S S240156

IN THE SUPREME COURT
OF THE
STATE OF CALIFORNIA

DON L. MATHEWS, MICHAEL L. ALVAREZ and WILLIAM OWEN
Plaintiffs and Appellants,
v.
KAMALA HARRIS and JACKIE LACEY
Defendants and Respondents.

On Review From The Court Of Appeal For the Second Appellate District, Division TWO
2nd Civil No. B265900
After An Appeal From the Superior Court of Los Angeles County
Honorable Michael L. Stern , Judge
Case Number BC573135

ANSWER TO PETITION FOR REVIEW

HURRELL CANTRALL LLP
THOMAS C. HURRELL, SBN 119876
MELINDA CANTRALL, SBN 198717
MARIA MARKOVA, SBN 233953
300 SOUTH GRAND AVENUE, SUITE 1300
LOS ANGELES, CALIFORNIA 90071
TELEPHONE: (213) 426-2000
FACSIMILE: (213) 426-2020
Attorneys for Defendant-Respondent JACKIE LACEY

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I. INTRODUCTION

Plaintiffs and Appellants' (plaintiffs) petition this Court for review of three issues that they erroneously contend satisfy the grounds set forth in Rule 8.500(b)(1) for Supreme Court review. Plaintiffs' issues, however, are based on mischaracterizations of the Court of Appeal's decision and related California cases. Moreover, none of the three issues presented for review in plaintiffs' petition is genuinely at issue in this case, and thus, none of the issues warrants review.

Moreover, Supreme Court review is not necessary to secure uniformity in decisions because the Court of Appeal's opinion does not conflict with existing precedent on any issue related to the Child Abuse and Neglect Reporting Act (CANRA). Likewise, a review is not necessary to settle an important question of law because the issues articulated by plaintiffs have little or no bearing on the Court of Appeal's decision, which correctly interprets existing case law regarding the scope and limitations to the psychotherapist patient relationship. Plaintiffs' petition for review should, therefore, be denied.

II. BACKROUND

The Petition seeks review of the January 9, 2017 unanimous order issued by the Court of Appeal, Second Appellate District, affirming the Los Angeles County Superior Court's dismissal of plaintiffs' Complaint with prejudice. The order arose from plaintiffs' challenge to the

constitutionality of Assembly Bill 1775 (AB 1775), a 2014 amendment to the State's mandatory reporting laws designed to protect children from child abuse and exploitation.

The challenged AB 1775 is part of a complex scheme in existence for over 50 years aimed at the protection of children. The amendment was constructed to improve the State's mandatory reporting requirements by clarifying that mandated reporters, such as psychotherapists, are required to report cases of child sexual exploitation, including accessing or consuming child pornography on the Internet. The California Legislature enacted AB 1775 to modernize its long-standing mandatory reporting laws in an effort to combat the growing contagion of child pornography.

Both the Superior Court and the Court of Appeal correctly found the challenged statute is constitutional under the California and United States Constitutions. Now, plaintiffs recycle the same legal arguments rejected by the trial court and the Court of Appeal with respect to AB 1775, with respect to the California Constitution only.

III. REASONS WHY REVIEW SHOULD BE DENIED

Plaintiffs seek review of three issues they allege were decided by the Court of Appeal incorrectly. Plaintiffs do so by misstating the holdings of the Court of Appeal in an attempt to create the impression that there are important issues of law that need to be resolved when, in fact, the Court of Appeal did not issue such rulings in its non-controversial, well-reasoned,

and specifically tailored opinion. The opinion should stand on this basis alone.

Review should also be denied because the presented issues, as articulated, are not important question of law in need of resolution, nor is there any need to secure the uniformity of decisions. Cal. Ct. Rule 8.500(b)(1). Accordingly, the Court should deny plaintiffs' request for review.

A. Review Of Issue One Is Unwarranted Because The Court Did Not Rule That There Is No Legally Protected Privacy Interest When A Patient Reports "Past Crimes" To A Psychotherapist, Whether Sais Crimes are "Morally Reprehensible" Or Not.

Plaintiffs' first issue or review asks: "Whether, under *Hill*, a psychotherapy patient has no constitutional right to privacy and no reasonable expectation of privacy regarding his communications with a psychotherapist under article 1, section 1 of the California Constitution and the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution if such communications involve conduct that constitutes a past crime." As a preliminary matter, plaintiffs appear to seek review of said issue under article 1, section 1 of the California Constitution only. (Petition for Review ["Pet."] 14-24.)

Plaintiffs' first issue challenges the Court of Appeal's finding that psychotherapy patients have no reasonable expectation of privacy, under *Hill v. National Collegiate Athletic Assn.* (1994) 7 Cal.4th 1, 39-40 [26 Cal.Rptr.2d 834] (*Hill*).[1] Plaintiffs argue that the Court of Appeal mandates that a patient's legally protected privacy interest in communications with a psychotherapist does not protect the patient's admission of a crime or conduct that society considers "morally reprehensible." (Pet. 23.) Plaintiffs then theorize that the Court of Appeal's limitation on patient's reasonable expectation of privacy regarding psychotherapy communications would turn psychotherapists into law enforcement agents with respect to any crime that the State decides is "morally repugnant." (Pet. 23-24.)

