

**Nos. 09-17241, 09-17551**

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

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

**v.**

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

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

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

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Andrew P. Pugno  
LAW OFFICES OF ANDREW P. PUGNO  
101 Parkshore Drive, Suite 100  
Folsom, California 95630  
(916) 608-3065; (916) 608-3066 Fax

Brian W. Raum  
James A. Campbell  
ALLIANCE DEFENSE FUND  
15100 North 90th Street  
Scottsdale, Arizona 85260  
(480) 444-0020; (480) 444-0028 Fax

Charles J. Cooper  
David H. Thompson  
Howard C. Nielson, Jr.  
Nicole J. Moss  
Jesse Panuccio  
Peter A. Patterson  
COOPER AND KIRK, PLLC  
1523 New Hampshire Ave., N.W.  
Washington, D.C. 20036  
(202) 220-9600; (202) 220-9601 Fax

*Attorneys for Defendant-Intervenors-Appellants/Petitioners*

### **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.<sup>1</sup> 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.

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<sup>1</sup> 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:

**Attorneys for Plaintiffs Kristin M. Perry, Sandra B. Stier, Paul T. Katami, and Jeffrey J. Zarillo:**

Theodore B. Olson  
Matthew C. McGill  
Amir C. Tayrani  
GIBSON, DUNN & CRUTCHER,  
LLP

1050 Connecticut Avenue, NW  
Washington, D.C. 20036  
(202) 955-8668  
Fax: (202) 467-0539  
tolson@gibsondunn.com

Theodore J. Boutrous, Jr.  
Christopher D. Dusseault  
Ethan D. Dettmer  
Theane Evangelis Kapur  
Enrique A. Monagas

**GIBSON, DUNN & CRUTCHER,  
LLP**

333 S. Grand Avenue  
Los Angeles, CA 90071  
(213) 229-7804  
Fax: (213) 229-7520  
tboutrous@gibsondunn.com

**David Boies  
Theodore H. Uno  
BOIES, SCHILLER & FLEXNER,  
LLP**

333 Main St  
Armonk, NY 10504  
(914) 749-8200  
Fax: (914) 749-8300  
dboies@bsfllp.com

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**Attorney for Defendant Clerk-Recorder Patrick O'Connell:**

Claude Franklin Kolm  
Lindsey G. Stern  
COUNTY OF ALAMEDA  
1221 Oak Street, Suite 450  
Oakland, CA 94612-4296  
(510) 272-6710  
claude.kolm@acgov.org

---

**Attorneys for Plaintiff-Intervenor City and County of San Francisco:**

Dennis J. Herrera, City Attorney  
Therese Stewart, Chief Deputy City Attorney  
Danny Chou, Chief of Complex and Special Litigation  
Vince Chhabria, Deputy City Attorney  
Erin Bernstein, Deputy City Attorney  
Christine Van Aken, Deputy City Attorney  
Mollie M. Lee, Deputy City Attorney  
CITY AND COUNTY OF SAN FRANCISCO  
OFFICE OF THE CITY ATTORNEY  
1 Dr. Carlton B. Goodlett Place  
Room 234  
San Francisco, CA 4102-4682  
(415) 554-4708  
Fax: (415) 554-4655  
Therese.stewart@sf.gov.org

---

**Attorneys for Defendants Governor Arnold Schwarzenegger, Director**

**Mark B. Horton, and Deputy Director Linette Scott:**

Kenneth C. Mennemeier  
Andrew Walter Stroud  
MENNEMEIER GLASSMAN & STROUD LLP  
980 9th St, Ste 1700  
Sacramento, CA 95814  
(916) 553-4000  
Fax: (916) 553-4011  
kcm@mgsllaw.com

---

**Attorneys for Defendant Attorney General Edmund G. Brown, Jr.:**

Gordon Bruce Burns  
Attorney General's Office, Dept. of Justice  
1300 I Street, 17th Floor  
Sacramento, CA 95814  
(916) 324-3081  
Gordon.Burns@doj.ca.gov

Tamar Pachter  
Office of the California Attorney General  
455 Golden Gate Ave, Suite 11000  
San Francisco, CA 94102-7004  
(415) 703-5970  
Fax: (415) 703-1234  
Tamar.Pachter@doj.ca.gov

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**Attorney for Defendant Registrar-Recorder Dean C. Logan:**

Judy Whitehurst  
OFFICE OF COUNTY COUNSEL –

COUNTY OF LOS ANGELES  
500 West Temple St  
Los Angeles, CA 90012  
(213) 974-1845  
JWhitehurst@counsel.lacounty.gov

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**Attorneys for Defendant-  
Intervenors Dennis Hollingsworth,  
Gail J. Knight, Martin F. Gutierrez,  
Hak-Shing William Tam, Mark A.  
Jansson, and  
ProtectMarriage.com—Yes on 8, A  
Project of California Renewal:**

Charles J. Cooper  
David H. Thompson  
Howard C. Neilson, Jr.  
Nicole J. Moss  
Jesse Panuccio  
Peter A. Patterson  
COOPER & KIRK, PLLC

1523 New Hampshire Ave., NW  
Washington, D.C. 22036  
(202) 220-9600  
Fax: (202) 220-9601  
ccooper@cooperkirk.com

Andrew P. Pugno  
LAW OFFICES OF ANDREW P.  
PUGNO  
101 Parkshore Dr., Ste. 100  
Folsom, CA 95630  
(916) 608-3065  
andrew@pugnolaw.com

Brian W. Raum  
James A. Campbell  
ALLIANCE DEFENSE FUND  
15100 N. 90th St.  
Scottsdale, AZ 85260  
(480) 444-0020  
braum@telladf.org

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Dated: November 19, 2009

Respectfully submitted,

s/ Charles J. Cooper  
Charles J. Cooper