

No. 10-16751

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

KRISTIN M. PERRY, et al.
Plaintiffs-Appellees,

v.

ARNOLD SCHWARZENEGGER, et al.
Defendants.

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

EMERGENCY MOTION UNDER CIRCUIT RULE 27-3

**JOINDER OF DEFENDANT-INTERVENORS-APPELLANTS DENNIS
HOLLINGSWORTH, GAIL J. KNIGHT, MARTIN F. GUTIERREZ,
MARK A. JANSSON, AND PROTECTMARRIEGE.COM'S EMERGENCY
MOTION FOR STAY PENDING APPEAL AND REQUEST FOR
JUDICIAL NOTICE**

ADVOCATES FOR FAITH AND FREEDOM
Robert H. Tyler, CA Bar No. 179572
Jennifer L. Monk, CA Bar No. 245512
24910 Las Brisas Road, Suite 110
Murrieta, CA 92562
Telephone: (951) 304-7583
Facsimile: (951) 600-4996
rtyler@faith-freedom.com
jmonk@faith-freedom.com

Attorneys for Movant-Appellants
COUNTY OF IMPERIAL, THE BOARD OF SUPERVISORS OF THE
COUNTY OF IMPERIAL, and ISABEL VARGAS

9th Cir. R. 27-3 Certificate

Pursuant to 9th Cir. R. 27-3, Appellants respectfully certify that their motion for stay pending appeal is an emergency motion requiring “relief ... in less than 21 days” to “avoid irreparable harm.”

Appellants are the County of Imperial of the State of California, the Board of Supervisors of County of Imperial, and Isabel Vargas in her official capacity as Deputy Clerk/Deputy Commissioner of Civil Marriages for the County of Imperial. On August 4, 2010, the district court ruled that Prop 8 is unconstitutional and ordered its enforcement permanently enjoined. The district court temporarily stayed entry of its judgment to consider a motion for stay pending appeal. On August 12, the district court denied the stay motion, lifted the temporary stay on the entry of judgment, and entered judgment. *See* Doc. No. 727, Doc. No. 728. At the same time, the district court ordered another limited stay, this time until “August 18, 2010 at 5 PM PDT” in order to “permit the court of appeals to consider the issue [of a stay pending appeal] in an orderly manner.” Doc. No 727 at 2, 11. It is thus imperative that a stay pending appeal be entered on or before August 18, 2010 at 5 p.m. to avoid the confusion and irreparable injury that would flow from the creation of a class of purported same-sex marriages. *See, e.g., Advisory: If Judge Walker Says It’s OK to Get Married*, GLTNN.com, Aug. 11, 2010, *available at* <http://gltnewsnow.com/2010/08/11/advisory-if-judge-walker->

says-it's-ok-to-get-married/ (reporting that West Hollywood stands ready to marry gay couples “[a]s soon as the federal judge lifts the stay,” and that Los Angeles County “is prepared to take immediate action to implement the court’s orders if the stay is lifted”) (quotations marks omitted).

Before filing their motion, Appellants notified counsel for the other parties by email and also emailed them a service copy of the motion.

Pursuant to 9th Cir. R. 27-3(a)(3)(i), the telephone numbers, email addresses, and office addresses of the attorneys for the parties are as follows:

Attorneys for Plaintiffs Kristin M. Perry, Sandra B. Stier, Paul T. Katami, and Jeffrey J. Zarrillo:

Theodore B. Olson
tolson@gibsondunn.com
Matthew C. McGill
mmcgill@gibsondunn.com
Amir C. Tayrani
atayrani@gibsondunn.com
GIBSON, DUNN & CRUTCHER, LLP
1050 Connecticut Avenue, NW
Washington, D.C. 20036
(202) 955-8668

Theodore J. Boutrous, Jr.
tboutrous@gibsondunn.com
Christopher D. Dusseault
cdusseault@gibsondunn.com
Theane Evangelis Kapur
tkapur@gibsondunn.com
Enrique A. Monagas
emonagas@gibsondunn.com
GIBSON, DUNN & CRUTCHER, LLP
333 S. Grand Avenue
Los Angeles, CA 90071
(213) 229-7804

