No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Aouie Goodnis and **Dhun May**, Petitioners

vs.

Kamala D. Harris in the official capacity of Attorney General of California, and **Edmund G. Brown Jr.** in the official capacity of Governor of California, Respondents

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On Petition for Writ of Certiorari to the Supreme Court of California

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PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

As there was a summary judgment against the plaintiffs in the original jurisdiction case in the Supreme Court of California, it should have been accepted as true that the Attorney General of California and the Governor of California refuse to provide for the legal defense of a state law about marriage, which was brought about by a voter initiative (Proposition 8 of 2008), at least in part due to personal beliefs and biases, and thus did not carry out their duties in good faith. The questions presented are that in this scenario:

1. Is a summary judgment that does not clarify what grounds it is based on, acceptable for this case that involves some important federal constitutional issues that are not known to be settled by this court against the plaintiff's case?

2. Are Attorney Generals of states required to represent their clients, the states, in good faith?

3. Does the right of access to the courts, including a good faith representation in federal appellate courts, apply to an association of individuals forming a state?

4. Is it a violation of the doctrine of separation of powers for a state executive official to impair one or more important functions of the federal judicial branch with reference to state laws?

5. Do associations of individuals forming states have the right to speak about values through state laws?

6. Do 'Traditionalists' deserve equal protection from unfair discrimination by state officials who have a bias towards being 'Progressive'?

7. By undermining voter initiatives, which are a primary draw for many voters, did one or both of the respondents cause unconstitutional voter suppression?

8. Since people have come to expect as a fundamental principle of justice that Attorney Generals will represent their clients, the states, in good faith, did one or both of the respondents violate the due process rights of many of the individuals in the state?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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TABLE OF AUTHORITIES

OPINIONS BELOW

The decision of the Supreme Court of California in the original jurisdiction case # S218146.

As the above was a summary judgment, the reformatted but exact text of the 'introduction' of the petition follows the above in the appendix.

JURISDICTION

The date that the Supreme Court of California rendered the court's decision in this case was 2014-06-18. This court has jurisdiction under 28 U.S. Code § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Due process constitutional protection.

Equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

Constitutional provision against illegally discouraging people from exercising the right to vote.

Freedom of speech clause of the

First Amendment to the Constitution of the United States.

Petition clause of the First Amendment to the Constitution of the United States.

Constitutional provision for the separation of judicial and executive powers.

STATEMENT OF THE CASE

The current California Constitution was ratified on May 7, 1879. In 1911, at the height of the US Progressive era, newly elected California Governor Hiram Johnson proposed twenty-three amendments to the California Constitution, including provisions allowing for direct democracy. In the subsequent special election, 76% of Californians voted to implement the initiative into the California Constitution. Initiatives are now widely used as a way for the people of various states to clearly express their wishes on the underlying issues. Recent initiatives passed into laws are usually a clear indicator of where the people of the state (and hence the state) stand on certain issues.

An initiative in 2008, resulted in Proposition 8 passing and amending the Constitution of California to restrict the official

validity and recognition of marriages to the ones that are between a woman and a man.

Two same-sex couples filed a challenge to the state law in a federal district court in California. The California government officials who would normally have defended the law in court, declined to do so. The proponents of Proposition 8 stepped in to defend the law. The federal district court in Perry v. Schwarzenegger (N.D.Cal. 2010) 704 F.Supp.2d 921, held that Article 1, Section 7.5 of the California Constitution violated the United States Constitution.

The proponents of Proposition 8 appealed the federal district court's ruling. The Supreme Court of California, in response to a request by the United States Court of Appeals for the Ninth circuit, opined that the proponents of a voter initiative could defend state laws related to the initiative (Perry v. Brown, 52 Cal.4th 1116, 265 P.3d 1002, Cal.,2011). But in 2013, in Hollingsworth v. Perry, 133 S.Ct. 2652 U.S.,2013, the United States Supreme Court held that the rules for federal appellate courts do not give the proponents of the voter initiative the legal right to appeal the unfavorable federal district court ruling. As a result, it held the decision by the U.S. Court of Appeals for the Ninth Circuit had no legal force,

and it sent the case back to that court with instructions to dismiss the case.

