

P O R T E R S C O T T

A PROFESSIONAL CORPORATION

Terence J. Cassidy, SBN 99180

Kristina M. Hall, SBN 196794

350 University Ave., Suite 200

Sacramento, California 95825

TEL: 916.929.1481

FAX: 916.927.3706

Attorneys for Defendant JAN SCULLY, in her official capacity

UNITED STATES DISTRICT COURT**EASTERN DISTRICT OF CALIFORNIA**

PROTECTMARRIAGE.COM - YES ON 8, A
PROJECT OF CALIFORNIA RENEWAL;
NATIONAL ORGANIZATION FOR
MARRIAGE CALIFORNIA - YES ON 8,
SPONSORED BY NATIONAL
ORGANIZATION FOR MARRIAGE, JOHN
DOE #1, an individual and as representative
of the CLASS OF MAJOR DONORS,

Case No. 2:09-CV-00058-MCE-DAD

**DEFENDANT JAN SCULLY'S ANSWER
TO THIRD AMENDED COMPLAINT
AND DEMAND FOR JURY TRIAL**

Plaintiffs,

vs.

DEBRA BOWEN, Secretary of State for the
State of California, in her official capacity;
EDMUND G. BROWN, JR., Attorney
General for the State of California, in his
official capacity; DEAN C. LOGAN,
Registrar-Recorder of Los Angeles County,
California, in his official capacity;
DEPARTMENT OF ELECTIONS - CITY
AND COUNTY OF SAN FRANCISCO; JAN
SCULLY, District Attorney for Sacramento
County, California in her official capacity and
as a representative of the Class of District
Attorneys in the State of California; DENNIS
J. HERRERA, City Attorney for the City and
County of San Francisco, California, in his
official capacity and as a representative of the
Class of Elected City Attorneys in the State of
California; ROSS JOHNSON, TIMOTHY
HODSON, EUGENE HUGUENIN, JR.,
ROBERT LEIDIGH and RAY REMY,
members of the California Fair Political
Practices Commision, in their official
capacities,

Defendants.

1 Defendant JAN SCULLY, in her official capacity as District Attorney for the County
2 of Sacramento, hereby answers Plaintiffs' Third Amended Complaint as follows:

3 **INTRODUCTION**

4 1. Answering paragraphs 1, 2, 3 and 4, this answering Defendant contends that
5 said paragraphs contain conclusions of law and not averments of fact to which an answer
6 may be required, but insofar as an answer may be deemed required, this answering Defendant
7 generally and specifically denies each and every allegation in said paragraphs.

8 **I.**

9 **JURISDICTION AND VENUE**

10 2. Answering paragraphs 5, 6 and 7, this answering Defendant contends that said
11 paragraphs contain conclusions of law and not averments of fact to which an answer may be
12 required, but insofar as an answer may be deemed required, this answering Defendant
13 generally and specifically denies each and every allegation in said paragraphs.

14 **II.**

15 **PARTIES**

16 3. Answering paragraphs 8, 9, 10, 11, 12, 13 and 14, this answering Defendant
17 lacks sufficient information or knowledge to enable her to answer the allegations contained
18 in said paragraph, and basing her denial on that ground, generally and specifically denies
19 each and every allegation contained in said paragraphs.

20 4. Answering paragraph 15, this answering Defendant admits that Debra Bowen
21 is the Secretary of State of California. Answering the remaining allegations contained in said
22 paragraph, this answering Defendant contends that said paragraph contains conclusions of
23 law and not averments of fact to which an answer may be required, but insofar as an answer
24 may be deemed required, this answering Defendant generally and specifically denies each
25 and every remaining allegation in said paragraph.

26 5. Answering Paragraph 16, this answering Defendant admits that Edmund
27 Brown, Jr., is the Attorney General of California. Answering the remaining allegations
28 contained in said paragraph, this answering Defendant contends that said paragraph contains

1 conclusions of law and not averments of fact to which an answer may be required, but insofar
2 as an answer may be deemed required, this answering Defendant generally and specifically
3 denies each and every remaining allegation in said paragraph.

4 6. Answering Paragraphs 17 and 18, this answering Defendant lacks sufficient
5 information or knowledge to enable her to answer the allegations contained in said
6 paragraphs, and basing her denial on that ground, generally and specifically denies each and
7 every allegation contained in said paragraphs.

8 7. Answering paragraph 19, this answering Defendant admits that she is the duly
9 elected District Attorney for Sacramento County, California. Answering the remaining
10 allegations contained in said paragraph, this answering Defendant contends that said
11 paragraph contains conclusions of law and not averments of fact to which an answer may be
12 required, but insofar as an answer may be deemed required, this answering Defendant
13 generally and specifically denies each and every allegation in said paragraph.