Ethan D. Dettmer
edettmer@gibsondunn.com
Sarah Elizabeth Piepmeier
spiepmeier@gibsondunn.com
GIBSON, DUNN & CRUTCHER LLP
555 Mission Street, Suite 300
San Francisco, Ca 94105
(415) 393-8200

David Boies
dboies@bsfllp.com
Rosanne C. Baxter
rbaxter@bsfllp.com
BOIES, SCHILLER & FLEXNER, LLP
333 Main Street
Armonk, NY 10504
(914) 749-8200

Jeremy Michael Goldman
jgoldman@bsfllp.com
Theodore H. Uno
tuno@bsfllp.com
BOIES, SCHILLER & FLEXNER LLP
1999 Harrison Street, Suite 900
Oakland, CA 94612
(510) 874-1000

Attorneys for Plaintiff-Intervenor City and County of San Francisco:

Dennis J. Herrera

Therese Stewart

therese.stewart@sfgov.org

Danny Chou

danny.chou@sfgov.org

Ronald P. Flynn

ronald.flynn@sfgov.org

Vince Chhabria

vince.chhabria@sfgov.org

Erin Bernstein

erin.bernstein@sfgov.org

Christine Van Aken

christine.van.aken@sfgov.org

Mollie M. Lee

mollie.lee@sfgov.org

catheryn.daly@sfgov.org

CITY AND COUNTY OF SAN

FRANCISCO

OFFICE OF THE CITY ATTORNEY

One Dr. Carlton B. Goodlett Place

Room 234

San Francisco, CA 94102-4682

(415) 554-4708

Attorneys for Defendants Governor Arnold Schwarzenegger, Director Mark B. Horton, and Deputy Director Linette Scott:

Kenneth C. Mennemeier

kcm@mglaw.com

Andrew Walter Stroud

stroud@mglaw.com

MENNEMEIER GLASSMAN & STROUD LLP

980 9th Street, Suite 1700

Sacramento, CA 95814

(916) 553-4000

Attorneys for Defendant Attorney General Edmund G. Brown, Jr.:

Gordon Bruce Burns
gordon.burns@doj.ca.gov
Attorney General's Office, Dept. of Justice
1300 I Street, 17th Floor
Sacramento, CA 95814
(916) 324-3081

Tamar Pachter
tamar.pachter@doj.ca.gov
Office of the California Attorney General
455 Golden Gate Ave, Suite 11000
San Francisco, CA 94102-7004
(415) 703-5970

Attorneys for Defendant Clerk-Recorder Patrick O'Connell:

Claude Franklin Kolm
claud.kolm@acgov.org
Manuel Francisco Martinez
manuel.martinez@acgov.org
COUNTY OF ALAMEDA
1221 Oak Street, Suite 450
Oakland, CA 94612-4296
(510) 272-6710

Attorney for Defendant Registrar-Recorder Dean C. Logan:

Judy Whitehurst
jwhitehurst@counsel.lacounty.gov
OFFICE OF COUNTY COUNSEL – COUNTY OF LOS ANGELES
500 West Temple Street
Los Angeles, CA 90012
(213) 974-1845

Attorney for Defendant-Intervenor Hak-Shing William Tam:

Terry L. Thompson
Tl_thompson@earthlink.net
Law Offices of Terry L. Thompson
Post Office Box 1346
Alamo, CA 94507
(925) 855-1507

Attorneys for Defendant-Intervenors Dennis Hollingsworth, Gail J. Knight, Martin F. Gutierrez, Mark A. Jansson, and ProtectMarriage.com—Yes on 8, A Project of California Renewal:

Charles J. Cooper
ccooper@cooperkirk.com
David H. Thompson
dthompson@cooperkirk.com
Howard C. Neilson, Jr.
hnelson@cooperkirk.com
Nicole J. Moss
nmoss@cooperkirk.com
Peter A. Patterson
ppatterson@cooperkirk.com
COOPER & KIRK, PLLC
1523 New Hampshire Ave., NW
Washington, D.C. 22036
(202) 220-9600

