No. 14-434

IN THE SUPREME COURT OF THE UNITED STATES

ProtectMarriage.com—Yes on 8, a Project of California Renewal, et al.
Petitioners,
vs.
Debra Bowen, Secretary of State for the State of California, et al.
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

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I.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit in this matter is reported at ProtectMarriage.com – Yes on 8, et al. v. Bowen, 752 F.3d 827 (9th Cir. 2014).

The Memorandum Order of the United States District Court for the Eastern District of California (District Judge Morrison C. England, Jr.), granting the Motions for Summary Judgment filed by the various Defendants, is reported at ProtectMarriage.com v. Bowen, 830 F.Supp.2d 914 (E.D. Cal. 2011).

II.

JURISDICTION

The Petition for a Writ of Certiorari in this matter follows the grant of summary judgment regarding the constitutionality of the California Political Reform Act of 1974 (Cal. Govt. Code §§ 81000, *et seq.*) by the district court and the general affirming of that ruling by the Ninth Circuit Court of Appeals.

1 The PRA requires political committees to report certain information to the State of California about their contributors. Under the PRA, political committees must file semi-annual disclosures, which identify, *inter alia*, individuals who have contributed more than $100 during or after a campaign, in addition to each contributor's address, occupation, and employer. Cal. Govt. Code §§ 84200, 84211(f). The State then

The Ninth Circuit Court of Appeals entered its final judgment on May 20, 2014. The jurisdiction of this Court is properly invoked under 28 U.S.C. Section 1254(1).

III.

COURT PROCEEDINGS TO DATE

On January 7, 2009, Petitioners filed suit against Respondents and various entities of the State of California and other parties, seeking declaratory and injunctive relief. Petitioners asserted bring facial and as-applied challenges to California's Political Reform Act of 1974 (Cal. Govt. Code §§ 81000-91014) ("PRA"). Specifically, Petitioners sought (1) an injunction exempting them from the PRA's future reporting deadlines for identification of political campaign donors; and (2) declaratory and injunctive relief requiring the State to purge all records of Petitioners' past PRA disclosures.

On November 4, 2011, the district court granted summary judgment in favor of Respondents on all counts. Petitioners timely appealed.

publishes this information on the website of the California Secretary of State and produces hard copies upon request. Petitioners are political committees that supported the November 2008 passage of Proposition 8, which amended the California Constitution to provide that "[o]nly marriage between a man and a woman is valid or recognized in California." Cal. Const., Art. I, § 7.5. Proposition 8 was subsequently invalidated. See Hollingsworth v. Perry, 133 S. Ct. 2652, 2660, 186 L. Ed. 2d 768 (2013) (citing Perry v. Schwarzenegger, 704 F. Supp. 2d 921, 1004 (N.D. Cal. 2010)).

On appeal, a Ninth Circuit panel affirmed in part the grant of summary judgment with respect to the facial challenge and found the as-applied challenge to be non-justiciable. Specifically, concerning the facial challenge to the California Political Reform Act of 1974 (Cal. Gov't Code §§81000-91014), the appellate panel concluded that the government's interest in disclosing campaign contributions to ballot initiative committees was not merely a pre-election interest, and without such reporting requirements, donors could undermine the State's interests in disclosure by donating only once the final pre-election reporting deadline has passed. With respect to the as-applied challenge, the panel determined that the court could not remedy the alleged harms; the request for an injunction did not present a live controversy, and, any claim based on appellants' future activities was not ripe.

IV.

POSITION OF THE DISTRICT ATTORNEY RESPONDENTS REGARDING THE PETITION FOR WRIT OF CERTIORARI

Respondent JAN SCULLY ("Respondent Scully"), on behalf of her herself and as representative of the designated Class of District Attorneys in the State of California, hereby respectfully submits this Response as a statement of position with regard to the Petition for Writ of Certiorari filed by Petitioners Protectmarriage.com—Yes on 8, et al., in this case. Respondent Scully and the District Attorney Class initially waived their right to respond

to the Petition presented to this Court, but were requested by the Court to submit the instant response thereto.

Respondents Scully and the District Attorney Class are, at best, peripheral Respondent/ Defendants in this case. California Government Code Section 91001, which is part of the California Political Reform Act, authorizes a District Attorney of any of the California counties to file a criminal or civil action if he or she determines that any violation of the Political Reform Act exists. The statute provides:

> (a) The Attorney General is responsible for enforcing the criminal provisions of this title with respect to state agencies, lobbyists and state elections. The district attorney of any county in which a violation occurs has concurrent powers and responsibilities with the Attorney General.
>
> (b) The civil prosecutor is primarily responsible for enforcement of the civil penalties and remedies of this title. The civil prosecutor is the commission with respect to the state or any state agency, except itself. The Attorney General is the civil prosecutor with respect to the commission. The district attorneys are the civil prosecutors with

> respect to any other agency. The civil prosecutor may bring any civil action under this title which could be brought by a voter or resident of the jurisdiction. Upon written authorization from a district attorney, the commission may bring any civil action under this title which could be brought by a voter or resident of the jurisdiction.

The grant of summary judgment by the district court – and the subsequent appeal to the Ninth Circuit thereafter – established the constitutionality of certain aspects of the Political Reform Act.[2] It is not disputed that the Political Reform Act is a law created and adopted by the State of California and not the various district attorneys. The District Attorneys are merely one of the groups authorized by the statute to prosecute violations thereof. In sum, the obligation of the district attorneys herein is not to create or modify the law but instead enforce the law, whatever the law may be.[3] Determination of

2 The Ninth Circuit Court of Appeals addressed only the challenge to the substance of the California Political Reform Act. It did not address any obligation by the District Attorney Respondents to enforce that law. In fact, neither the rulings of the district court nor the Ninth Circuit address the District Attorney Respondents at all.

3 Respondent Scully and the District Attorney Respondent Class note that this position is consistent with the posture they have taken throughout the history of this case in both the district court and court of appeals.

the validity of the current version and contents of the PRA is the issue now before this Court. Thus, the involvement of the California district attorneys in this case is only to follow the law as determined by the Court. Indeed, Respondent Scully and the District Attorney Class are concerned with this matter only to the extent of being informed as to whether the State of California's law is enforceable: if this Court either affirms the Ninth Circuit's decision and thereby determines that the current law passes constitutional review, then the district attorneys in the State of California may enforce the law; if this Court undertakes a review of this matter and ultimately determines that the current law is not constitutional, then the district attorneys are unable to enforce its provisions.

In sum, there is no contention in this case that either Scully or any other member of the District Attorney Class has enforced the law improperly or unfairly. Rather, Respondent Scully and the District Attorney Class appear in this matter only because the California statute that Petitioners challenge refers to them as government actors who have authority to enforce the Political Reform Act – whatever its lawful parameters may be.

IV.

CONCLUSION

Based on the foregoing, Respondent Scully and the District Attorney Respondent Class take no position with regard to whether Petitioner's request for review should be granted. In the event this

Court is desirous of further information regarding this position, Respondent Scully and the District Attorney Class will submit additional briefing upon request.

Dated: December 23, 2014 Respectfully submitted,

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