Based on this distorted contention, plaintiffs argue that the Court of Appeal's decision "finds no support in existing law." (Pet. 24.) Not so. The shortcoming of this argument is that it is not tethered to the actual language of the appellate court's decision. Rather, the Court of Appeal held there is no reasonable expectation of privacy under the circumstances of *this* case. (Appellants' Appendix ("AA") 24.) In other words, the Court

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[1] *Hill* is the seminal California Supreme Court case setting forth the three threshold elements for determining whether a complaint states a cause of action for violation of the state constitutional right to privacy under article 1, section 1, of the California Constitution.

of Appeal's decision was limited to *mandated reporting* within the requirements of CANRA. The Court of Appeal held that as a matter of law there is no expectation of privacy in the disclosure by plaintiffs' patients of the illegal consumption of Internet child pornography. (AA 23.)

Plaintiffs' repeated assertions that the Court of Appeal somehow held that patients have no legally protected interest in communications with a psychotherapist when the patients admit of a crime or conduct that society considers "morally reprehensible" is unsupported by the record. Thus, since plaintiffs' first issue for review does not address the actual holding in the present case, the Court should deny plaintiffs' request for review.

B. Review of Issue Two Is Unwarranted Because The Court of Appeal Did Not Hold That The State Legislature Has Properly Mandated Psychotherapists To Report *All* Patient Conduct To Law Enforcement To Assist With The Prosecution Of Crimes.

Plaintiffs' second issue for review asks "Whether the California Legislature can require psychotherapists to report any patient conduct to law enforcement that it decides will help prosecute and deter crime because California citizens have no fundamental right to any particular form of medical treatment, including psychotherapy." However, the Court of Appeal's decision made no such finding. The Court of Appeal simply affirmed that no fundamental privacy interest guarantees treatment for a

sexual disorder that causes a patient to indulge in the criminal conduct of viewing Internet child pornography, for which mandated reporting is required. (AA 22-23.) Plaintiffs' overblown claims that the Court of Appeal supposedly found that psychotherapy patients have no fundamental right to any form of medical treatment, and thus psychotherapists can be constitutionally required to divulge *any* patient communication that involve a crime, indeed *any* crime, are wholly without support. (Pet. 25.) The decision demonstrates no such mandate. The Court specifically addressed the issue of whether AB 1775 interferes with patients' right to seek treatment for sexual disorders involving the viewing of Internet child pornography. (AA 22.)

Relying on *People v. Younghanz* (1984) 156 Cal.App.3d 811, 816 and *People v. Privitiera* (1979) 23 Cal.3d 697, 702, the Court of Appeal reiterated that the disclosures of patient communications within the psychotherapy relationship that the patient has viewed illegal child pornography on the Internet are neither protected by the privacy provision of the California Constitution nor privileged under *Evidence Code* section 1014. (AA 23.) In other words, the Court of Appeal's decision is entirely consistent with existing precedent on this issue. Since the opinion does not diverge from applicable authorities, the decision does not raise important questions of law.

It is further noteworthy that the Court of Appeal found that plaintiffs' complaint did not allege a legally protected privacy interest on additional grounds independent of its *Younghanz* analysis. (AA 15-21.)

The petition should therefore be denied.

C. Review of Issue Three Is Unwarranted Because This Question Is Not Genuinely at Issue In this Case, And Plaintiffs' Argument Once Again Misstates the Appellate Court's Decision.

Plaintiffs' third issue for review asks: "Whether the California Legislature can permissibly amend CANRA, a statutory scheme intended to protect children from abuse and neglect, to assist law enforcement in criminally prosecuting child pornography viewers because this purpose trumps the patients' constitutional right to privacy in their psychotherapy communications even though this new reporting requirement does not substantially further and is not narrowly tailored to achieve CANRA's laudatory purpose." Yet again, the Court of Appeal's decision made no such determination.

As a preliminary matter, the Court of Appeal correctly held that CANRA satisfies the rational basis test for determination of the validity of a legislative enactment. (AA 2.) Plaintiffs' contention that the state must demonstrate that its mandated reporting requirement serves a "compelling

interest" and is "narrowly tailored" (Pet. 27, 30, 32) to protecting children from abuse is incorrect. (*See*, *Hill*, *supra*, 7 Cal.4th at 40.)

While finding that the State may show, but is not required to, a compelling interest in the circumstances of this case, the appellate court concluded that the privacy rights of patients who report viewing child pornography from the Internet do not outweigh the State's interests in protecting abused and sexually exploited children. (AA 27.) The Court of Appeal's limited conclusion that the possibility of criminal prosecution does not outweigh California's legitimate purpose of protecting children from abuse (AA 31) does not implicate a novel or important issue of law.

