

**FILED**

JUL 25 2012

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

**FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

**RICHARD STENGEL; MARY LOU  
STENGEL,**

Plaintiffs - Appellants,

v.

**MEDTRONIC INCORPORATED, a  
foreign corporation,**

Defendant - Appellee.

No. 10-17755

D.C. No. 4:10-cv-00318-RCC

**ORDER**

**KOZINSKI**, Chief Judge:

Upon the vote of a majority of nonrecused active judges, it is ordered that this case be reheard en banc pursuant to Fed. R. App. P. 35(a) and Circuit Rule 35-3. The three-judge panel opinion shall not be cited as precedent by or to any court of the Ninth Circuit.

Judges Wardlaw, Murguia and Hurwitz did not participate in the deliberations or vote as to whether the case should be taken en banc.