

Case No. 09-16959

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

KRISTIN M. PERRY, SANDRA B. STIER, PAUL T. KATAMI, and JEFFREY J. ZARRILLO, Plaintiffs/Appellees

v.

ARNOLD SCHWARZENEGGER, in his official capacity as Governor of California; EDMUND G. BROWN, JR., in his official capacity as Attorney General of California, MARK B. HORTON, in his official capacity as Director of the California Department of Public Health and State Registrar of Vital Statistics; LINETTE SCOTT, in her official capacity as Deputy Director of Health Information & Strategic Planning for the California Department of Public Health; PATRICK O'CONNELL, in his official capacity as Clerk-Recorder for the County of Alameda; and DEAN C. LOGAN, in his official capacity as Registrar-Recorder/ County Clerk for the County of Los Angeles, Defendants.

CAMPAIGN FOR CALIFORNIA FAMILIES, Proposed Intervenor-Defendant/Appellant

PROPOSITION 8 OFFICIAL PROPONENTS DENNIS HOLLINGSWORTH, GAIL J. KNIGHT, MARTIN F. GUTIERREZ, HAK-SHING WILLIAM TAM, and MARK A. JANSSON; and PROTECTMARRIAGE.COM-YES ON 8, A PROJECT OF CALIFORNIA RENEWAL, Intervenor-Defendants/Appellees

Appeal from the United States District Court for the Northern District of California
Honorable Vaughn R. Walker, U.S. District Judge
Case No. CV-09-02292 VRW

APPELLANT'S MOTION TO EXPEDITE ORAL ARGUMENT

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Appellant, proposed Defendant-Intervenor Campaign for California Families (the “Campaign”), moves this Court to expedite the oral argument on its appeal against Plaintiffs/Appellees KRISTIN M. PERRY, SANDRA B. STIER, PAUL T. KATAMI, and JEFFREY J. ZARRILLO (“Plaintiffs”) and Intervenor-Defendants/Appellees PROPOSITION 8 OFFICIAL PROPONENTS DENNIS HOLLINGSWORTH, GAIL J. KNIGHT, MARTIN F. GUTIERREZ, HAK-SHING WILLIAM TAM, and MARK A. JANSSON and PROTECTMARRIAGE.COM-YES ON 8, A PROJECT OF CALIFORNIA RENEWAL (“Intervenor-Defendants”).

The Campaign makes this motion pursuant to 9th Cir. R. 34-3 on the grounds that in the absence of expedited scheduling for oral argument, Appellant will be foreclosed from meaningful participation in discovery, trial preparation and trial of the underlying action regardless of this Court’s resolution of the appeal. As a result, the appeal will be rendered effectively moot, which provides good cause for expediting oral argument under 28 U.S.C. §1657.

PARTIES’ POSITION ON THE MOTION

The Campaign’s counsel has contacted counsel for the other parties regarding their position on this motion. The County of Los Angeles and County of Alameda have responded that they have no position on the motion. The Attorney General, Plaintiff-Intervenor City and County of San Francisco do not oppose the motion. Plaintiffs, Administration Defendants (Arnold Schwarzenegger, Linette Scott and Mark Horton) and Defendant-Intervenors did not

respond.

INTRODUCTION

Appellant, Campaign for California Families (“the Campaign”), is seeking to intervene as a Defendant in Plaintiffs’ District Court action challenging California constitutional and statutory provisions defining marriage as the union of a man and a woman as violative of their rights to due process and equal protection under the United States Constitution. The District Court denied the motion, and the Campaign is asking this Court to overrule that determination so that the Campaign can participate in discovery, pre-trial and trial proceedings and contribute toward development of the factual record the District Court will need to properly analyze Plaintiffs’ claims. Under the pre-trial and trial schedule adopted by the District Court, discovery will be concluded on November 30, 2009 and pre-trial submissions will be filed by December 6, 2009 in preparation for a January 11, 2010 trial date.

