is the only time that a donor has

1        tried to designate the use of the funds?

2        A. For a political purpose, yeah. I mean, again,  
3        we've received things for DOMA Defense Fund and  
4        other non-political purposes where their donors  
5        are allowed to designate, but for a political  
6        purpose it's actually pretty rare. I don't -- I  
7        don't recall receiving any other letter like  
8        this. I did receive a phone call in which -- at  
9        least one phone call in which I was called and  
10       asked can we donate directly to NOM and not have  
11       our name show up anywhere and I said no. As far  
12       as the conversation went, I -- I had the feeling  
13       that that call was just someone trying to get us  
14       -- at least one of those calls to get us into  
15       trouble.

16       Q. I thought your theory was that as long as people  
17       didn't designate the use of their funds that their  
18       names wouldn't be disclosed? That's your theory,  
19       right? That if they don't earmark their donations  
20       or you don't allow them to earmark their donations  
21       then they don't have to be disclosed for federal  
22       purposes, I guess is your theory, and state  
23       purposes?

24       A. Well --

25       Q. So I'm not sure if I follow the phone call.

1 A. Yeah, there was someone who called on my cell  
2 phone and asked me if they can make a contribution  
3 to NOM but have us spend it in Maine --

4 Q. Oh, okay, I missed that part.

5 A. -- and I said no.

6 Q. I misstated that part, I'm sorry, okay. What  
7 happened to this check?

8 A. I asked for it to be returned, but I believe that  
9 our staff held onto it and didn't immediately  
10 return it and then returned it later. It was  
11 never cashed, but I think that there was a mistake  
12 in them holding onto it longer than they should  
13 have and didn't immediately return it, which we  
14 eventually did and we haven't received an  
15 additional donation from this donor, I don't  
16 believe.

17 Q. So the last page of Exhibit 21 is that a letter  
18 that you sent to the donor returning the \$10,000  
19 check?

20 A. I sent the letter in December, December 18th,  
21 enclosing the check. I had wanted the check to be  
22 returned earlier, but it didn't happen. It was  
23 never deposited. It was never deposited and when  
24 I realized just through error that they had just  
25 held onto it and not deposited it, I made clear

1           that it needed to be returned.

2       Q. And are you saying that the person didn't  
3       re-deposit it in response to your letter of  
4       December 18th -- excuse me -- didn't send another  
5       check in response to your invitation that it do so  
6       as a contribution in general support of the work  
7       of the National Organization for Marriage?

8       A. No, I don't believe that they did.

9       Q. The disclaimer on the web site talks about the  
10      funds not being earmarked or reserved for any  
11      political purpose, is that right?

12     A. Yeah, that's a common disclaimer for 501(c)(4)  
13     organizations.

14     Q. What does political purpose mean to you or to NOM?

15     A. Any form of an express advocacy, independent  
16     expenditures, ballot initiative committees in  
17     which you're required under the state law to treat  
18     a donation as similar to what the federal law  
19     would treat an independent expenditure.

20     Q. Why do you define political purpose that way?

21     A. Because the disclaimer and our procedures have  
22     been consistently upheld by the Supreme Court as  
23     to what an organization like ours should do as far  
24     as not accepting independent expenditures if we  
25     don't want to subject ourselves to additional

1 reporting and additional disclosure. We operate  
2 in so many different states and we would  
3 effectively be, if not shut down, seriously  
4 impeded in being able to exercise our First  
5 Amendment rights if anytime we mention Maine and  
6 -- or we weren't allowed to mention Maine or  
7 California or any other state we operate in unless  
8 we had to figure out, oh, well, this is an  
9 independent -- this is a designated gift for  
10 California, this is a designated gift for Maine,  
11 this is a designated gift for this state.  
12 Effectively, how could we talk about multiple  
13 states that we're operating in if that e-mail  
14 would be construed as soliciting a donation that  
15 is designated? We would only be able to talk  
16 about one state at a time, and then we would have,  
17 depending on the state, different reporting  
18 requirements for each state.

19 Q. It sounds like your answer is that political  
20 purposes is your definition in order to not have  
21 to comply with various state and federal laws?

22 A. No, not at all. It's the definition laid out in  
23 Buckley v Valeo and all of the progeny of Buckley  
24 v Valeo which is that express advocacy is a  
25 certain type of speech.

1 Q. But political purpose, that's the phrase I'm  
2 focusing in on. Why do you interpret political  
3 purpose that way?

4 A. Because the court has interpreted political  
5 purposes as entailing express advocacy.

6 Q. So it's your interpretation of court decisions?  
7 I'm just trying to understand. That's where it  
8 comes from?

9 A. Well, it's not -- it's our counsel and I think it  
10 is the understanding of the U.S. Supreme Court  
11 about what express advocacy and political activity  
12 are.

13 Q. Okay. The Complaints that have been filed at  
14 various places make reference to NOM's major  
15 purpose or actually what is not its major  
16 purpose. Are you familiar with those references  
17 in the Complaint?

18 A. Yes.

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

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.

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.

5 Q. Okay, and I guess what you were getting at before  
6 is that in your view as long as less than 50  
7 percent of its money is not spent on political  
8 activity then it doesn't have to comply with  
9 various state and federal laws?

10 A. No, we attempt to comply with all state laws. The  
11 issue here is a question of whether the state law  
12 is constitutional or not.

13 Q. Okay. Do you make sure that less than 50 percent  
14 of NOM's expenditures in a given year are on  
15 expressed advocacy?

16 A. Yes.

17 Q. Do you make sure that less than 50 percent of  
18 NOM's expenditures -- strike that -- okay. Could  
19 you look at Exhibit 18 please for a moment which  
20 is the Amended Complaint that was filed in  
21 December of 2009?

22 A. Yes.

23 Q. Look at paragraph 113 on page 30.

24 A. Yes.

25 Q. The third sentence says "these persons will not

1 donate if that means being disclosed on PAC  
2 reports or elsewhere." Do you see that sentence?

3 A. Yes.

4 Q. By "these persons" you're talking about multiple  
5 persons who have donated more than \$50 to NOM  
6 which is the reference in the first sentence,  
7 agreed?

8 A. Yes.

9 Q. What is the basis for this statement that persons  
10 will not donate to NOM if that means being  
11 disclosed on PAC reports?

12 A. My experience in the wake of Proposition 8 in  
13 which we complied with state law and in that state  
14 we raised money specifically for a ballot  
15 initiative and all of those donors were made  
16 public and a wave of hatred was essentially  
17 unleashed against them and an abridgement of their  
18 basic civil rights. I've spoken to many who have  
19 said that they wouldn't likely do that again if  
20 they had to go through what they went through in  
21 California.

