

CLARENCE THOMAS SPEAKS-TO ENGAGE IN ANTI-GAY FEARMONGERING

Adam Bonin notes this curious, short opinion in the larger Citizens United decision endorsing the idea that ballot supports should not have to reveal their identities.

I dissent from Part IV of the Court's opinion, however, because the Court's constitutional analysis does not go far enough. The disclosure, disclaimer, and reporting requirements in BCRA §§201 and 311 are also unconstitutional...

Amici's examples relate principally to Proposition 8, a state ballot proposition that California voters narrowly passed in the 2008 general election. ... Any donor who gave more than \$100 to any committee supporting or opposing Proposition 8 was required to disclose his full name, street address, occupation, employer's name (or business name, if self-employed), and the total amount of his contributions. ¹ See Cal. Govt. Code Ann. §84211(f) (West 2005). The California Secretary of State was then required to post this information on the Internet.

Some opponents of Proposition 8 compiled this information and created Web sites with maps showing the locations of homes or businesses of Proposition 8 supporters. Many supporters (or their customers) suffered property damage, or threats of physical violence or death, as a result. ...

Now more than ever, §§201 and 311 will chill protected speech because—as California voters can attest—"the advent

of the Internet” enables “prompt disclosure of expenditures,” which “provide[s]” political opponents “with the information needed” to intimidate and retaliate against their foes. Thus, “disclosure permits citizens ... to react to the speech of [their political opponents] in a proper”–or undeniably improper –“way” long before a plaintiff could prevail on an as-applied challenge.

I cannot endorse a view of the First Amendment that subjects citizens of this Nation to death threats, ruined careers, damaged or defaced property, or pre-emptive and threatening warning letters as the price for engaging in “core political speech, the ‘primary object of First Amendment protection.’ “

As it happens, as we speak, the Prop 8 plaintiffs have pretty much debunked the claims that Prop 8 supporters are getting harassed at greater rates than Prop 8 opponents. Here’s expert witness Gary Segura calling into doubt whether a Heritage report making such a claim really constitutes proof of the claim.

S: I’m concerned making that leap. Most recent act took place after the election. Also, we’d want to weigh those incidents against the converse. We have testimony from Mayor Sanders about his house being vandalized. The Heritage Foundation report makes no effort to gauge violence and vandalism in the opposite direction. We know that there were over 100 acts of violence against gays and lesbians in 2007. We know that gays and lesbians are more likely to be targeted for violence than any other group. We’d want to consider all of that.

[snip]

B: Heritage foundation backgrounder.
Describe the Heritage Foundation.

S: An extremely conservative think tank.

B: Do you know the author of that
backgrounder?

S: I Googled him.

B: Is he an expert in political science.

S: I was not familiar with his name.
Didn't know him.

B: You sit on a lot of editorial boards
for political science journals. Does
that backgrounder meet the standards to
qualify for a peer-reviewed journal?

S: No. It wouldn't even be submitted for
review.

B: Why?

S: We'd want to look for evidence-
gathering techniques. Accuracy of the
sample of the acts that took place.
Selecting on the dependent variable –
only studying instances where the case
occurred. You only have the presence of
the phenomena, not the absence. Can't
study war and only look at war and not
peace, and describe what leads to war.

B: Do you think those news reports
reached enough viewers to swing the Prop
8 election?

S: It's implausible.

B: The Heritage Foundation document did
not have any information about violence
or vandalism against Prop 8 opponents.

S: No.

Perhaps that's why Clarence Thomas wrote such a
lonely opinion, not shared by any of his
conservative colleagues. Because the claims that
anti-gay haters are being disproportionately

harassed just don't stand up to scrutiny.