As a result, we had a situation where no one was mounting a defense of California's marriage laws in the higher federal courts on behalf of the state. Voter initiatives and the people's political power contained in the same, are now seen by many as being subject to the sanction of the Attorney General and Governor of California.

The plaintiffs prepared a case against the Attorney General and Governor of California, alleging that our political power and some constitutionally protected state and federal rights are being violated. Plaintiffs sought several remedies including writs of mandate and a more official selection of alternate representative(s) of the state to defend the state's marriage laws. Plaintiffs submitted a petition to the Supreme Court of California in December 2013, but it was returned unfiled. Plaintiffs successfully filed the case in April 2014. The Supreme Court of California issued a summary judgment against the plaintiffs in June 2014.

A similar situation to what happened in California has since happened in Oregon. The Attorney General of that state refused to defend that state's marriage laws in good faith in the

federal appellate courts.

In 2010, Kamala Harris as a candidate for the position of the Attorney General of California implied that if elected, Kamala Harris would not seek relief from Perry v. Schwarzenegger (N.D.Cal. 2010) 704 F.Supp.2d 921. In numerous public interviews and writings Kamala Harris has indicated a refusal to defend the state law on the grounds that it was in violation of the United States Constitution. In widely viewed shows in February 2012 and March 2013, Kamala Harris also indicated a bias against the state's marriage laws on account of California being a “Progressive” state and Kamala Harris' ancestry. Kamala Harris also conveyed a lack of value for any political process that would conflict with what Kamala Harris thinks of as important constitutionally protected entitlements.

Plaintiff Aouie Goodnis is a citizen of California and resides in Los Angeles county. Aouie has encountered resistance to sponsoring and otherwise supporting a voter initiative to outlaw the genital cutting of all children in the absence of a critical medical need for it, on the grounds that the state officials would not defend a law based on such an initiative in the courts. The violations alleged in this lawsuit are hindering Aouie's ability

to utilize the initiative powers of the people to the fullest extent. Aouie's federal and state rights are being chilled by the violations alleged in this case.

Plaintiff Dhun May is a citizen of California and resides in Los Angeles county. Dhun is an experienced teacher and a candidate for the Santa Monica-Malibu Unified School District Board of Education. Dhun contributed to the Proposition 8 campaign and has been an advocate of traditional values.

The office of the Attorney General continues to ignore the duty of seeking relief in the higher federal courts from a questionable district court ruling in Perry v. Schwarzenegger (N.D.Cal. 2010) 704 F.Supp.2d 921, that largely restricts Article 1, Section 7.5 of the California Constitution.

REASONS FOR GRANTING THE PETITION

In California and in Oregon, Attorney Generals are abusing their discretionary powers by not representing the positions of the state, that were expressed clearly in recent initiatives, in the federal appellate courts, partly based on personal opinions and biases. This has caused a huge loss of trust in our government and impaired an important function of our federal judicial system. Several

constitutional rights of the association of individuals who form the states, including the rights of access to the courts and free speech, are being violated by the state officials acting in bad faith.

This court should protect democratic principles and our system of governance. This court should discourage violations of voter initiatives by state officials. All representatives of the people should know that they are expected to act in good faith on behalf of the state or nation they represent, and not allow their official decisions to be unduly influenced by ancestry or personal bias.

I. Inadequate summary judgment that fails to clarify what grounds the decision is based on.

The important federal constitutional issues raised in the case that plaintiffs filed with the Supreme Court of California deserve a clearer answer than the summary judgment that was rendered. The judgment implicitly negated all of the allegations of violations of the federal and state constitutional rights raised in the case. The judgment should be vacated and the case remanded to the Supreme Court of California with

instructions to indicate what grounds its judgment is based on. California v. Krivda, 409 U.S. 33, 93 S.Ct. 32, 34 L.Ed.2d 45 (1972).