22 Q. How many people told you that?

23 A. I would say a hundred, you know, a lot, and I know  
24 that there are a number of others that have made  
25 Doe declarations in a ProtectMarriage suit that I

1           may not have even spoken with, but a large number  
2           and those are only the ones that I've spoken with.

3       Q. I'm not familiar with all the Doe declarations in  
4       the ProtectMarriage suit. Do all of them contain  
5       the statement that they will likely not donate  
6       again or something to that effect or do any of  
7       them say that?

8                   MR. NEELEY: Some of them do, yes.

9

10       BY MR. KNOWLTON:

11       Q. Are you familiar with them, Mr. Brown?

12       A. I am. They don't all state that.

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.

1 Q. But I think you just said that everywhere you  
2 spent your money within the last year and a half  
3 has been to protect marriage and the faith  
4 communities that sustain it?

5 A. Yes.

6 Q. Okay. Can you tell me anything else about the  
7 basis for the third sentence in paragraph 113 of  
8 Exhibit 18 based on your conversations with folks  
9 in California it sounds like?

10 A. Yeah, not just in California, throughout the  
11 country, people who donated to Prop 8 throughout  
12 the country had their home addresses put up on  
13 Google maps and were targeted sometimes with  
14 death-threat-type phone calls at their homes in  
15 which their children had to listen to messages  
16 like that. My own experience the same, the sort  
17 of death threats we've received. If I hadn't  
18 chosen to do and to stand up on this issue in the  
19 way that I have, if I was -- you know, I could see  
20 how a donor who just wants to give \$50 or \$100  
21 doesn't want to have to deal with the sort of  
22 harassment and intimidation they've been subject  
23 to. So I think it's pretty clear from what folks  
24 have said to me and just, you know, looking at the  
25 facts, you know, is it worth giving \$50, \$100 and

1       then risking -- possibly risking your safety? No,  
2       I don't think for a lot of donors that's true, and  
3       I think that also it's been -- the other  
4       experience that has buttressed this is that it is  
5       more difficult for us to raise money in PACs in  
6       which people are publicly disclosed for specific  
7       political purposes.

8       Q. In January of 2009 I think I've seen an e-mail  
9       that you wrote in which you told NOM donors and  
10      members that their names were going to be  
11      disclosed to the other side in litigation. Could  
12      you look at Exhibit 31 -- I'm sorry -- page 31 in  
13      Exhibit 5?

14     A. Yes, I did write this. It doesn't say that their  
15      identities are going to be disclosed in litigation  
16      though.

17     Q. Okay. It says whatever it says.

18     A. Okay.

19     Q. Let's just leave it at that. How many e-mails  
20      like this did you send out in connection with the  
21      ProtectMarriage.com case?

22     A. I think only that one. There might have been one  
23      other, but I think that was the major sort of  
24      e-mail blast we sent out to all our supporters.

25     Q. Okay. So this was an e-mail blast. This one says

1 "Dear Pat" but this was a blast that went out to  
2 whom?

3 A. It went out -- I believe we targeted it to -- I  
4 think we sent it out to our whole list which at  
5 the time probably was around, I don't know, 80,000  
6 e-mails -- well, probably less, I need to think  
7 back to the time, but many of those folks weren't  
8 necessarily donors to Prop 8. There's a much more  
9 limited universe of those that could reply as  
10 having donated to ProtectMarriage or NOM's ballot  
11 initiative committee.

12 Q. I'm going to show you what I'll mark as Exhibit  
13 22, the affidavit of Heidi Morse.

14 (Whereupon, Deposition Exhibit #22 is marked.)

15

16 BY MR. KNOWLTON:

17 Q. Are you familiar with Exhibit 22?

18 A. I'm not actually familiar with this. This is the  
19 first time that I've looked at it.

20 Q. Do you know who Heidi Morse is?

21 A. I do not.

22 Q. Have you ever spoken to Heidi Morse?

23 A. I have not.

24 Q. Has anyone at NOM ever spoken to Heidi Morse?

25 A. Not that I'm aware of.

- 1 Q. Do you have any idea how NOM got the name of Heidi  
2 Morse to include as an affiant in this litigation?
- 3 A. I don't.
- 4 Q. Have you ever heard of Bruce Elder?
- 5 A. No.
- 6 Q. Are you aware that Mr. Elder submitted an  
7 affidavit in this lawsuit?
- 8 A. No.
- 9 Q. Have you ever seen the affidavit of Bruce Elder?
- 10 A. No.
- 11 Q. Has anyone at NOM, to your knowledge, ever heard  
12 of Bruce Elder?
- 13 A. No.
- 14 Q. Any idea how NOM got the name of Bruce Elder to  
15 include as an affiant in this lawsuit?
- 16 A. I do not know.
- 17 Q. Ever heard of Howard Hanneman?
- 18 A. No.
- 19 Q. Do you have any idea how NOM got the name of  
20 Howard Hanneman to include him as an affiant in  
21 this lawsuit?
- 22 A. No, I don't know.
- 23 Q. Have you ever seen the affidavit of Howard  
24 Hanneman before?
- 25 A. No.

1 Q. Are you familiar with a Joseph Bernatche,  
2 B-E-R-N-A-T-C-H-E?

3 A. The name sounds familiar but I don't know him  
4 personally.

5 Q. Have you ever read the affidavit of Joseph  
6 Bernatche submitted in this lawsuit?

7 A. No.

8 Q. Do you know how NOM got the name of Mr. Bernatche  
9 to include as an affiant in this lawsuit?

10 A. No.

11 Q. Do you know a Linda Jones of Portland, Maine?

12 A. No.

13 Q. Do you know how NOM got the name of Linda Jones of  
14 Portland, Maine to include her as an affiant in  
15 this lawsuit?

16 A. No.

17 Q. Have you ever read the affidavit of Linda Jones  
18 submitted in this lawsuit?

19 A. No.

20 Q. Who at NOM is responsible for the reporting that  
21 NOM or its affiliates does to the FEC or states?

22 A. For the FEC we have a company called Huckaby,  
23 Davis & Lisker in Washington, D.C. that helps us  
24 with filing independent expenditure forms. I work  
25 together with Paul Bottwell, my assistant, to

1           ensure that all the relevant information is gotten  
2           to the firm of Huckaby, Davis & Lisker.