Andrew P. Pugno
Andrew@pugnolaw.com
LAW OFFICES OF ANDREW P. PUGNO
101 Parkshore Drive, Suite 100
Folsom, CA 95630
(916) 608-3065

Brian W. Raum
braum@telladf.org
James A. Campbell
jcampbell@telladf.org
ALLIANCE DEFENSE FUND
15100 N. 90th St.
Scottsdale, AZ 85260
(480) 444-0020

Jordan W. Lawrence
jlarence@telladf.org
Austin R. Nimocks
animocks@telladf.org
ALLIANCE DEFENSE FUND
801 G St. NW, Suite 509
Washington, D.C. 20001
(202) 393-8690

Timothy D. Chandler
tchandler@telladf.org
ALLIANCE DEFENSE FUND
101 Parkshore Drive, Suite 100
Folsom, CA 95630
(916) 932-2850

Dated: August 13, 2010

s/ Jennifer L. Monk
Jennifer L. Monk, Esq.
Counsel for Movant-Appellants
COUNTY OF IMPERIAL, THE BOARD
OF SUPERVISORS OF THE COUNTY
OF IMPERIAL, and ISABEL VARGAS

County of Imperial of the State of California (“County”), Board of Supervisors of Imperial County (“Board”), and Isabel Vargas in her official capacity as Deputy Clerk/Deputy Commissioner of Civil Marriages for the County of Imperial (“Deputy Clerk”) respectfully join the emergency motion for immediate stay pending appeal filed yesterday by Appellants Hollingsworth, Knight, Gutierrez, Jansson, and ProtectMarriage.com (“Proponents”).

The County of Imperial respectfully requests that this Court take judicial notice of the Emergency Motion for Stay Pending Appeal filed by Dennis Hollingsworth, Gail J. Knight, Martin F. Gutierrez, Mark A. Jansson, and ProtectMarriage.Com – Yes On 8, A Project of California Renewal, which was filed in *Perry v. Schwarzenegger* (Ninth Circuit Case No. 10-16696). *U.S. v. Wilson*, 631 F.2d 118, 119 (9th Cir. 1980).

The County plays a vital and indispensable official role in the regulation of marriage in California. Its clerks and deputy clerks are “commissioner[s] of civil marriages.” Cal. Fam. Code § 401(a); Cal. Gov’t Code §§ 24100, 24101. Deputy Clerk Vargas’s duties thus include, among other things, issuing marriage licenses, Cal. Fam. Code § 350, and performing civil marriages, *id.* § 400. The Board has the statutory duty to “supervise the official conduct of all county officers,” including county clerks and their deputies, and “see that they faithfully perform their duties” under the law. Cal. Gov’t Code §§ 25303, 24000(c), 24100. As with

other County officials, the Board also allocates resources for and prescribes the compensation of county clerks, *see id.* § 25300, and directs and controls the conduct of litigation involving the office of county clerk, *id.* § 25203.

In light of the significantly protectable interests created by their official responsibilities with respect to marriage—and in light of the fact that none of the government officials named as defendants are defending Proposition 8, the County of Imperial and its Deputy Clerk have moved to intervene in this litigation in district court. *See* Doc. No. 311. The district court, however, has denied their motion to intervene. They have appealed that decision along with the district court’s merits decision to this Court.

The district court’s rulings on the merits, denying the County’s motion to intervene, and denying a stay pending appeal, are inconsistent in relation to the intervention of the County, Board, and Deputy Clerk, and the significantly protectable interests of the same provided above. *See* Doc. No. 708, Doc. No. 709, Doc. No. 727. While correctly identifying in the ruling on the merits that none of the government officials named as defendants are defending Proposition 8, the district court relied on the fact that the interests of the County and Deputy Clerk were represented by the other government defendants to justify its denial of the County and Deputy Clerk’s motion to intervene. *See* Doc. No. 708, Doc. No. 709. Furthermore, the district court’s denial of a stay pending appeal suggested that the

Proponents may lack standing to pursue an appeal, and would need a government defendant to appeal. *See* Doc. No. 727. Something the County, a governmental entity, has already done. The County, Board, and its Deputy Clerk sought intervention prior to trial in order to assure the district court order was appealable and Proposition 8 was defended by a governmental agency. *See* Doc. No. 311. The intervention correctly relied upon the County and Deputy Clerk's duty to enforce the law, conduct civil marriages, issue marriage licenses, and generally implement all laws pertaining to or defining marriage within the State of California – including Proposition 8. *See* Doc. No. 311. They clearly have a protectable interest that is not only inadequately represented, but not represented whatsoever by other government officials.

