

No. 10-16696

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

KRISTIN PERRY, et al.,
Plaintiffs-Appellees,

v.

ARNOLD SCHWARZENEGGER, et al.
Defendants,

and

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

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

**DEFENDANT-INTERVENORS-APPELLANTS'
MOTION FOR LEAVE TO EXCEED TYPE-VOLUME LIMITATIONS**

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.
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 Hollingsworth, Knight, Gutierrez,
Jansson, and ProtectMarriage.com*

Pursuant to Ninth Circuit Rule 32-2, Appellants respectfully seek the Court's leave to file an opening brief in excess of the applicable type-volume limitations. *See FED. R. APP. P. 32(a)(7)(B).* Specifically, Appellants respectfully request leave to file a brief containing no more than 31,000 words.

The importance of this case beggars description, not only for the people of California, but for the American people as a whole. As this Court has recognized, "it cannot be gainsaid that in our social and legal traditions the institution of marriage has been considered to be an integral part of the foundation of a well-ordered and viable society, the sinew that strengthens society, the glue that holds society together." *Smelt v. County of Orange*, 447 F.3d 673, 679 (9th Cir. 2006). This appeal presents the Court with the question whether the United States Constitution requires California to redefine this bedrock social institution. Specifically, it raises the questions whether the Due Process Clause secures to individuals in same-sex relationships a fundamental right to marry that is infringed by the traditional definition of marriage as the union of a man and a woman, whether gays and lesbians are a suspect or quasi-suspect class for purposes of the Equal Protection Clause, and whether the traditional definition of marriage as reflected in Proposition 8 bears a reasonable relationship to any legitimate government interest. Full presentation of the arguments relevant to any *one* of these momentous legal issues might alone consume an entire appellate brief, for to

answer them, this Court may be required to examine not only the history, legal tradition, and practice of marriage in this Nation, but also matters related to human sexuality, the growing political power of gays and lesbians, developmental psychology, and the societal consequences of family breakdown.

A brief of the size Appellants request is thus necessary to give the wide array of issues presented the careful consideration they deserve. Indeed, the district court's ruling invalidating Proposition 8 spans nearly 140 pages and contains nearly 40,000 words. *See* Doc. No. 708. And despite its size, the district court's ruling simply fails to engage—or even to acknowledge—a wealth of information potentially bearing on Proposition 8's constitutionality, from legal authorities past and present, to scholarship in fields such as sociology, anthropology, and history, an error by the court below that Appellants have sought to correct in their brief to this Court so that it may decide the momentous issues presented by this appeal in full view of the relevant materials necessary to evaluate them with the care that they deserve. This Court has also asked for briefing on Appellants' standing to appeal, a distinct and unsettled issue, the resolution of which could have profound consequences not only in this case, but also for the defense of future California initiative measures in federal court.

In sum, a brief of 31,000 words is amply justified in light of the nature of this case and the issues presented, and Appellants therefore respectfully request leave to file a brief of no more than 31,000 words.

Dated: September 17, 2010

Respectfully submitted,

s/ Charles J. Cooper
Charles J. Cooper
Attorney for Appellants

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on September 17, 2010.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

s/ Charles J. Cooper
Charles J. Cooper