

Nos. 10-16696 & 11-16577

DECIDED FEBRUARY 7, 2012

(CIRCUIT JUDGES STEPHEN REINHARDT, MICHAEL HAWKINS & N.R. SMITH)

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

KRISTIN PERRY, et al.,
Plaintiffs-Appellees,

v.

EDMUND G. BROWN, Jr., et al.,
Defendants,

and

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

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

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

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Pursuant to Fed. R. App. P. 2 & 35(b)(2) and Circuit Rule 32-2, *see United States v. Molina-Tarazon*, 285 F.3d 807 (9th Cir. 2002), Appellants (“Proponents”) respectfully seek the Court’s leave to file a petition for rehearing en banc in excess of the applicable type-volume limitation of 4,200 words, *see* Circuit Rule 40-1(a). Specifically, Proponents request leave to file a petition for rehearing en banc containing no more than 12,000 words. For the following reasons, Proponents submit that they have substantial need for this relief.¹

1. The panel majority decision holds that Proposition 8, a voter-initiated amendment to the California Constitution that defines marriage as the union of a man and a woman, CAL. CONST. art. 1, § 7.5, violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. It is difficult to overstate the importance of the outcome of this case to the people of California. As this Court has recognized, “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,” and it is thus “difficult to imagine an area more fraught with sensitive social policy considerations in which federal courts should not involve themselves if there is an alternative.” *Smelt v. County of Orange*, 447

¹ If an extension of time to file a petition for rehearing en banc is necessary to permit the Court's consideration of this motion, we respectfully request that the Court treat this as a motion for such an extension as well.

F.3d 673, 679, 681 (9th Cir. 2006). The gravity of the panel majority’s decision is only heightened by the fact that it invalidates a provision of the California Constitution adopted through an exercise of the “fundamental right” of “the sovereign people’s initiative power.” *Perry v. Schwarzenegger*, 628 F.3d 1191, 1196 (9th Cir. 2011) (quotation marks omitted); *see also Coalition for Economic Equity v. Wilson*, 122 F.3d 718, 719 (9th Cir. 1997). For these reasons, it is imperative that the members of this Court have the information necessary for careful consideration of whether this case should be reheard en banc.

2. The importance and complexity of the issues presented by this case are reflected by the briefing to date. In the merits appeal, for example, the combined length of Proponents’ opening and reply briefs and Plaintiffs’ response brief exceeds 300 pages containing more than 80,000 words. Plaintiff-Intervenor City and County of San Francisco and nearly 50 amici submitted briefs spanning hundreds of additional pages.

3. In deciding the exceedingly important questions presented by this case, the panel majority affirmed the decision below, but for different reasons than those relied on by the district court. Accordingly, the panel majority’s reasoning rests on grounds only partially addressed in the briefing to date.

4. The panel's ultimate ruling that Proposition 8 is unconstitutional embraces rulings on several subsidiary issues that Proponents believe are erroneous and that misapply or conflict with the decisions of the Supreme Court, this Court, and other courts. Proponents' petition for rehearing thus encompasses multiple issues.

5. In addition to addressing Proponents' appeal on the merits, the panel's decision also disposes of Proponents' separate appeal of the district court's denial of their motion to vacate the judgment on account of former Chief Judge Walker presiding over this case in violation of 28 U.S.C. § 455. Proponents are seeking rehearing en banc of this issue as well as of the merits.

6. The importance, complexity, and number of the issues presented by this case are amply demonstrated by the length of the panel's opinions: the panel majority's opinion is about 75 pages and 19,700 words; the dissent is about an additional 38 pages and 9,000 words.

7. Counsel for the other parties to this appeal have stated that they will not oppose this motion to exceed the type-volume limitations.

For these reasons, Proponents respectfully request leave to file a petition for rehearing en banc of no more than 12,000 words.

Dated: February 21, 2012

Respectfully submitted,

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9th Circuit Case Number(s) 10-16696 & 11-16577

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