

NO. 10-16696
Argued December 6, 2010
(Reinhardt, Hawkins, N. Smith)

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

KRISTIN PERRY, et al.,
Plaintiffs-Appellees,
vs.
EDMUND G. BROWN, Jr., et al.,
Defendants,
and
DENNIS HOLLINGSWORTH, et al.,
Defendant-Intervenors-Appellants.

On Appeal from the United States District Court
for the Northern District of California
Civil Case No. 09-CV-2292 JW (Honorable James Ware)

NON-PARTY MEDIA COALITION'S MOTION TO INTERVENE

THOMAS R. BURKE (State Bar No. 141930)
ROCHELLE L. WILCOX (State Bar No. 197790)
DAVIS WRIGHT TREMAINE LLP
505 Montgomery Street, Suite 800
San Francisco, California 94111
(415) 276-6500; (415) 276-6599 fax

Attorneys for Non-Party Media Coalition Los Angeles Times Communications
LLC; The McClatchy Company; Cable News Network; In Session (formerly
known as "Court TV"); The New York Times Co.; FOX News; NBC News; Hearst
Corporation; Dow Jones & Company, Inc.; The Associated Press; KQED Inc.; The
Reporters Committee for Freedom of the Press; and Northern California Chapter of
Radio & Television News Directors Association

Come now Los Angeles Times Communications LLC; The McClatchy Company; Cable News Network; In Session (formerly known as “Court TV”); The New York Times Co.; FOX News; NBC News; Hearst Corporation; Dow Jones & Company, Inc.; The Associated Press; KQED Inc. on behalf of KQED News and the California Report; The Reporters Committee for Freedom of the Press; and Northern California Chapter of Radio & Television News Directors Association (the “Non-Party Media Coalition”), pursuant to Rule 27 of the Federal Rules of Appellate Procedure, and respectfully submit this Motion to Intervene in this proceeding for the sole purpose of joining in the Motion to Unseal filed by Plaintiffs-Appellees, seeking an order unsealing the video records of the trial in this matter. Thus, the Media Coalition respectfully request that the Court accept the concurrently-lodged Joinder of Non-Party Media Coalition in Plaintiffs-Appellees’ Motion to Unseal (the “Joinder”) in evaluating the Motion recently filed by Plaintiffs-Appellees asking the Court to unseal the video recordings of the trial that are currently sealed in the district court’s record.

Should the Court, for any reason, deny this motion for leave to intervene, The Media Coalition, in the alternative, move for leave to file the attached Joinder as an *amicus curiae*.

As this Court repeatedly has recognized, the media have standing to assert the public’s – and its own – constitutional right of access to court records and

proceedings. *See, e.g., Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 609 n.25 (1982) (“representatives of the press and the general public must be given an opportunity to be heard on the question of their exclusion”). Thus, this Court has held that non-parties must be permitted to intervene for the purpose of challenging any restrictions on the First Amendment right of access. *See Beckman Industries, Inc. v. Int’l Ins. Co.*, 966 F.2d 470, 473 (9th Cir. 1992). This Court also has recognized that non-parties challenging restrictions on public access need not file a formal complaint in intervention. *See id.* *See also In re Associated Press*, 162 F.3d 503, 508 (7th Cir. 1998) (“*Associated Press II*”) (reversing district court and instructing that “the Press ought to have been able to intervene in order to present arguments against limitations on the constitutional or common law right of access”).

As the Media Coalition explains in their concurrently-filed Joinder, the issue pending before this Court is of profound interest to members of the public, who have followed this matter closely as it worked its way through the trial court and to this Court (and soon to the California Supreme Court). The access issue presented by the motions now pending before the Court is one frequently litigated by members of the media – whether a presumptive right of access attaches to materials in a court file and, if so, whether those who seek the sealing of those materials have met their heavy burden to justify that sealing. The majority of the

Media Coalition has already participated in this case – seeking the right to record and broadcast part or all of the trial and to televise the arguments before this Court – and participated in briefing in the proceedings that culminated in the Supreme Court’s decision in *Hollingsworth v. Perry*, 130 S.Ct. 705 (2010).¹ Thus, the interest of the Media Coalition in the questions pending before this Court cannot be denied.

///

///

¹ Indeed, given their prior participation in this case, which Appellants expressly note (at page 9 of their Motion), the Media Coalition contend that Appellants should have served their Motion for Order Compelling Return of Trial Recordings on counsel for the Media Coalition.

For the foregoing reasons, the Media Coalition respectfully request that this Court grant this Motion and give the Media Coalition the right to intervene for the limited purpose of filing the concurrently-lodged Joinder. Alternatively, the Media Coalition request that the Court grant the Media Coalition the right to file the concurrently-submitted Joinder as a brief of *amicus curiae*.

RESPECTFULLY SUBMITTED this 18th day of April, 2011.

DAVIS WRIGHT TREMAINE LLP
THOMAS R. BURKE
ROCHELLE L. WILCOX

By /s/ Thomas R. Burke

Thomas R. Burke

Attorneys for Non-Party Media Coalition
LOS ANGELES TIMES
COMMUNICATIONS LLC; THE
MCCLATCHY COMPANY; CABLE
NEWS NETWORK; IN SESSION
(formerly known as "Court TV"); THE
NEW YORK TIMES CO.; FOX NEWS;
NBC NEWS; HEARST CORPORATION;
DOW JONES & COMPANY, INC.; THE
ASSOCIATED PRESS; KQED INC.; THE
REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS; and
NORTHERN CALIFORNIA CHAPTER
OF RADIO & TELEVISION NEWS
DIRECTORS ASSOCIATION

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).

CERTIFICATE OF SERVICE

When All Case Participants are Registered for the Appellate CM/ECF System

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 (date) [] .

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

Signature (use "s/" format)

[]

CERTIFICATE OF SERVICE

When Not All Case Participants are Registered for the Appellate CM/ECF System

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 (date) [April 18, 2011] .

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the following non-CM/ECF participants:

Please see attached service list.

[]

Signature (use "s/" format)

/s/ Natasha Majoroko

SERVICE LIST

Thomas Brejcha
Thomas More Society
29 S. La Salle Street, Suite 440
Chicago, Illinois 60603

Antony R. Picarello, Jr.
Michael F. Moses
United States Catholic Conference
3211 Fourth Street, N.E.
Washington, D.C. 20017

Lincoln C. Oliphant
Columbus School of Law
The Catholic University of America
3600 John McCormack Road, N.E.
Washington, D.C. 20064

Hon. Vaughn Walker
c/o Pillsbury Winthrop Shaw Pittman LLP
50 Fremont Street
San Francisco, CA 94105-2228

Arthur Bailey, Jr.
Hausfeld LLP
44 Montgomery Street, Suite 3400
San Francisco, CA 94104

Anita L. Staver
Liberty Counsel
P. O. Box 540774
Orlando, Florida 32854

Mathew D. Staver
Liberty Counsel
1055 Maitland Center Commons, 2nd Floor
Maitland, Florida 32751

Hon. Vaughn Walker
c/o Berkeley Law
215 Boalt Hall
Berkeley, CA 94720-7200