14 8. Answering paragraphs 20 and 21, this answering Defendant lacks sufficient
15 information or knowledge to enable her to answer the allegations contained in said
16 paragraphs, and basing her denial on that ground, generally and specifically denies each and
17 every allegation contained in said paragraphs. In addition, Defendant contends that said
18 paragraphs contain conclusions of law and not averments of fact to which an answer may be
19 required, but insofar as an answer may be deemed required, this answering Defendant
20 generally and specifically denies each and every allegation in said paragraphs.

21 III.

22 CLASS ACTION ALLEGATIONS

23 9. Answering paragraphs 22 and 23, Defendant contends that said paragraphs
24 contain conclusions of law and not averments of fact to which an answer may be required,
25 but insofar as an answer may be deemed required, this answering Defendant generally and
26 specifically denies each and every allegation in said paragraphs.

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28 ///

1 **IV.**

2 **FACTS**

3 10. Answering paragraphs 24, 25, 26, 27 and 28, this answering Defendant lacks
4 sufficient information or knowledge to enable her to answer the remaining allegations
5 contained in said paragraphs, and basing her denial on that ground, generally and specifically
6 denies each and every allegation contained in said paragraphs.

7 11. Answering paragraphs 29, 30, 31, 32, 33, 34 and 35, this answering Defendant
8 lacks sufficient information or knowledge to enable her to answer the allegations contained
9 in said paragraphs, and basing her denial on that ground, generally and specifically denies
10 each and every allegation contained in said paragraphs. In addition, Defendant contends that
11 said paragraphs contain conclusions of law and not averments of fact to which an answer
12 may be required, but insofar as an answer may be deemed required, this answering Defendant
13 generally and specifically denies each and every allegation in said paragraphs.

14 12. Answering paragraphs 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47 and 48, this
15 answering Defendant lacks sufficient information or knowledge to enable her to answer the
16 allegations contained in said paragraphs, and basing her denial on that ground, generally and
17 specifically denies each and every allegation contained in said paragraphs.

18 13. Answering paragraphs 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63,
19 64, 65, this answering Defendant contends that said paragraphs contain conclusions of law
20 and not averments of fact to which an answer may be required, but insofar as an answer may
21 be deemed required, this answering Defendant generally and specifically denies each and
22 every allegation in said paragraphs.

23 **V.**

24 **COUNT 1**

25 14. Answering paragraph 66, this answering Defendant incorporates by reference
26 her responses to paragraphs 1 through 65 as though fully restated herein.

27 15. Answering paragraphs 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77 and 78
28 (including footnotes), this answering Defendant contends that said paragraphs contain

1 conclusions of law and not averments of fact to which an answer may be required, but insofar
2 as an answer may be deemed required, this answering Defendant generally and specifically
3 denies each and every allegation in said paragraphs.

4 16. Answering paragraphs 79, 80, 81, 82, 83, 84 and 85, this answering Defendant
5 lacks sufficient information or knowledge to enable her to answer the allegations contained
6 in said paragraphs, and basing her denial on that ground, generally and specifically denies
7 each and every allegation contained in said paragraphs. In addition, Defendant contends that
8 said paragraphs contain conclusions of law and not averments of fact to which an answer
9 may be required, but insofar as an answer may be deemed required, this answering Defendant
10 generally and specifically denies each and every allegation in said paragraphs.

11 **Prayer for Relief**

12 17. Answering paragraph 86 and its subparagraphs of Plaintiffs' Prayer for Relief,
13 this answering Defendant contends that said paragraphs do not contain averments of fact to
14 which an answer may be required, but insofar as an answer may be deemed required,
15 Defendant generally and specifically denies each and every allegation in said paragraphs.

16 **VI.**

17 **COUNT 2**

18 18. Answering paragraph 87, this answering Defendant incorporates by reference
19 her responses to paragraphs 1 through 86 as though fully restated herein.

20 19. Answering paragraphs 88, 89, 90, 91, 92, 93, 94, 95, 96, 97 and 98, this
21 answering Defendant lacks sufficient information or knowledge to enable her to answer the
22 allegations contained in said paragraphs, and basing her denial on that ground, generally and
23 specifically denies each and every allegation contained in said paragraphs. In addition,
24 Defendant contends that said paragraphs contain conclusions of law and not averments of
25 fact to which an answer may be required, but insofar as an answer may be deemed required,
26 this answering Defendant generally and specifically denies each and every allegation in said
27 paragraphs.

28 ///

1 **Prayer for Relief**

2 20. Answering paragraph 99 and its subparagraphs of Plaintiffs' Prayer for Relief,
3 this answering Defendant contends that said paragraphs do not contain averments of fact to
4 which an answer may be required, but insofar as an answer may be deemed required,
5 Defendant generally and specifically denies each and every allegation in said paragraphs.

