

No. 10-15649

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

EQUALITY CALIFORNIA AND NO ON PROPOSITION 8,
CAMPAIGN FOR MARRIAGE EQUALITY: A PROJECT OF THE
AMERICAN CIVIL LIBERTIES UNION OF NORTHERN CALIFORNIA

Petitioners/Appellants

v.

KRISTIN M. PERRY, *et al.*,

Respondents/Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN
DISTRICT OF CALIFORNIA
C 09-2292 VRW

**PETITIONERS/APPELLANTS' MOTION FOR EXPEDITED APPEAL
AND FOR DESIGNATION AS "COMEBACK APPEAL"**

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Petitioners/Appellants in the above-entitled matter have today filed their Notice of Appeal, Emergency Motion for Stay Pending Appeal and their Certificate Pursuant to Ninth Circuit Rule designating that motion as an emergency motion pursuant to Rule 27-3. By this motion, Appellants seek an order : (a) Referring this appeal to the Panel that decided *Perry v. Schwarzenegger*, 591 F.3d 1147 (9th Cir. 2010) as a “Comeback Appeal” pursuant to Ninth Circuit General Order 3.7 and (b) for entry of an order setting an expedited schedule for disposition of this appeal as more fully set forth below, or as is convenient to the Court.

This appeal arises directly out of, and is exclusively concerned with, interpretation of footnote 12 of the decision in *Perry*. As more fully explained in Appellants’ emergency stay motion, it involves an order directing non-party Appellants to produce internal, non-public campaign documents relating to the campaign against enactment of California initiative amendment “Proposition 8.” Appellants contend that the orders appealed from are based upon an incorrect, and unconstitutional, application of the decision in *Perry*. If allowed to stand, that order will violate Appellants’ rights under the First Amendment and create a chilling effect upon the conduct of future political campaigns – precisely the result that *Perry* was intended to avoid.

The district court has ordered Appellants to produce their documents not later than March 31, but has stayed its order until March 29 to allow Appellants to

seek further relief from this Court. It did so based upon a representation by Appellants that they would seek extraordinary expedition of their appeal, which they now do by this motion. Expedition is necessary because the underlying case, involving the constitutionality of Proposition 8, has been tried and is awaiting final argument and disposition. While Appellants consider the issues raised herein to be of great importance, they have no desire to delay disposition of the underlying case in the district court beyond the time necessary to resolve the instant appeal on an extremely expeditious schedule.

Given the nature of the issues raised on appeal, the obvious familiarity of the Panel that decided the prior case with the background of this matter (not to mention, of course, the meaning of its own opinion) and the need for expedition, reference of this matter to that Panel unquestionably is in the interests of justice. Further, that Panel acted with extraordinary expedition in resolving the prior appeal and, therefore, can be expected to do so in this instance as well.

With respect to schedule, Appellants are willing to file their opening merits brief within 5 days of an order granting this motion, and in all events not later than April 2nd. They further suggest that the time for any opposition briefs be set 5 days after the filing and service of Appellants' Opening Brief and that the Court set a hearing for the first convenient time thereafter, allowing the filing of any optional Reply Brief within 3 days or within 24 hours of the time set for argument,

whichever is less. (In the event the Panel cannot be reconstituted for argument within a reasonable time, Appellants are willing to waive argument.)

WHEREFORE, Appellants request that their motion as set forth above be granted.

Dated: March 25, 2010

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