The Court of Appeal also noted that it was not persuaded by plaintiffs' contention that the Legislature has unconstitutionally utilized AB 1775 as a vehicle to criminally prosecute child pornography viewers because since 1965, the Legislature has placed CANRA and its child abuse reporting statues in the *Penal Code* as means of protecting children from abuse. (AA 31.)

Substantively, plaintiffs' precise argument is a moving target. First, plaintiffs concede that the Court of Appeal's opinion simply stated that the criminal prosecution of child pornography views permissibly falls within CANRA's purpose. (Pet. 28.) Plaintiffs then leap to make the unsupported argument that the Court of Appeal held that that the Legislature could permissibly amend CANRA to assist law enforcement in criminally

prosecuting child pornography viewers even when said purpose does not further CANRA's purpose. (Pet. 27-28.) Next, plaintiffs improperly extrapolate that the Court of Appeal supposedly found that the prosecution of the perpetrator is the sole new purpose of CANRA as amended by AB 1775 and that it constitutes a compelling interest outweighing psychotherapy patients' rights to privacy.. (*See*, Pet. 30.) Plaintiffs' conclusions are flawed as well as incorrect, and fully overstate the impact of the appellate court's finding that although psychotherapy patients could be criminally prosecuted, this fact does not outweigh California's legitimate purpose of protecting children from abuse and exploitation. (AA 31.) Notably, the court also pointed out that there is no merit to plaintiffs' contention that CANRA and its purposes, including AB 1775's expansion of the definition of sexual exploitation to encompass modern technology via the Internet, have become irrelevant due to any of the other considerations raised by plaintiffs, such as empirical evidence and psychotherapists opinions of the danger presented by their patients, the theory of "hands-on" contact, or the breadth of AB 1775. (AA 31.)

Respectfully, plaintiffs' manufactured legal issues simply do not present grounds for Supreme Court review.

IV. CONCLUSION

Plaintiffs' Petition should be denied.

DATED: March 13, 2017

HURRELL CANTRALL LLP

By: /s/ Maria Markova
THOMAS C. HURRELL
MELINDA CANTRALL
MARIA MARKOVA
Attorneys for Defendant-Respondent JACKIE LACEY

CERTIFICATE OF WORD COUNT

Pursuant to rule 8.204(c) of the California Rules of Court, I hereby certify that this brief contains 1,873 words, including footnotes. In making this certification, I have relied on the word count of the computer program used to prepare the brief.

DATED: March 13, 2017

HURRELL CANTRALL LLP

By: /S/ Maria Markova
THOMAS C. HURRELL
MELINDA CANTRALL
MARIA Z. MARKOVA
Attorneys for Defendant-Respondent JACKIE LACEY

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Los Angeles, State of California. My business address is 300 South Grand Avenue, Suite 1300, Los Angeles, California 90071.

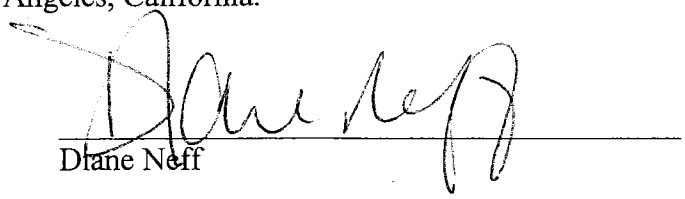
On March 13, 2017, I served true copies of the following document(s) described as **ANSWER TO PETITION TO REVIEW** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Hurrell Cantrall's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 13, 2017, at Los Angeles, California.



Diane Neff

HURRELL CANTRALL LLP
300 SOUTH GRAND AVENUE, SUITE 1300
LOS ANGELES, CALIFORNIA 90071
TELEPHONE (213) 426-2000

SERVICE LIST
Don L. Mathews, et al. v. Kamala D. Harris, et al.
Case No. BC573135

Attorneys for Plaintiffs

Mark Hardiman, Esq.
Jonathan Radke, Esq.
Salvatore Zimmitti, Esq.
NELSON HARDIMAN LLP
11835 West Olympic Blvd.
Suite 900
Los Angeles, CA 90064
Telephone: (310) 203-2800
Facsimile: (310) 203-2727
mhardiman@nelsonhardiman.com
jradke@nelsonhardiman.com
szimmitti@nelsonhardiman.com

Attorneys for Kamla D. Harris in her official capacity as Attorney General of California

Kamala D. Harris
Attorney General of California
Marc A. LeForester
Supervising Deputy Attorney General
S. Michele Inan
Deputy Attorney General
455 Golden Gate Ave, Suite 1100
San Francisco, CA 94102-7004
Telephone: (451) 703-5474
Facsimile: (415) 703-5480

Court of Appeals
Second Appellate District
Division Two
300 S. Spring St.
2nd Floor North Tower
Los Angeles, CA 90013

Los Angeles Superior Court
ATTN: Hon. Michael J. Stern
Dept. 62
111 N. Hill St.
Los Angeles, CA 90012

HURRELL CANTRALL LLP
300 SOUTH GRAND AVENUE, SUITE 1300
LOS ANGELES, CALIFORNIA 90071
TELEPHONE (213) 426-2000