6 **VII.**

7 **COUNT 3**

8 21. Answering paragraph 100, this answering Defendant incorporates by reference
9 her responses to paragraphs 1 through 99 as though fully restated herein.

10 22. Answering paragraphs 101, 102, 103, 104, 105, 106, 107, 108, 109 and 110,
11 this answering Defendant contends that said paragraphs contain conclusions of law and not
12 averments of fact to which an answer may be required, but insofar as an answer may be
13 deemed required, this answering Defendant generally and specifically denies each and every
14 allegation in said paragraphs.

15 **Prayer for Relief**

16 23. Answering paragraph 111 and its subparagraphs of Plaintiff's Prayer for Relief,
17 this answering Defendant contends that said paragraphs do not contain averments of fact to
18 which an answer may be required, but insofar as an answer may be deemed required,
19 Defendant generally and specifically denies each and every allegation in said paragraphs.

20 **VIII.**

21 **COUNT 4**

22 24. Answering paragraph 112, this answering Defendant incorporates by reference
23 her responses to paragraphs 1 through 111 as though fully restated herein.

24 25. Answering paragraphs 113, 114, 115, 116, 117, 118, 119, 120, 121, 122 and
25 123, this answering Defendant lacks sufficient information or knowledge to enable her to
26 answer the allegations contained in said paragraphs, and basing her denial on that ground,
27 generally and specifically denies each and every allegation contained in said paragraphs. In
28 addition, Defendant contends that said paragraphs contain conclusions of law and not

1 averments of fact to which an answer may be required, but insofar as an answer may be
2 deemed required, this answering Defendant generally and specifically denies each and every
3 allegation in said paragraphs.

4 **Prayer for Relief**

5 26. Answering paragraph 124 and its subparagraphs of Plaintiffs' Prayer for Relief,
6 this answering Defendant contends that said paragraphs do not contain averments of fact to
7 which an answer may be required, but insofar as an answer may be deemed required,
8 Defendant generally and specifically denies each and every allegation in said paragraphs.

9 **AFFIRMATIVE DEFENSES**

10 **FIRST AFFIRMATIVE DEFENSE**

11 The Complaint fails to state facts sufficient to constitute claims upon which relief can
12 be granted against this answering Defendant.

13 **SECOND AFFIRMATIVE DEFENSE**

14 Plaintiffs' demand to enjoin this answering Defendant is barred, as Plaintiffs have
15 suffered neither harm nor irreparable harm as a result of any of this Defendant's actions, and
16 Plaintiffs have an adequate remedy at law.

17 **THIRD AFFIRMATIVE DEFENSE**

18 Plaintiffs' claims against this answering Defendant are not ripe for adjudication and/or
19 are moot.

20 **FOURTH AFFIRMATIVE DEFENSE**

21 Plaintiffs' claims against this answering Defendant are barred by the doctrine of
22 abstention.

23 **FIFTH AFFIRMATIVE DEFENSE**

24 This matter is not an appropriate class action and Defendant is not a class
25 representative and therefore any judgment cannot bind any other purported party other than
26 Defendant.

27 **SIXTH AFFIRMATIVE DEFENSE**

28 Defendant is mandated by statute to enforce the codified laws of the State of

1 California and therefore this action against her is without basis in law.

2 **SEVENTH AFFIRMATIVE DEFENSE**

3 Plaintiffs' claims and each of them are barred on the grounds that Plaintiffs lack any
4 remedy and therefore the Court lacks jurisdiction over any such claims.

5 WHEREFORE, Defendant JAN SCULLY prays for judgment as follows:

- 6 1. That Plaintiffs' action be dismissed;
- 7 2. That Plaintiffs take nothing by way of their Complaint;
- 8 3. That Defendant be awarded her costs of suit, including attorney fees; and,
- 9 4. For such other relief as the Court deems proper.

10
11 Respectfully submitted,

12 Dated: June 15, 2009

PORTER SCOTT
A PROFESSIONAL CORPORATION

13 By /s/Terence J. Cassidy
14 Terence J. Cassidy
15 Attorney for Defendant
16 JAN SCULLY, District Attorney for
Sacramento County, California in her
official capacity

17
18 **DEMAND FOR JURY TRIAL**

19 Defendant JAN SCULLY hereby demands a trial by jury in the above-entitled action
20 as provided by the Seventh Amendment to the United States Constitution and Rule 38 of the
21 Federal Rules of Civil Procedure.

22 Respectfully submitted,

23 Dated: June 15, 2009

PORTER SCOTT
A PROFESSIONAL CORPORATION

24 By /s/Terence J. Cassidy
25 Terence J. Cassidy
26 Attorney for Defendant
27 JAN SCULLY, District Attorney for
Sacramento County, California in her
official capacity