3       Q. Can you say that name again, I'm sorry?

4       A. Huckaby, H-U-C-K-A-B-Y, Davis & Lisker.

5       Q. L-I-S-K-E-R?

6       A. Correct.

7       Q. All right, thank you. Who handles the filing at  
8           the state level?

9       A. Justin Haas does much of it. He's our director of  
10           administration, and I sign off on those filings.  
11           In California we have a set-aside treasurer for  
12           the NOM California PAC and his name is David  
13           Bower, and he does all of the reporting for that.  
14           He's the treasurer.

15      Q. Mr. Bower handles all the filing for the state of  
16           California?

17      A. Correct, for state. The FEC is separate.

18      Q. So other than California, in what states does NOM  
19           file political committee reports, and by NOM I'm  
20           referring to NOM or any of its PACs?

21      A. Well, NOM Rhode Island is not a corporately-  
22           controlled PAC but that PAC, Christopher Plante  
23           who's the executive director is the chairperson, I  
24           believe, or he might be treasurer of the NOM Rhode  
25           Island PAC.

1 Q. And how frequently do you file in Rhode Island?

2 A. Whenever we're required to by state law. It  
3 depends on if -- you know, I believe it's  
4 quarterly in Rhode Island, but I could be wrong.

5 Q. How about New Jersey?

6 A. Justin Haas helps compile all the data and we,  
7 again, file regularly.

8 Q. File them as frequently as the statute requires?

9 A. Correct.

10 Q. The same for New York?

11 A. Correct.

12 Q. Did I miss any states in which NOM or NOM PACs  
13 file reports?

14 A. I personally am the treasurer of other PACs, but  
15 they're unconnected, in the District of Columbia  
16 and in New Jersey. I think that's it.

17 Q. So there are no other states in which NOM has  
18 registered as a political committee or files  
19 reports?

20 A. In Iowa, NOM has filed a report but not as a PAC.  
21 They have a unique designation in their law of  
22 political corporation and we're filed and granted  
23 political corporation status and filed independent  
24 expenditure reports in the one election we were  
25 involved in, special election.

1 Q. And how many independent expenditure reports did  
2 NOM have to file in Iowa?

3 A. Just one because it was -- it was only one.

4 Q. A one-time expenditure report?

5 A. Yes.

6 Q. What's different about the campaign finance  
7 reporting in Maine as opposed to those other  
8 states in which NOM or its PACs currently file?

9 A. Under the BQC statute?

10 Q. Yes, we'll take that first.

11 A. Well, the -- the statute when it refers to NOM  
12 somehow being able to define intent of the donor  
13 when it -- part of the statute says something to  
14 the effect that if NOM believes that part of the  
15 donation or the purpose of the donation was to be  
16 used for Maine, that's very unique. I don't know  
17 any state law that says that.

18 Q. I'm trying to get more at the nuts and bolts of  
19 the actual PAC filing report itself and the  
20 registration requirement. Is there anything  
21 particularly burdensome or difficult about  
22 registering and filing in Maine as opposed to any  
23 other state?

24 A. For the BQC it's -- it's -- well, it's unique in  
25 the sense that it's PAC-like reporting but because

1 we were doing general treasury gifts to  
2 StandforMarriage Maine PAC and I was a member of  
3 the PAC, it was also seen that we were abiding by  
4 the law by having a PAC be the one where people  
5 were to write their contributions that were  
6 designated for Question 1 and that NOM wasn't  
7 allowed to use its general treasury funds to make  
8 contributions, which we did everything we could to  
9 comply with. The issue is the vagueness of  
10 compliance.

11 Q. Again, I'm asking you a different question. Let  
12 me just -- let me just show you a copy of the  
13 report itself which you attached to the Complaint  
14 in this case. This is Exhibit 8 to the  
15 Complaint. I'm going to mark this as Exhibit 23.  
16 It's the 2009 campaign finance report for ballot  
17 question committees. Are you familiar with  
18 Exhibit 23?

19 A. Yes.

20 (Whereupon, Deposition Exhibit #23 is marked.)

21

22 BY MR. KNOWLTON:

23 Q. Again, putting aside any legal arguments that you  
24 or your counsel might have about the terms of  
25 Maine statute, what is it about filing this report

1           that is any more difficult or burdensome than any  
2           other PAC report that NOM already files in other  
3           states? Is there anything?

4       A. Well --

5       Q. And if there is, please identify it in Exhibit  
6           23.

7       A. Well, in those other states those are for  
8           political action committees, not the sort of  
9           lobbying activity that we engaged in here in  
10          Maine. So I would say, no, compared to other  
11          states, depending on the state, no, but you're  
12          sort of comparing apples to oranges. In Iowa it  
13          is in many ways much less onerous if you're  
14          talking about independent expenditures because  
15          it's very clear that if we -- Iowa's law judges  
16          express advocacy as a certain standard. It's  
17          clear that we're doing express -- when we do  
18          express advocacy we file a one-time independent  
19          expenditure report and as long as we didn't raise  
20          any donations designated for Iowa, we just fill  
21          out the report and it's done.

22       Q. So that's one difference, in Iowa you have to file  
23          once, whereas in Maine you might have to file more  
24          than once. I accept that, but what is it about  
25          the report itself -- is there anything -- you

1 haven't identified anything yet. Is there  
2 anything in Exhibit 23 that's more complicated or  
3 burdensome than any other report you need to file  
4 in any other state?

5 A. Well, again, in many states there isn't any of  
6 this type of filing for -- for ballot initiative  
7 committees. If you are comparing it to PACs in  
8 which you're doing express advocacy for  
9 candidates, then, no, this is not substantially  
10 different than what many states do. I mean, there  
11 are states like Virginia that are quite different  
12 and, you know, corporate contributions are  
13 unlimited. That's a very different beast than New  
14 York or New Jersey, but if you're going to compare  
15 the BQC reports and the difficulty in filing them  
16 or if they're more onerous than New Jersey and New  
17 York, I would say no. The New Jersey and New York  
18 are specifically for PAC filings and there isn't  
19 an initiative or balloted process in both those  
20 states. So there's nothing to -- we're comparing  
21 apples to oranges.

22 Q. And the registration form asked NOM to identify  
23 its treasurer. Is there anything burdensome about  
24 that? Didn't NOM already have a treasurer at the  
25 time it was engaging in -- strike that -- at the

1 time it was donating money to StandforMarriage  
2 Maine?

3 A. Yes.

4 Q. Okay. So there's nothing in this registration  
5 form -- it's Exhibit 24, let me show it to you  
6 because you guys marked it as an exhibit in the  
7 Complaint.

8 (Whereupon, Deposition Exhibit #24 is marked.)

