

Nos. 09-17241, 09-17551

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

KRISTIN M. PERRY, et al.,
Plaintiffs-Appellees,

v.

DENNIS HOLLINGSWORTH, et al.
Defendant-Intervenors-Appellees.

Appeal from United States District Court for the Northern District of California
Civil Case No. 09-CV-2292 VRW (Honorable Vaughn R. Walker)

**APPELLANTS'/PETITIONERS' CERTIFICATE DESIGNATING
PREVIOUSLY FILED MOTIONS FOR A STAY AS
EMERGENCY MOTIONS UNDER 9TH CIR. R. 27-3**

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9th Cir. R. 27-3 Certificate

Pursuant to 9th Cir. R. 27-3, Appellants/Petitioners in Case Nos. 09-17241 and 09-17551 respectfully certify that their previously filed motions for a stay pending appeal are now emergency motions requiring “relief ... in less than 21 days” to “avoid irreparable harm.” *See* File # 7129821, Case No. 09-17241 (filed Nov. 13, 2009); File # 7133699-0, Case No. 09-17241 (filed Nov. 17, 2009).

Appellants/Petitioners are a “primarily formed ballot committee” and the “official proponents” of Proposition 8 (collectively, “Proponents”), who were permitted to intervene in this case to defend that California ballot initiative. The appeals (or, in the alternative, petitions for writs of mandamus) at issue concern the district court’s denial of Proponents’ claim of First Amendment privilege over certain internal, confidential political communications and documents requested by Plaintiffs in discovery. At the time Proponents filed their stay motions, the district court had not set a date certain by which production had to occur and thus the motions did not qualify for “emergency” or “urgent” treatment under 9th Cir. R. 27-3. The court has now ordered that the documents at issue be produced on a rolling basis to be concluded by November 30, 2009. Doc. 259 (attached as Exhibit 1).

On November 16, 2009, the Plaintiffs requested that the district court “enter an order directing Proponents to produce the documents and categories of

documents that the Court found to be relevant, responsive and non-privileged in the November 11 Order, and that such production occur within three days of issuance of the order compelling production.” Doc. 256 at 2. Plaintiffs argued that they should not have to await production of the documents for the period established by Fed. R. App. P. 27 while this Court considers the stay motion. Doc. 256 at 2.¹ Despite this objection, Plaintiffs have yet to file any response to Proponents’ stay motions.

On November 19, 2009, the district court—per Magistrate Judge Spero—entered an order stating:

The twenty-one documents identified by the court in its November 11 order as responsive and not privileged shall be designated “attorneys eyes only” and produced to plaintiffs not later than the close of fact discovery on Monday, November 30, 2009. Similarly, proponents shall produce the additional documents responsive to plaintiffs’ eighth document request on a rolling basis to conclude not later than the close of fact discovery on November 30, 2009.

Ex. 1 (Doc. 259) at 6. Accordingly, to avoid the irreparable harm that would occur from production of these documents before this Court has a chance to adjudicate Proponents’ claim of privilege, an immediate stay is necessary.

¹ Plaintiffs also claimed that Proponents did not seek expedited treatment of the stay request,” *id.* Yet in both motions, in order to minimize any delay caused by this Court’s consideration, Proponents explicitly “ask[ed] that the Court expedite these appeals.” *See* File # 7129821 at 25, Case No. 09-17241 (filed Nov. 13, 2009); File # 7133699-0 at 25, Case No. 09-17241 (filed Nov. 17, 2009).

Counsel for the other parties have previously been served with Proponents' motions for a stay, either through the Court's electronic filing system or through United States mail. Before filing this certificate, Proponents' counsel notified counsel for the other parties of its imminent filing with the Court and served a copy by email. As the motions for a stay indicate, "the grounds advanced in support thereof ... were submitted to the district court" and denied in a series of orders filed on October 1, 2009 (Doc. 214), October 23, 2009 (Doc. 237), and November 11, 2009 (Doc. 252).

Pursuant to 9th Cir. R. 27-3(a)(3)(i), the telephone numbers and addresses of the attorneys for the parties are as follows:

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Respectfully submitted,

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