II. Associations of individuals, including states, have a right of access to the federal appellate courts.

Many of the complaints and remedies sought were about having the views of the state as expressed by the people in a recent election represented in the federal appellate courts. Such access to the courts was thwarted by the respondents.

"But the individual person's right to speak includes the right to speak in association with other individual persons." - Citizens United v. Federal Election Com'n, 558 U.S. 310, 130 S.Ct. 876, U.S., 2010. The right of access to the courts is a similar right that should not disappear for the association of individual persons who form the state.

The Supreme Court of California may have erred by implicitly determining that this right was not violated by the respondents.

III. Judicial branch is impaired by the combination of strategic civil litigation and failures to defend state laws in good faith.

Many well funded organizations who try to advance their causes through lawsuits, engage experts in the art and science of estimating the chances of success of a lawsuit in different courts. The lawsuits are then brought in one of the courts estimated to have a higher chance of success. A good trial court ruling increases the chances that the favorable ruling will not be reversed on appeal. On issues where the trial court makes determinations on issues that have not been clearly established in prior higher court rulings, the appellate courts are free to make their own determinations. Usually, on issues that are as divisive and hotly debated as this one, ultimately the United States Supreme Court will make the determination as to whether or not they find the challenged laws to be valid.

Competent lawyers for parties who receive unfavorable rulings at trial courts, where such rulings were not clearly based only on prior rulings of the higher courts, will typically consider appealing the ruling in good faith on behalf of the parties. The important and critical function of the

appellate courts to keep in check the rulings of the trial courts and provide clarity and guidance for related future rulings by the lower courts is carried out when lawyers act in good faith on behalf of the parties they represent. With Perry v. Schwarzenegger (N.D.Cal. 2010) 704 F.Supp.2d 921, the people of California were not represented in good faith by the chief law officer of the state, and the chief executive officer did not remedy the situation, and a questionable district court ruling was not successfully appealed. Hence the important and critical function of the federal appellate courts was impaired with respect to the interests of the people of California in defending the state's laws.

The Supreme Court of California may have erred by not remedying the situation.

IV. Attorney generals, should represent their clients, the states, and not selves, in good faith.

Attorney generals are attorneys for the state. Attorneys should represent their clients in good faith. The evidence that was included in the petition we had filed, part of which has been reproduced in the appendix, should be accepted as true for summary judgments. The evidence clearly

indicated that Kamala Harris' decision to not defend state law was based on personal views about what should be considered constitutional and on personal biases. Kamala Harris indicated in widely viewed television shows that the decision to not defend the state law was partly based on what Kamala Harris' ancestry would permit Kamala Harris to do, and on what is appropriate for a "Progressive" state. Kamala Harris campaigned for the office of Attorney General of California promising to not defend the state law.

The Supreme Court of California may have erred by implicitly sanctioning such poor representation of the state and the state's views by the Attorney General of California.

V. Attorney Generals should not substitute determinations on the constitutionality of hotly contested issues by the higher federal courts with their personal views, desires or opinions.

A. Constitutionality of marriage laws are yet to be decided.

The issue at hand is clearly one that the United States Supreme Court has yet to decisively

rule on. This is implied in Hollingsworth v. Perry, 133 S.Ct. 2652 U.S.,2013, with the following quotation where the court states that in light of the "overriding and time-honored concern about keeping the Judiciary's power within its proper constitutional sphere, we must put aside the natural urge to proceed directly to the merits of [an] important dispute and to 'settle' it for the sake of convenience and efficiency. Raines v. Byrd, 521 U. S. 811, 820 (1997)."

B. Kamala Harris didn't defend state law on the grounds that it was unconstitutional.

In many public interviews and writings Kamala Harris has indicated a refusal to defend the state law on the grounds that it was in violation of the United States Constitution. Supporting evidence was submitted with our petition.

The Supreme Court of California may have erred by implicitly sanctioning the substitution of personal views and opinions in the place of judicial determinations as to the constitutionality of the state's laws by the higher federal courts.