9

10 BY MR. KNOWLTON:

11 Q. What's burdensome about the registration form  
12 that's Exhibit 24?

13 A. I don't really see how you can divorce the form  
14 from the qualifications to have to file the form.

15 Q. I understand your legal arguments about why you  
16 shouldn't have to file anything, I understand  
17 that, but if you would try putting those to the  
18 side, the fact that you don't think that NOM  
19 should have to file anything, what is it about the  
20 form itself that is burdensome?

21 A. As a matter of clarification, NOM has not claimed  
22 that we don't need to file anything, but the form  
23 itself is similar to PAC reporting -- PAC reports  
24 that you would have to file for candidates in a  
25 number of states. So it's not substantially

1 different.

2 Q. What does NOM agree that it needs to file in  
3 Maine? I didn't follow what you were just saying  
4 a minute ago. You were correcting me when I was  
5 suggesting that NOM contended it didn't need to  
6 file anything in Maine. What is it that NOM  
7 believes it is required to file in Maine?

8 A. I was only pointing out that you had said that NOM  
9 believes it doesn't need to file anything. We  
10 file independent expenditure reports for the FEC.  
11 We comply with all state laws.

12 Q. I'm talking about Maine. If that wasn't clear,  
13 I'm talking about Maine.

14 A. Well, in Maine we dutifully recorded all of our  
15 contributions to the StandforMarriage Maine PAC,  
16 and my understanding of the law and speaking to  
17 legal counsel and also later speaking to the  
18 Ethics Commission was that that was complying as  
19 long as those were not designated gifts. So we  
20 did not attempt to somehow get out of what we were  
21 asked to do. We did comply by reporting all of  
22 our contributions to StandforMarriage Maine.

23 Q. Again, I'm sorry, one more time. What is it about  
24 either the registration form that's Exhibit 24 or  
25 the campaign finance report that's Exhibit 23

1       that's particularly onerous or burdensome as  
2       compared to other state reports or registration  
3       forms that NOM is required to fill out?

4       A. Well, it's not in comparison to PAC-type forms in  
5       most states. As far as other states that have  
6       regulations governing ballot initiatives, that  
7       would seem to be a more appropriate analogy but if  
8       you're asking where we file right now, no, of  
9       course not because those are PAC -- PAC report  
10      forms.

11     Q. Has the 2010 annual meeting date been set for the  
12     board of directors?

13     A. Yes.

14     Q. When is it going to be?

15     A. July 8th.

16     Q. Has the agenda been prepared yet?

17     A. No.

18     (Whereupon, Deposition Exhibit #25 is marked.)

19

20     BY MR. KNOWLTON:

21     Q. Let me show you what's marked as Defendant's  
22     Exhibit 25. It's the National Organization for  
23     Marriage board update 2008/2009. Are you familiar  
24     with Exhibit 25?

25     A. Yes.

1 Q. Who wrote it?

2 A. Maggie Gallagher together with Joshua Baker.

3 Q. When was it written?

4 A. I believe in May possibly of 2009.

5 Q. What was the purpose for writing Exhibit 25?

6 A. To update the board on developments.

7 Q. To whom was it distributed?

8 A. To our board.

9 Q. To anyone else?

10 A. I think Schubert Flint Public Affairs probably  
11 also received it, Joshua Baker who works with us.

12 Q. Could you look at the fifth page of the document,  
13 please? They're not numbered but it's the page  
14 that has -- there's a reference in like the fourth  
15 paragraph down that says "last month the Senate  
16 appeared poised." Do you see that reference?

17 A. Yes.

18 Q. There's a reference to the New York Marriage PAC,  
19 do you see that?

20 A. Yes.

21 Q. And a promise to spend the first 500,000 raised in  
22 support of a primary challenger to any New York  
23 republican senator who voted for same sex  
24 marriage?

25 A. Correct.

1 Q. How much money was raised in that endeavor?

2 A. Well, we won and so we didn't need to spend the  
3 money or raise it in the PAC, so I believe that  
4 probably \$30,000 or \$40,000, possibly much less,  
5 because we basically discontinued the effort.

6 Q. When you say we won, what did you mean by that?

7 A. We defeated same sex marriage in the senate by a  
8 38/24 vote.

9 Q. Has a board update been prepared for 2009/2010?

10 A. No.

11 Q. Is one going to be prepared?

12 A. Yes.

13 Q. Who is going to write it?

14 A. Joshua Baker and myself will work on it together.

15 Q. Have you started writing it?

16 A. No.

17 Q. What did you say the date of the next board  
18 meeting was?

19 A. July 8th

20 (Whereupon, Deposition Exhibit #26 is marked.)

21

22 BY MR. KNOWLTON:

23 Q. I'm showing you what's marked as Defendant's  
24 Exhibit 26. It's a letter with Rick Santorum's  
25 picture on the front of it dated April 2010. Are

1           you familiar with Exhibit 26?

2           A. Yes.

3           Q. To whom was Exhibit 26 sent?

4           A. I think there were various versions of this  
5           letter. Some were sent to existing donors and  
6           some to possible future donors.

7           Q. Roughly how many people was this letter sent to?

8           A. I can't answer that.

9           Q. More than a hundred?

10          A. Oh, yes, yeah.

11          Q. More than a thousand?

12          A. Yes, I would say at the minimum we probably sent  
13          this to our entire donor list of 35,000.

14          Q. And by possible donors, who would those people be?

15          A. Well, I'm not sure whether we did do an  
16          acquisition mailing with this, but if we did, we  
17          would have tested a variety of rented mail lists.

18          Q. The second to last page has -- excuse me -- the  
19          third to last page of Exhibit 26 has some redacted  
20          material. Do you see those redactions?

21          A. Yes.

22          Q. Why was that material redacted?

23          A. Because it had to do with a donor.

24          Q. You mean it listed a donor's name?

25          A. Yes.

1 Q. Did your donor know that you were sending his name  
2 out to 35,000 people?

3 A. Yes.

4 Q. How did he know that?

5 A. Because we asked him if we could tell our  
6 supporters that he had given us a donation.

7 Q. And what did he say?

8 A. Yes.

9 Q. And is that memorialized anywhere, that consent?

10 A. No.

11 Q. Did you speak to the donor?

12 A. No, Maggie Gallagher did.

13 Q. But you would agree that there was no restriction  
14 on any of the 35,000 people who received this  
15 letter from telling friends, telling anybody who  
16 the donor was that's been redacted from Exhibit  
17 26?

18 A. Well, that's true that they could tell other  
19 friends or family that he had done that, but  
20 because this was I believe sent to our donors,  
21 it's different than the entire public.

