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ELECTRONICALLY FILED

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

Re: *Perry v. Brown*, 10-16696 (Reinhardt, Hawkins, N.R. Smith)
(argued December 6, 2010)

Dear Ms. Dwyer:

On January 4, 2011, this Court requested that the Supreme Court of California answer the following certified question:

> Whether under Article II, Section 8 of the California Constitution, or otherwise under California law, the official proponents of an initiative measure possess either a particularized interest in the initiative's validity or the authority to assert the State's interest in the initiative's validity, which would enable them to defend the constitutionality of the initiative upon its adoption or appeal a judgment invalidating the initiative, when the public officials charged with that duty refuse to do so.

Dkt. Entry 292 at 3 (ECF pagination). This Court instructed the parties to "notify the Clerk of this Court within three days after the [Supreme Court of California] renders an opinion." *Id.* at 19.

On November 17, 2011, the Supreme Court of California issued a unanimous opinion (attached as Exhibit A) answering "the question posed by the Ninth Circuit in the affirmative." Ex. A at 5. Specifically, that Court held that

> when the public officials who ordinarily defend a challenged state law or appeal a judgment invalidating the law decline to do so, under article II,

> section 8 of the California Constitution and the relevant provisions of the Elections Code, the official proponents of a voter-approved initiative measure are authorized to assert the state's interest in the initiative's validity, enabling the proponents to defend the constitutionality of the initiative and to appeal a judgment invalidating the initiative.

Ex. A at 61; *accord id*. at 5, 23-24, 41, 43, 55; *id*. at 8 (Kennard, J., concurring). Because it correctly determined that this "conclusion is sufficient to support an affirmative response to the question posed by the Ninth Circuit," the Supreme Court of California found it unnecessary to "decide whether, under California law, the official proponents also possess a particularized interest in a voter-approved initiative's validity." *Id*. at 24.

As demonstrated in Proponents' previous briefing in this case, *see* Dkt. Entry 21 at 37-42 (ECF pagination); Dkt. Entry 243-1 at 14-17 (ECF pagination), and recognized by this Court in its Certification Order:

> If California does grant the official proponents of an initiative the authority to represent the State's interest in defending a voter-approved initiative when public officials have declined to do so or to appeal a judgment invalidating the initiative, then Proponents would also have standing to appeal on behalf of the State.

Dkt. Entry 292 at 10 (ECF pagination). Because the decision of the Supreme Court of California authoritatively establishes that California does grant official proponents this authority, Proponents' standing to maintain this appeal is now clear.

Respectfully submitted,

s/ Charles J. Cooper

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Counsel for Defendant-Intervenors-Appellants Hollingsworth, Knight, Gutierrez, Jansson, and ProtectMarriage.com

cc: All Counsel

Enclosure