This Court has granted the Campaign’s motion to expedite the appeal, in part, by setting accelerated briefing deadlines and a hearing date during December 2009. However, if oral argument is not held until December, then the Campaign will be foreclosed from participating in discovery or submitting pre-trial information before this Court can render its decision in this appeal, and would not have sufficient time to prepare for the January 11, 2010 trial. The Campaign would be prevented from meaningfully participating in development of the evidentiary record or the legal analysis, even if this Court were to decide that the Campaign should be a party to the proceedings.

In order to preserve the Campaign's rights as a potential party, the Campaign requests that the Court expedite oral argument and place this matter on its calendar no later than November 2009.

LEGAL ARGUMENT

Ninth Cir. Rule 34-3 provides that an appellant may move to expedite the hearing or submission of a case pursuant to 28 U.S.C. § 1657 appeal for good cause, and that such motions should be filed expeditiously. On September 14, 2009, this Court granted the Campaign's motion to expedite the appeal, in part, by setting an expedite briefing schedule. However, the Court indicated that the matter would not be heard until the December 2009 hearing calendar. Postponing oral argument until December 2009 will essentially render the appeal, even with an expedited briefing schedule, moot, as it will foreclose the Campaign from participating in discovery and pre-trial submissions, and perhaps even the trial regardless of whether this Court decides in the Campaign's favor.

The District Court's pre-trial/trial scheduling order provides that the parties must complete discovery, except for follow up expert discovery, by November 30, 2009. (Minute Order after hearing, Exhibit A to the Declaration of Mary E. McAlister, "McAlister Declaration"). The pre-trial conference is scheduled for December 16, 2009 and trial on January 11, 2010. (Exhibit A). The pre-trial order issued on August 24, 2009 provides that the parties must submit trial memoranda, proposed findings of fact, pre-marked exhibits, witness lists, motions in limine and expert designations by December 6, 2009. (Exhibit B, McAlister

Declaration). According to the calendar posted on this Court's Web site, oral arguments are scheduled for December 7-11, after all of the pre-trial submissions must be filed with the District Court. Consequently, if this matter is not heard by this Court until December, the Campaign will not be permitted to participate in discovery, submit a trial memorandum, exhibits or motions in limine. Furthermore, if the hearing panel does not immediately issue an opinion, the Campaign may be foreclosed from any participation in the trial, and certainly will be prevented from engaging in meaningful preparation. As a result, a favorable ruling by this Court would be of no effect for the Campaign, and the parties would have succeeded in excluding the Campaign from the case by default. By contrast, if this case is heard in November 2009, and the Campaign prevails, then the Campaign will have an opportunity to participate, even minimally in discovery, to prepare exhibits, a trial memoranda, witness lists and motions in limine prior to trial and participate in trial.

The Campaign should have the opportunity to have its appeal heard by this Court and, if successful, to benefit from having brought the appeal. Maintaining a December 2009 oral argument date would foreclose that possibility. Therefore, good cause exists for expediting oral argument under 28 U.S.C. §1657 from December 2009 to no later than November 2009.

CONCLUSION

If oral argument is not expedited, then the Campaign will be unable to meaningfully participate as a party in the District Court, even if this Court decides that the Campaign is so entitled. Consequently, the Campaign respectfully requests that the Court grant this motion

and expedite oral argument.

Dated: September 15, 2009

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PROOF OF SERVICE

I am employed at the law firm of Liberty Counsel. I am over the age of 18 and not a party to the within action. My business address is 100 Mountain View Road, Suite 2775, Lynchburg Virginia 24502.

On September 15, 2009 I electronically filed this document through the ECF system, which will send a notice of electronic filing to the parties as shown on the attached **SERVICE LIST**.

On September 15, 2009, I also sent a copy via electronic mail to all of the parties listed on the attached **SERVICE LIST**.

Executed on September 15, 2009, at Lynchburg, Virginia.

I declare under penalty of perjury under the laws of the United States of America and State of California that the above is true and correct.

/s/ Mary E. McAlister

Mary E. McAlister

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