22 Q. How could you figure out whether or not this was  
23 also sent to rented mailing lists of possible  
24 donors?

25 A. I could find out relatively easily.

1 Q. Would you do that, please?

2 A. Yes.

3 Q. Just let us know?

4 A. Okay.

5 (Whereupon, Deposition Exhibit #27 is marked.)

6

7 BY MR. KNOWLTON:

8 Q. Exhibit 27 is an April 2010 letter with Maggie  
9 Gallagher's picture on the first page. To whom  
10 was Exhibit 27 sent?

11 A. The same. I believe it was sent to our donors but  
12 I think this one was also an acquisition list  
13 mailing. I think we sent this to -- I'm not a  
14 hundred percent positive but I think we also sent  
15 this to an acquisition list.

16 Q. And by an acquisition list, you mean a list of  
17 people who weren't members or donors of NOM?

18 A. No, but were likely prospective supporters.

19 Q. Based on what?

20 A. Past giving.

21 Q. To NOM?

22 A. No, to other organizations similar to NOM.

23 Q. How big was the acquisition list in addition to  
24 the 35,000 existing donors?

25 A. I don't know.

1 Q. Roughly speaking, could you give me some ball  
2 park?

3 A. It could be anywhere from 5,000 to 100,000. I  
4 don't know. I'd have to look at the actual list.

5 Q. Would you check that, please?

6 A. Yes.

7 Q. And, again, the third to last page has two  
8 redacted sections, and those are redacted because  
9 a donor is listed there?

10 A. I believe so, yes.

11 Q. And is that the same donor as in Exhibit 26?

12 A. Yes.

13 Q. And --

14 A. I -- I'm pretty sure, yes.

15 Q. Is it your testimony that this donor gave his  
16 permission to Maggie Gallagher to have his name  
17 sent out in a letter?

18 A. Yes.

19 (Whereupon, Deposition Exhibit #28 is marked.)

20

21 BY MR. KNOWLTON:

22 Q. I'm showing you what I've marked as Exhibit 28  
23 entitled Marriage: 20 Million Dollar Strategy for  
24 Victory?

25 A. Um-hum.

1 Q. Who wrote Exhibit 28?

2 A. I believe this is from 2008. This is an earlier  
3 version of our marriage victory and I believe  
4 Maggie Gallagher, myself and Luis Tellez had a  
5 role in crafting this.

6 Q. Do you believe it was written sometime in 2008?

7 A. No, no, that's wrong. Is this the exact same  
8 thing as -- no, I don't know that this was  
9 circulated. This wouldn't be something that --  
10 this seems to be the same thing as our marriage  
11 victory -- strategy for marriage plan in an early  
12 version or a changed version. It's simply a Word  
13 document rather than a PDF.

14 Q. Do you know when it was written?

15 A. I don't.

16 MR. NEELEY: If I can ask a clarifying  
17 question, if you look on the first page, second  
18 paragraph --

19 MR. KNOWLTON: It refers to June 15th, 2009  
20 so it was probably written at least at some point  
21 after June 15th, 2009.

22 MR. NEELEY: Yeah, and if you look at the  
23 fourth paragraph, it refers I believe  
24 prospectively to July 1st, 2009, indicating that  
25 it was written before July 1st, 2009.

1 BY MR. KNOWLTON:

2 Q. Based on that, Mr. Brown, would you conclude this  
3 was written sometime in roughly June 2009?

4 A. Yes, as I said, I think it's an earlier version of  
5 the National Strategy for Winning the Marriage  
6 Battle and I'm not sure that it was publicly or  
7 even privately disseminated.

8 Q. Well, I want to ask you some more about that  
9 because at the bottom of page 3 there's a  
10 reference to "this pledge" and there are various  
11 other places in this document that refer to "this  
12 pledge" and so my question is what is the pledge  
13 that this document is referring to?

14 A. On page 3 I'm looking and I don't see anything  
15 that says "this pledge."

16 Q. The very bottom line, it says "amount of this  
17 pledge."

18 A. I think this was --

19 Q. Do you see it? "Thispledge" and there's other  
20 places where it refers to "this pledge" and that  
21 phrase is repeated many times throughout Exhibit  
22 28. So my question is, what is the document  
23 talking about?

24 A. Again, I think this -- I'm not sure that this was  
25 ever given to a donor. I think we worked this

1 through and had our lawyers look over it and  
2 didn't sent it out. I don't know what "this  
3 pledge" refers to. I think it was prospective.  
4 It was looking into the future, and I think that  
5 we -- I'm not sure that we ever sent this out. I  
6 don't believe that we did, and I believe we  
7 changed this into the August 11th, 2009 National  
8 Strategy for Winning the Marriage Battle, and I  
9 think this is an early draft.

10 Q. You haven't answered my question. What is the  
11 pledge that Exhibit 28 is referring to?

12 A. Well, I don't know. I think that it refers to in  
13 4 the pledged money that we have outstanding  
14 pledged to NOM and how we're going to -- how we're  
15 going to spend it.

16 Q. This document reads like it was written to be sent  
17 to a particular donor? Is that the purpose for  
18 Exhibit 28?

19 A. I don't know. I don't recall sending this to any  
20 donor nor do I recall having anything ever sent  
21 out that says amount of this pledge to be devoted  
22 -- that's talking about any one specific pledge.

23 Q. Can you look at the third page from the back that  
24 has a budget and fundraising series of columns?

25 A. Yes.

1 Q. And it has two columns, pledged as of July 2009,  
2 there's a million dollars, and pledged end of 2009  
3 another million dollars. Do you see those?

4 A. Um-hum.

5 Q. Did any of your donors pledge to give you two  
6 million dollars contingent on anything else  
7 happening in 2009?

8 A. We had donors who generally gave gifts wanting  
9 those gifts to be matched but not for specific  
10 purposes or for designated activity.

11 Q. Mr. Brown, what's the million dollars that each of  
12 these pledges is referring to?

13 A. This is money that is -- that we believe we have  
14 already raised in July and by the end of 2009 and  
15 it shows that we only have two million dollars out  
16 of the total 20 million dollars pledged.

17 Q. Was it not a particular donor who had pledged two  
18 million dollars? Was this just NOM's estimate or  
19 was this NOM's assessment that as of June 2009 it  
20 had two million dollars in total pledges -- two  
21 million dollars in total in pledges?

22 A. Yes, but I don't believe it was any one specific  
23 donor. I think it was total.

24 Q. Okay. If you'd look back at Exhibit 25 which is  
25 the board update.

1 A. Um-hum.

2 Q. The first attachment is 20 Million Dollar Strategy  
3 for Victory, Marriage: 20 Million Dollar Strategy  
4 for Victory?