VI. Unconstitutional defenses of the United States Constitution should not be tolerated.

The proper course of action for state officials who find it difficult to play any role in furthering views that they strongly object to, is to seek to recuse selves from any such roles that are part of their jobs.

Cities may not refuse to grant a permit for a rally to promote traditional marriage laws on the grounds that the laws would be unconstitutional. Similarly, state officials whose role is to defend the state's laws should not be allowed to refuse to provide for the legal defense of the laws on behalf of the state in good faith, on the grounds that the laws are unconstitutional. Granting such permits and defending the state's laws are legal activities regardless of whether or not the sought or existing laws are unconstitutional. Not granting the permits or not defending the state's laws on the grounds that the laws would be or are unconstitutional are violations of the constitutional rights of the people.

We are not an oligarchy where a few state officials should be allowed to shape society as they see fit at the expense of the political power of the people.

The Supreme Court of California may have

erred by implicitly sanctioning such violations of the constitution by state officials.

VII. Violation of Due Process protections.

In Snyder v. Massachusetts, 291 U.S. 97, 105 (1934), the United States Supreme Court held that due process is violated "if a practice or rule offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental." While it may be true that there have been multiple instances of attorney generals and governors refusing to defend some laws, people have generally come to expect that the executive branch will not undermine the laws of the state by refusing to defend them. To not provide for the legal defense of a state law is a violation of the due process that should be afforded to people and their political power, whether or not the law was brought about by a voter initiative or by lobbying key personnel in our legislative branch.

The Supreme Court of California may have erred by implicitly determining that this right was not violated by the respondents.

VIII. Violation of Free Speech.

"But the individual person's right to speak includes the right to speak in association with other individual persons." - Citizens United v. Federal Election Com'n, 558 U.S. 310, 130 S.Ct. 876, U.S., 2010. This is also true for speech made in association with other citizens of the state. The size of the association should not restrict the rights in question. There may be states with fewer registered voters than there are shareholders in some of the biggest corporations.

The state law (Proposition 8) would still allow same-sex couples interested in the state benefits of marriage to become official domestic partners. Furthermore, same-sex couples interested in the federal benefits of marriage could travel out of state to Massachusetts and get legally married. Therefore, the law would not significantly deprive same-sex couples of any tangible benefits.

A primary function of the challenged marriage laws is to communicate the message that raising children in committed cross-sex relationships is best for society at large. Societies, and hence states, have a compelling interest in advancing messages that are for the betterment of society, as society at large deems it. Governments have often had messages against other perceived

problems in society such as smoking or unsafe sexual habits. The statement to all in society that a marriage between a woman and a man is the preferred union is very much in the same vein as far as many of its proponents are concerned. To subvert the expression of that view point through our state functions while allowing some other views to be expressed through our state functions, is a violation of the free speech of those who favor the challenged marriage laws.

The Supreme Court of California may have erred by implicitly determining that this right was not violated by the respondents.

IX. Violation of Equal Protection.

'Traditionalists', those who place a relatively greater emphasis and value on traditional values, should be a suspect class meriting strict scrutiny in areas where popular support for social norms has shifted by a large extent in the last two decades from a traditional or conservative view to a "progressive" view. Many of the people who favored California State Proposition 22 of 2000 and the related Proposition 8 of 2008 are 'traditionalists'. This class of people are often at odds with people who are strong proponents of recognizing and

promoting same-sex relationships as being virtually identical to cross-sex relationships. The class of people who support traditional marriage laws may find that the task of convincing those with a different opinion is a tough one. This class of people deserves equal protection of their political power and free speech by state officials. Providing for the legal defense of laws brought about by the efforts of certain classes of people while unconstitutionally undermining the laws brought about by the efforts of a different class of people is a violation of the equal protection clause. The political power and free speech of all people of California deserve equal protection.

The Supreme Court of California may have erred by implicitly determining that the right to equal protection was not violated by the respondents.

