

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE U.D. REGISTRY, INC.,

Plaintiff and Appellant,

v.

THE STATE OF CALIFORNIA et al.,

Defendants and Appellants.

B179653 & B186012

(Los Angeles County
Super. Ct. No. BC287331)

ORDERS MODIFYING
OPINION AND DENYING
REHEARING PETITION

[NO CHANGE IN JUDGMENT]

The opinion filed on October 30, 2006, is modified as follows:

1. On page 2, line 14, change “defendants from disclosing” to “defendants from enforcing section 1785.11.2 as to”
2. On page 4, line 2, replace “Equinox” with “Equifax”

* Pursuant to California Rules of Court, rules 976(b) and 976.1, this opinion is certified for publication with the exception of part IV.

3. On page 25, line 9, change “invalid its face” to “invalid on its face”

4. On page 27, line 9, replace “to freeze release” with “to freeze the release of”

5. On page 30, line 22, replace “not merely to of plaintiff” with “not merely to plaintiff”

6. On page 31, line 11, change “plaintiff’s opening brief” to “defendants’ opening brief”

7. On page 29, after the conclusion of the first paragraph and above the notation to the Reporter of Decisions concerning the unpublished portion of the opinion, insert the following as a new paragraph:

For the first time in the rehearing petition, plaintiff argues the requirement recognized in *Tobe v. City of Santa Ana*, *supra*, 9 Cal.4th at page 1084 that a party mounting a facial attack on a statute demonstrate the challenged provision presents a “present total and fatal conflict” with the applicable constitutional prohibition does not apply to an overbreadth question in the free expression context. Plaintiff’s analysis is incorrect. (*Secretary of State of Md. v. Joseph H. Munson Co., Inc.* (1984) 467 U.S. 947, 967-968 [“Where, as here, a statute imposes a direct restriction on protected First Amendment activity, and where the defect in the statute is that the means chosen to accomplish the State’s objectives are too imprecise, so that in all its applications the statute creates an unnecessary risk of chilling free speech, the statute is properly subject to facial attack.”]; *People v. Stanistreet* (2002) 29 Cal.4th 497, 511, fn. 5.) Moreover, as

noted, insufficient evidence was presented to support the trial court's facial overbreadth conclusions. The evidence before the trial court related to *plaintiff's* credit reports. There was no evidence as to industry wide practices or other credit reporting agency's reports. Plaintiff presented *no* evidence as to whether section 1785.11.2 impinges upon the free expression rights of a substantial portion of those credit reporting agencies to whom it applies. (See *American Academy of Pediatrics v. Lungren* (1997) 16 Cal.4th 307, 348.)

8. On page 31, line 10, delete the entire paragraph. In its place, insert as a new paragraph:

We need not address plaintiff's equal protection argument. As it relates to the as applied issue, we have ruled in plaintiff's favor and the issue is moot. As to the facial challenge, the equal protection issue changes nothing. Plaintiff has failed to comply with the requirement recognized in *Tobe v. City of Santa Ana, supra*, 9 Cal.4th at page 1084 that it demonstrate that section 1785.11.2 violates equal protection principles in all circumstances.

The rehearing petition is denied.

TURNER, P. J.

KRIEGLER, J.