5 A. Um-hum.

6 Q. Exhibit 28 is entitled Marriage: 20 Million Dollar  
7 Strategy for Victory?

8 A. Um-hum.

9 Q. So would you agree that Exhibit 28 was an  
10 attachment to Exhibit 25?

11 A. Yes, although we also call these two things the 20  
12 million dollar plan. So I don't know if this was  
13 what was attached or one of these. The amount of  
14 this pledge is -- that number totals the budget at  
15 the very end.

16 Q. Okay.

17 A. So it's the amount of money that we already have  
18 pledged in July out of the 20 million dollars,  
19 which is two million dollars.

20 Q. And what are you concluding from that?

21 A. Well, that it doesn't -- this wasn't sent to  
22 someone for them to make a pledge. It's about the  
23 pledges that we already have existing.

24 Q. So it was an internal strategy document, is that  
25 what you're saying?

1 A. If it was attached to here, it was highlighting  
2 where we were spending the money and how much  
3 money we'd already had pledged and how we were  
4 going to divide it up.

5 Q. Why are Exhibits 28 and 26 designated as  
6 confidential? Because they have the name of a  
7 donor in them?

8 A. I believe it was an internal document only meant  
9 for our board and not distributed.

10 Q. I'm sorry, I've got my numbers wrong. Why are  
11 Exhibits 26, which is the Rick Santorum letter,  
12 and 27, which is the Maggie Gallagher letter, why  
13 are those designated confidential other than the  
14 fact that they have one reference to a donor? Is  
15 there any other reason?

16 MR. NEELEY: I can speak. In sending out  
17 some of the documents -- I spoke with Ms. Gardiner  
18 about this earlier -- there was a judgment made  
19 that since we were trying to get them out quickly,  
20 we would err on the side of caution in terms of  
21 designating things confidential and then later on  
22 the sides could talk about if there were issues  
23 with specific documents.

24 MR. KNOWLTON: But the problem is that  
25 there's a 30-day limit in the order. So I assume

1 that you don't have any problem if it takes us  
2 longer than 30 days to get back to you on all of  
3 the hundreds of documents that you've designated  
4 as confidential that may not be confidential?

5 MR. NEELEY: That's fine, yes.

6 MR. KNOWLTON: Okay.

7 (Whereupon, Deposition Exhibit #29 is marked.)  
8

9 BY MR. KNOWLTON:

10 Q. Mr. Brown, Exhibit 29 is a series of e-mails that  
11 have been provided to us by your counsel. Would  
12 you take a minute and look through them?

13 A. Yes.

14 Q. Are you familiar with those e-mails?

15 A. Yes.

16 Q. Could you take me through them, please?

17 A. Okay, page 1 says we have to spend \$250,000 in New  
18 Jersey by June at the latest.

19 Q. Can I stop you for a second? I don't mean to  
20 interrupt you, I'm sorry. If you could explain to  
21 me the context, the reason, the backdrop to the  
22 e-mail and then you can direct me to any part of  
23 the e-mail that might be helpful, but I don't  
24 really need you to read it into the record. I'm  
25 just trying to get you to help me understand the

1 context for these e-mails. What was going on?

2 A. Well, for this e-mail we had received a gift and  
3 it was -- the gift we wanted to spend on religious  
4 liberty ads in New Jersey, and we had said we were  
5 going to do \$250,000 in religious liberty ads and  
6 we needed to follow through, so that's what this  
7 e-mail discusses.

8 Q. I'm sorry, say that again.

9 A. We were going to do religious liberty ads in New  
10 Jersey. We had planned them for quite some time  
11 and we had not yet done them, and we had -- we had  
12 spoken and agreed to do this and we had not yet  
13 done them.

14 Q. Okay, thank you. What's the -- the second, third  
15 and fourth pages of Exhibit 29 seem to be an  
16 e-mail string. So if you could just tell me the  
17 context of the e-mail conversation going on on  
18 pages 2, 3 and 4 of Exhibit 29.

19 A. It's just a budget for what we believe we're  
20 actually going to spend in various places and some  
21 back and forth on what the budget should say.

22 Q. What do you mean by "the budget?" I thought NOM  
23 didn't have a budget.

24 A. Well, this is a budget for what's included in the  
25 National Strategy for Winning the Marriage

1 Battle. This is the beginning draft of what  
2 eventually became that.

3 Q. So this was a conversation between you and other  
4 board members about how to set forth your  
5 organization's fundraising expenditures for the  
6 year, year and a half after July 2009?

7 A. Correct.

8 Q. At the bottom of the second page it says APP to be  
9 added by Frank. Who is Frank?

10 A. Frank Cannon is the president of the American  
11 Principles Project.

12 Q. Okay.

13 A. And this was conceived -- part of it was a joint  
14 effort to get them off the ground.

15 Q. All right, thank you. The fifth page of this  
16 exhibit is an August 5th, 2009 e-mail conversation  
17 between and among Maggie Gallagher, Luis Tellez,  
18 you and Robbie George it looks like, is that  
19 right?

20 A. Correct.

21 Q. Could you explain the purpose and the backdrop to  
22 this e-mail?

23 A. It's just we need to create a plan for  
24 Pennsylvania as to what we were going to do.

25 Q. Okay. I don't believe we've seen any e-mails in

1           which NOM's spending or planned spending or  
2           activities related to Maine were discussed. Do  
3           any such e-mails exist?

4           A. I've gone through my e-mails and so have others  
5           specifically for Maine. I don't -- I believe that  
6           we have forwarded e-mails that discuss Maine but  
7           there's not a discussion of budgeting.

8                     MR. NEELEY: If I could clarify, on page 2,  
9           the second e-mail, isn't there a discussion?

10                    MR. KNOWLTON: There's a general budgetary  
11           discussion in Maine, yes, okay, fair enough, the  
12           word Maine is mentioned on page 2 of Exhibit 29, I  
13           agree.