X. Voter Suppression.

Initiative based propositions are one of the biggest draws for voters in elections. To weaken the initiative powers is to unjustly disincentivize participation in elections. The violations alleged in this complaint have resulted in too many people thinking that when the Attorney General and

Governor are against an initiative, the people's votes in favor of an initiative may not count for much more than an opinion poll. The Attorney General and Governor of California have unconscionably undermined our initiative powers by failing to represent the state in good faith in the courts of the land, and have thus caused voter suppression.

The Supreme Court of California may have erred by implicitly determining that the alleged violations by the respondents is not contributing to voter suppression.

XI. Nation of Laws.

Public opinions change. Polling is an inaccurate way of gauging how people will vote when given various arguments for and against an issue. We are a nation of laws, and we have mechanisms in place to alter any law. Voter initiatives come close to the ideal of equal power sharing by the people. Laws resulting from voter initiatives are often the result of much discussion. People are relatively more active about winning over people of differing views when an issue is the subject of a voter initiative. To know where a state stands on any issue, we should be guided by the

laws of the state, especially relatively recent ones passed by the voters themselves.

XII. Abuse of discretionary powers.

Hollingsworth v. Perry, 133 S.Ct. 2652 U.S.,2013, implied that in defending laws the Attorney General of California should take into account “resource constraints, changes in public opinion, or potential ramifications for other state priorities.” However, this appears to be in conflict with being a nation of laws. If public opinion should change and there is a compelling interest in changing or removing a law, then there are mechanisms in place to effectuate such change. It is an abuse of discretionary powers for any Attorney General to refuse to defend a state law because of political motives, or due to a bias towards being Progressive, or because of one's ancestry.

The Supreme Court of California may have erred by failing to hold the defendants accountable for abuses of their discretionary powers.

XIII. Valuing the democratic ideal of equal power sharing.

Too often people are unwilling to give up

anything of value for the sake of sharing power equally with others in society, including those who have conflicting values. We should encourage people to not be accepting of the kind of violations alleged in this lawsuit, as it undermines voter initiatives and hence the democratic ideal of equal power sharing. Even if we, the people, believe that some challenged laws are in violation of the United States Constitution, we ought to ensure that all challenged laws get full judicial reviews so as to protect our system of government and our political power. It is understandable that we may be tempted to subvert democratic processes to prevent great wrongs, but let us try to have enough value for the democratic process to not subvert it for anything but the greatest of wrongs.

As Franklin D. Roosevelt said, “let us never forget that government is ourselves and not an alien power over us. The ultimate rulers of our democracy are not a President and senators and congressmen and government officials, but the voters of this country.” To become comfortable with individuals in positions of power abusing their powers at the expense of our voting power, is to weaken ourselves and therefore not be the "ultimate rulers".

CONCLUSION

Democratic principles should be safeguarded. Attorney Generals, like any other attorneys, should represent their clients in good faith. Plaintiffs request this court to grant the writ.

Sincerely,

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Date: 2014-09-11

APPENDIX

S218146

IN THE SUPREME COURT OF CALIFORNIA

En Banc

AOUIE GOODNIS et al., Petitioners

v.

OFFICE OF THE ATTORNEY GENERAL et al., Respondents;

KAMALA D. HARRIS, as Attorney General, etc. et al., Real Parties in Interest.

The petition for writ of mandate is denied.

/s/
CANTIL-SAKAUYE
Chief Justice

Introduction section of the plaintiff's petition filed in the Supreme Court of California in case number S218146.

In 2011, in case number S189476, Perry v. Brown, 52 Cal.4th 1116, 265 P.3d 1002, Cal.,2011, the California Supreme Court, in response to a request by the United States Court of Appeals for the Ninth circuit, opined that the proponents of a voter initiative could defend state laws related to the initiative.

But in 2013, the United States Supreme Court held that the rules for federal appellate courts do not give the proponents of the voter initiative the legal right to appeal the unfavorable federal district court ruling against the initiative.

As a result we have a situation where no one is mounting a defense of this state's marriage laws in the higher federal courts on behalf of the state. Voter initiatives, and the people's political power contained in the same, are seen by many as being subject to the sanction of the attorney general and governor of California.

