

FILED

UNITED STATES COURT OF APPEALS

AUG 21 2012

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

LIBERTARIAN PARTY OF LOS  
ANGELES COUNTY et al.,

Plaintiffs - Appellants,

v.

DEBRA BOWEN, in her official capacity  
as Secretary of State of California,

Defendant - Appellee.

No. 11-55316

D.C. No. 2:10-cv-02488-PSG-OP  
Central District of California,  
Los Angeles

ORDER

Before: PREGERSON, GRABER, and BERZON, Circuit Judges.

This case is referred to the Circuit Mediation Office for mediation, and its submission is withdrawn and the case deferred pending further order of the court.

The Circuit Mediator will contact the parties to schedule mediation and shall provide a status report to the panel within sixty (60) days following this order.

To further the mediation effort, we note that, "when the threatened enforcement effort implicates First Amendment rights, the inquiry tilts dramatically toward a finding of standing." LSO, Ltd. v. Stroh, 205 F.3d 1146, 1155 (9th Cir. 2000). The facts of this case are similar to the facts in Arizona Right to Life Political Action Committee v. Bayless, 320 F.3d 1002 (9th Cir. 2003), in which we held that the plaintiffs had standing to bring a pre-enforcement

challenge to state statutes regulating political activity. By contrast, the facts of this case differ from those in Thomas v. Anchorage Equal Rights Commission, 220 F.3d 1134 (9th Cir. 2000) (en banc), in which we held that the plaintiffs lacked standing. Here, unlike in Thomas, the Secretary of State has issued official instructions stating that all circulators of petitions must comply with the challenged statutes, and requires those who circulate petitions to file declarations under penalty of perjury directed at determining compliance with those statutes. This case therefore presents the question whether there is a cognizable injury for standing purposes when individuals are specifically ordered to comply with state statutory law by governmental officials, and required to provide information demonstrating compliance, a different standing question from that in Thomas.

Libertarian Party of Los Angeles County v. Bowen, No. 11-55316

GRABER, Circuit Judge, concurring:

I concur in the order directing the parties to mediate. I write separately to remind the parties of our independent discretion under the prudential ripeness doctrine to decline to exercise jurisdiction over this case. Thomas v. Anchorage Equal Rights Comm'n, 220 F.3d 1134, 1141–42 (9th Cir. 2000) (en banc). Even if constitutional jurisdictional requirements are met, the Secretary of State has presented non-frivolous arguments that the vague allegations render this case "unfit for judicial resolution" and that there is little to no hardship to Plaintiffs of "withholding court consideration" at this time. Id. at 1141 (internal quotation marks omitted).