14

15           BY MR. KNOWLTON:

16           Q. Mr. Brown, you travel a lot, don't you?

17           A. Yes.

18           Q. Are you a frequent user of your BlackBerry?

19           A. I don't have a BlackBerry but I have something  
20           similar, yes.

21           Q. What do you call it?

22           A. A Droid.

23           Q. A Droid, how long have you had a Droid?

24           A. For three months.

25           Q. What did you have before you had the Droid?

1 A. HTC-6800 or --

2 Q. Is that comparable to a BlackBerry?

3 A. Yes.

4 Q. During 2009 were you on the road a lot?

5 A. I was.

6 Q. And did you use your -- I'll call it a BlackBerry,  
7 is that okay?

8 A. Yes.

9 Q. Did you use your BlackBerry a lot when you were on  
10 the road in 2009?

11 A. I did, yeah, I did.

12 Q. Did you use it to send e-mails?

13 A. Yes, I did.

14 Q. Is that how you communicated frequently in 2009  
15 while you were on the road about NOM's activities?

16 A. Yes.

17 Q. Okay, and your testimony is that you have reviewed  
18 all of your e-mails and asked others, Maggie  
19 Gallagher, Robbie George and Luis Tellez, to  
20 review their e-mails and have we been provided  
21 with all the e-mails that refer to or discuss the  
22 Maine Campaign in any way?

23 A. Yeah, I've gone through and any discussion of  
24 budget or Maine that was in the original request  
25 for documents I've forwarded on to our counsel.

1 Any e-mails I send, whether on my BlackBerry or  
2 anywhere else, all go through the same system so  
3 they would all show up.

4 Q. Do you delete e-mails regularly?

5 A. I delete some but generally I don't. I generally  
6 keep every single e-mail. You know, there's spam  
7 that automatically gets deleted, but I do not  
8 delete e-mails regularly. We save pretty much  
9 everything.

10 Q. Okay. You were explaining to me on the fifth page  
11 of Exhibit 29 that this was about the Pennsylvania  
12 activities?

13 A. Yes.

14 Q. What's the next page on Exhibit 29 dealing with?

15 A. It discusses a pledge we have. Our goal was to  
16 raise two million dollars, and this is -- I guess  
17 we needed \$500,000 and it discusses raising the  
18 additional \$500,000.

19 Q. Does this October 6, 2009 e-mail relate to one of  
20 the wire transfers that was in the October 2009  
21 bank statement you reviewed earlier?

22 A. I don't believe -- well, I don't know. I don't  
23 know if it relates to that.

24 Q. Would you look at the last three pages of Exhibit  
25 29, the page that starts with Election Cycle 2009,

1 Election Cycle Investors Report?

2 A. Um-hum.

3 Q. What is that?

4 A. The last three pages?

5 Q. Yes, it's a three-page e-mail. The first page --

6 MR. NEELEY: I have a six-page e-mail at  
7 the end.

8 THE DEPONENT: So do I.

9 MR. NEELEY: What is the date?

10 MR. KNOWLTON: December 15th, 2009. Let's  
11 go off the record for a second.

12 (OFF RECORD)

13

14 BY MR. KNOWLTON:

15 Q. I'll show you a three-page e-mail, December 15th,  
16 2009, entitled 2009 Election Cycle Investors  
17 Report. Do you see that?

18 A. Correct, yes.

19 Q. What is that?

20 A. It's to report to supporters how we spent their  
21 money.

22 Q. Did this turn into a document that was distributed  
23 to donors?

24 A. I believe this is the document.

25 Q. Well, this is an e-mail from you to Maggie

1           Gallagher.

2           A. Yes, we did send an investors' report to donors.

3           Q. And what did it look like?

4           A. It was this. I believe it was this.

5           Q. How did it get sent? By e-mail?

6           A. I believe we sent it out probably a month or two  
7           months ago by snail mail.

8                   MR. KNOWLTON: Josiah, have we been  
9           provided with a copy of that as far as you know?

10                   MR. NEELEY: I can picture it. Yeah, let  
11           me double-check to see whether it's actually --

12                   MR. KNOWLTON: Okay. It doesn't look  
13           familiar to me.

14                   MR. NEELEY: It would be -- it's the glossy  
15           -- I'll look for it.

16                   MR. KNOWLTON: Thank you, and could you  
17           send one to us?

18                   MR. NEELEY: Yes, absolutely.

19                   MR. KNOWLTON: Thank you. If you could  
20           give me five or ten -- five minutes to look at  
21           some documents. I'm getting near the end, so just  
22           give me a few minutes, about seven minutes.

23                                   (OFF RECORD)

24

25           BY MR. KNOWLTON:

1 Q. Mr. Brown, I just have two more areas I wanted to  
2 ask you about. One is a follow-up to the question  
3 about the PAC filing that you guys do with either  
4 the FEC or with various states. Are you able to  
5 utilize the Kintera platform to help you transmit  
6 the information you need to send to the states or  
7 the FEC in connection with your filing  
8 obligations?

9 A. Not so much for the FEC because those are only  
10 expenditures. For the states we use the  
11 information that goes into the central Kintera  
12 database in order to create the reports, but most  
13 of the states we file in there isn't a way to just  
14 automatically upload it from Kintera. It has to  
15 then be put into a form.

16 Q. Okay, all right. The Kintera stuff makes it  
17 pretty easy for you to organize the data that you  
18 need to file, you just can't directly upload it  
19 from Kintera to the --

20 A. Correct.

21 Q. Okay, and I think -- I was wondering if you could  
22 just give rough estimates -- I'm looking at  
23 Exhibit 12 for a moment which is the strategy  
24 document that was prepared in December 2009. I'm  
25 just trying to get a sense for the numbers that

1 are missing in that document, and I understand  
2 that they won't be exact but since it's now mid  
3 2010, perhaps you have a sense in round numbers of  
4 the amount that was spent, and you tell me, either  
5 from July to the end of 2009 or all of 2009 for  
6 the District of Columbia, for example.

7 A. I think we probably spent \$100,000, maybe 150.

8 Q. Okay, in '09?

9 A. I believe so, yeah.

10 Q. Okay. In Iowa, and I understand you said that was  
11 probably in the first half of 2009 but roughly how  
12 much did NOM spend in Iowa in 2009?

13 A. Probably 400, 400,000.

14 Q. Pennsylvania and beyond?

15 A. Nothing.

16 Q. Rhode Island?

17 A. For overall operations probably about \$150,000  
18 total in 2009.

19 Q. All right. Two million for Marriage, why does  
20 that have a million dollars of expenditures? What  
21 was that for?

22 A. That was for a (c)(3) type ad, the Carrie Prejean  
23 ad.

24 Q. That was a million bucks?

25 A. Yeah, it ran nationally.

1 Q. Okay. The state emergency fund?

2 A. We don't have anything in that.

3 Q. Nothing was spent out of that in 2009?

4 A. No.

5 Q. Okay. The Federal Marriage PAC?

6 A. We haven't done anything. We haven't even created

7 the Federal Marriage PAC.

8 Q. Then help me understand why it had expenditures of

9 250,000. Was that just estimated from --

10 A. Yeah, we thought we were going to do that and that

11 didn't happen.

