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November 17, 2010

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Ms. Molly C. Dwyer
Clerk of the Court
United States Court of Appeals
for the Ninth Circuit
James R. Browning U.S. Courthouse
San Francisco, CA 94119-3939

Client: T 36330-00001

Re: *Perry v. Schwarzenegger, Nos. 10-16696, 10-16751*

Dear Ms. Dwyer:

Plaintiffs-Appellees (“Plaintiffs”) have received the Court’s November 15, 2010 Order regarding oral argument in the above-referenced matter. Pursuant to that Order, Plaintiffs respectfully advise the Court of their objection to the allocation of time set forth in that Order and propose re-allocation of argument time as set forth herein.

The allocation of time set forth in the Court’s November 15, 2010 Order combines the separate appeals brought by Proponents and Imperial County (*which has to date never been a party to the underlying case*), while dividing the argument into two hour-long sessions addressing standing and procedural issues first and the constitutionality of Proposition 8 second. This allocation leaves Plaintiffs, who brought this important constitutional challenge and whose counsel acted as lead counsel at all stages of the case, with *only 15 minutes of a two-hour argument* to address the merits of their claims and defend the judgment entered in their favor below. It gives Plaintiffs *half* the time to argue the merits that their opponents, the Proponents of Proposition 8, will enjoy. It also gives the City and County of San Francisco (the “City”), which was permitted to intervene in this case *only* for the *expressly limited* purpose of addressing its governmental interests implicated by Proposition 8, the same amount of time to argue the merits as Plaintiffs themselves. Lastly, it allocates roughly a quarter of the total argument time to Imperial County’s appeal, which presents issues that are much more discrete and limited than the issues presented by the rest of the case.

Rather than treat the two pending appeals together and divide the argument into equal sessions on standing and the merits, Plaintiffs respectfully submit that the importance of the merits issues in this case warrants treating the two appeals separately. Moreover, the Court can establish the amount of time to be spent on standing issues in connection with Proponents’ appeal through its questions at oral argument. Plaintiffs therefore request that the Court begin the argument with Proponents’ appeal (No. 10-16696), followed by Imperial County’s appeal (No. 10-16751), and allot 50 minutes to each side on Proponents’ appeal and 10 minutes to each side on Imperial County’s appeal. Plaintiffs are prepared to cede five of the 50 minutes allocated to Proponents’ appeal to the City, consistent with the limited

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purpose of the City's intervention and the City's letter to this Court dated October 28, 2010, requesting at most five minutes of argument.

Alternatively, should the Court not wish to depart from its plan to devote the first hour of argument to standing and procedural issues and the second hour of argument to the unconstitutionality of Proposition 8, Plaintiffs suggest that the Court adopt the proposal made by the City in its October 28, 2010 letter to Ms. Dwyer. In that letter, counsel for the City, Ms. Therese Stewart, stated that the City did *not* wish to take *any* time away from Plaintiffs' argument, but instead asked that it be permitted five additional minutes to address the limited issue on which it was permitted to intervene. Under this proposal, the merits portion of the oral argument would be divided as follows: 30 minutes for Proponents, 30 minutes for Plaintiffs, and five minutes for the City. Plaintiffs also would have no objection to the Court's affording Proponents an additional five minutes of argument time on the merits as requested in Mr. Cooper's letter to Ms. Dwyer dated November 9, 2010.

Plaintiffs appreciate the Court's attention to this matter.

Very truly yours,

/s/ Theodore B. Olson
Theodore B. Olson

cc: All counsel via ECF

9th Circuit Case Number(s) 10-16696

NOTE: To secure your input, you should print the filled-in form to PDF (File > Print > *PDF Printer/Creator*).

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[redacted] /s/ Theodore B. Olson

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