In this petition we elaborate on how and why with respect to referendums and initiatives “the duty of the courts to jealously guard this right of the people” (as stated by the California Supreme

Court in Perry v. Brown, 52 Cal.4th 1116, 265 P.3d 1002, Cal.,2011), also applies to any state official when in their official capacity they can facilitate the effectuation of the people's initiative powers. We make the case that our political power and some state and federal rights are being unconstitutionally harmed, and seek various related remedies including writs of mandate, and a more official selection of alternate representatives for the state (a follow up to Perry v. Brown, 52 Cal.4th 1116, 265 P.3d 1002, Cal.,2011).

In the coming months or years, the United States Supreme Court may uphold the constitutionality of the marriage laws of other states that are virtually identical to Article 1, Section 7.5 of the California Constitution. In such a scenario, would it not be a great wrong for California's marriage laws to unjustly remain largely enjoined by the contradictory district court ruling in Perry v. Schwarzenegger (N.D.Cal. 2010) 704 F.Supp.2d 921? We hope that the California Supreme Court will ensure that such a travesty of our political system does not come to pass.

This lawsuit provides an opportunity for the California Supreme Court to carry out the court's duty of “jealously guarding” and vindicating the political power of the people, including the

initiative powers.

Plaintiffs allege that by continuing to fail to provide for the legal defense of Article 1, Section 7.5 of the California Constitution in good faith, the attorney general of California and the governor of California have

* unconstitutionally harmed their political power,

* violated due process protections,

* violated free speech protections,

* violated equal protection principles,

* caused the loss of trust in our government,

* caused voter suppression,

* and violated the principle of separation of the judicial, legislative and executive powers.

Plaintiffs seek various extraordinary remedies including

* on the grounds that facts have since changed, free the state from an earlier ruling of the California Supreme Court that deemed California Family Code Section 308.5 unconstitutional, and issue a related alternative writ of mandate,

* officially select one or more individuals to represent the state in both state and federal courts to defend specific challenged laws, when there is reason to doubt that the attorney general or governor will provide for the legal defense of the

laws in good faith, such as is the case with Article 1, Section 7.5 of the California Constitution,

* towards restoring the faith of the people of California in our government and to provide hope to people across the country, issue a statement within the California Supreme Court's ruling that the constitutional protection of the political power of the people shall include providing for the legal defense of the laws of the land in good faith,

* issue several related censures of the attorney general of California,

* and issue several related censures of the governor of California.

We discuss how in the face of strategic civil litigation, the absence of appealing rulings like that in Perry v. Schwarzenegger (N.D.Cal. 2010) 704 F.Supp.2d 921, impairs the function of the judicial branch.

While this petition could lawfully have been brought in the Superior Court of California in the first instance, the petitioners believe the California Supreme Court should exercise its original jurisdiction.

The plaintiffs request that the California Supreme Court grant by summary judgment the two most important remedies of freeing California Family Code Section 308.5, and selecting alternate

representative(s) of the state to defend the state's marriage laws. We hope the other issues will also be addressed in an expedient manner. The rest of the country could use the guidance of the California Supreme Court on how to handle similar violations with respect to marriage laws or other voter initiatives.

Transcript of an excerpt from an interview on 'The Rachel Maddow' Show in March 2013.

This was part of an exhibit submitted in the original case to the Supreme Court of California. (RM -> Rachel Maddow, KH -> Kamala Harris)

RM: So, Prop 8 passed in California in in 2008. As I understand it when you won state-wide office a couple of years after that, you said that if you were elected you would not defend that ban in court. Why why did you make that decision and how do you think it is playing out?

KH: Um .. You are exactly right. I did and and we should also note that my opponent said that he would defend Prop 8, and of course my opponent was not elected. And um the reason I said that and the reason I have refused to defend Prop 8 is, one simple reason, it is unconstitutional. And it has actually been found by a court to be unconstitutional. And frankly Rachel, as the daughter of parents who were active in the civil rights movement, I refuse to stand in the doorway of the wedding chapel blocking same-sex couples' ability to marry.