12 Q. Okay. So that's zero, okay. International

13 Organization for Marriage expenditures for 2009?

14 A. I think probably \$15,000.

15 Q. All right, NOM Legal Defense Fund?

16 A. Well, I think we've spent probably \$100,000.

17 Q. Cultural strategies, again, this is 2009 I'm

18 trying to focus in on since that's what this

19 column is for.

20 A. I don't know how much we spent on the Gathering --

21 on the -- did we do the Gathering Storm ad at that

22 time? We did. I think that's probably 300,000.

23 Q. Okay. I'm trying to make this add up to roughly

24 eight million dollars since that's what you

25 thought NOM spent in 2009. So are there other

1 overhead or administrative expenses that we could  
2 list that would help get that number closer to  
3 eight million and how much would they be?

4 A. Well, it's probably two million dollars or 1.5  
5 million dollars in total overhead for employees  
6 and everything related to that.

7 Q. Okay.

8 A. Also this doesn't include, for example, our direct  
9 mail budget or our newsletter budget. It doesn't  
10 include all of the automated calling or all of the  
11 other activities that are educational in nature  
12 that aren't state specific projects.

13 Q. Okay. Roughly speaking, what would that expense  
14 be?

15 A. Well, I think we probably spent close to 600 --  
16 well, probably more like a million dollars on  
17 direct mail. I could be wrong, but we spent a  
18 significant amount of money on direct mail and our  
19 newsletters and everything else.

20 Q. So all the mailing, newsletters, direct mail, any  
21 kind of general mailing that goes out to some list  
22 of donors or contributors or members or however  
23 you guys slice it?

24 A. Yes.

25 Q. The New York and New Jersey number, if you

1 included the first half of 2009, would the number  
2 be bigger and how much, if so? The same for New  
3 Hampshire.

4 A. I think that -- I think that that's about how much  
5 we spent total.

6 Q. For both New Hampshire and New York, slash, New  
7 Jersey?

8 A. Correct.

9 Q. Okay. You identified the Ruth Institute before.  
10 How much is that?

11 A. Roughly \$200,000 a year out of our (c)(3).

12 Q. Would that be included in the eight million that  
13 you were counting as NOM expenses for the year  
14 before or were those just (c)(4) expenses?

15 A. Those were (c)(4).

16 Q. So don't count the Ruth Institute expenses, right?

17 A. No.

18 Q. Okay.

19 A. Although, you know, I think that we have -- even  
20 though it's a (c)(4), there's no problem with them  
21 paying for (c)(3) activity. So I do think that we  
22 have paid the overhead out of the (c)(4). So I  
23 still think it's probably about \$150,000 out of  
24 the (c)(4) for that.

25 Q. Okay, and you said NOM Rhode Island, I'm sorry,

1           how much was that?

2           A. \$150,000.

3           Q. Okay. Can you think of anything else that's not  
4           listed there? I'm trying to get something that  
5           roughly adds up to eight million dollars.

6           A. I can't.

7                       MR. NEELEY: Can I ask a clarifying  
8           question? Has the Latino Project been included in  
9           what we've talked about so far?

10                      THE DEPONENT: No, we haven't -- we haven't  
11           launched that yet. That's part of the cultural.  
12           It may not be in there, but we've subsumed that in  
13           the cultural strategy.

14                      MR. KNOWLTON: I don't have any other  
15           questions for today, just keeping in mind if and  
16           when NOM gives us the information that it hasn't  
17           given us yet about donors and communications with  
18           StandforMarriage Maine, those are two pieces of  
19           information that we haven't received yet, that we  
20           may or may not want to ask you some questions  
21           about it, hopefully not, hopefully not too many if  
22           there are; but, you know, it may be that those  
23           documents if and when they have to be turned over  
24           to us will raise questions that we need to ask you  
25           about, but that's all we have for right now.

1 THE DEPONENT: Thank you.

2 MR. KNOWLTON: Thank you.

3 (Whereupon, the above-named deposition was  
4 concluded on June 23, 2010 at 4:30 p.m.)

5 (The deponent does not waive reading and signing.)

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CERTIFICATE

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

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

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

\_\_\_\_\_  
Joanne P. Alley  
Court Reporter/Notary Public

My commission expires: July 17, 2015

1 ALLEY & MORRISETTE REPORTING SERVICE  
2 1203 Augusta Road  
3 Belgrade, ME 04917  
4

5 June 30, 2010

6 Brian S. Brown  
7 c/o Josiah S. Neeley, Esq.  
8 Bopp, Coleson & Bostrom  
9 One South Sixth Street  
10 Terre Haute, IN 47807

11 RE: APIA v Walter McKee, et al.  
12 Enclosed please find a copy of your deposition  
13 taken in the above-mentioned action. Also  
14 enclosed is the original signature page and a  
15 sheet for corrections.

16 Please read the copy of the deposition and sign  
17 the original signature page before a Notary  
18 Public. If there are any corrections you wish to  
19 make, they should be made on the enclosed  
20 correction sheet. Do not mark on the deposition.

21 Please return the signed original signature page  
22 and correction sheet to Alley & Morrisette at the  
23 above address within 30 days.

24 Thank you.  
25

1 THE ORIGINAL DEPOSITION OF BRIAN S. BROWN SHOULD  
2 INCLUDE THE FOLLOWING CORRECTIONS:

3

4	Page	Line	Change from this	To this
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1 TO BE COMPLETED BY THE DEPONENT:

2 I, \_\_\_\_\_, have read the  
3 foregoing pages and have noted any stenographic  
4 errors of my testimony together with their  
5 respective corrections and the reasons therefore  
6 on the following Errata Sheet.

7

8 (SIGNATURE) \_\_\_\_\_

9 (DATE) \_\_\_\_\_

10 \*\*\*\*\*

11 TO BE COMPLETED BY THE NOTARY PUBLIC/ATTORNEY

12 I, \_\_\_\_\_, a Notary  
13 Public/Attorney in and for the State of Maine,  
14 hereby acknowledge that the above-named deponent  
15 personally appeared before me and affixed his/her  
16 signature as his/her own true act and deed.

17

18 (SIGNATURE) \_\_\_\_\_

19 (DATE) \_\_\_\_\_

20

21 TITLE: NOM vs Walter McKee, et al.

22 DEPOSITION OF: Brian S. Brown

23 DATE OF DEPOSITION: May 26 and June 23, 2010

24 NOTICING PARTY: Thomas Knowlton, Esq.

25 REPORTER: Joanne Peasley Alley