For the reasons stated in Proponents' emergency motion for immediate stay, which the County, Board, and Deputy Clerk hereby join, we respectfully request that the district court's judgment be stayed during the pendency of this appeal. As the district court's ruling provides that the stay currently in effect will be lifted on August 18, 2010 at 5 p.m., we respectfully request that the immediate stay pending appeal be granted on or before August 18, 2010. We further respectfully request that should this Court be inclined to deny the requested stay of the district

court's judgment, sufficient time be provided to submit an emergency application for immediate stay pending appeal to the United States Supreme Court for its review and consideration.

Respectfully submitted,

ADVOCATES FOR FAITH AND FREEDOM

Dated: August 13, 2010

s/ Jennifer L. Monk

Jennifer L. Monk, Esq.
Counsel for Movant-Appellants
COUNTY OF IMPERIAL, THE BOARD
OF SUPERVISORS OF THE COUNTY
OF IMPERIAL, and ISABEL VARGAS

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of August 2010, I caused to be served on the following counsel a true and correct copy for the foregoing via electronic mail.

SERVICE LIST

Kenneth C. Mennemeier
Andrew W. Stroud
MENNEMEIER, GLASSMAN &
STROUD LLP
980 9th Street, Suite 1700
Sacramento, CA 95814-2736
T: (916) 553-4000
F: (916) 553-4011
kcm@mgsllaw.com
gosling@mgsllaw.com
aknight@mgsllaw.com
stroud@mgsllaw.com
lbailey@mgsllaw.com

***Attorneys for the Administration
Defendants***

Dennis J. Herrera
Therese M. Stewart
OFFICE OF THE CITY ATTORNEY
City Hall, Room 234
One Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4682
T: (415) 554-4708
F: (415) 554-4699
therese.stewart@sfgov.org
erin.bernstein@sfgov.org
vince.chhabria@sfgov.org
danny.chou@sfgov.org
ronald.flynn@sfgov.org
mollie.lee@sfgov.org
Christine.van.aken@sfgov.org
catheryn.daly@sfgov.org

***Attorneys for Plaintiff-Intervenor
City and County of San Francisco***

Richard E Winnie
Brian E. Washington
Claude F. Kolm
Manuel F. Martinez
THE OFFICE OF CITY COUNSEL
1221 Oak Street, Suite 450
Oakland, California 94612
T: (510) 272-6700
F: (510) 272-5020
brian.washington@acgov.org
claud.kolm@acgov.org
judith.martinez@acgov.org
manuel.martinez@acgov.org

***Attorneys for Defendant Patrick
O'Connell Clerk Recorder of the
County of Alameda***

Terry L. Thompson
LAW OFFICE OF TERRY L.
THOMPSON
P.O. Box 1346
Alamo, CA 94507
T: (925) 855-1507
F: (925) 820-6035
tl_thompson@earthlink.net

***Attorney for Defendant-Intervenor
Hak-Shing William Tam***

Charles J. Cooper
David H. Thompson
Howard C. Nielson, Jr.
Nicole Jo Moss
Peter A. Patterson
COOPER & KIRK PLLC
1523 New Hampshire Ave. NW
Washington, D.C. 20036
T: (202) 220-9600
F: (202) 220-9601
ccooper@cooperkirk.com
dthompson@cooperkirk.com
hnielson@cooperkirk.com
nmoss@cooperkirk.com
ppatterson@cooperkirk.com

Andrew P. Pugno
LAW OFFICES OF ANDREW P.
PUGNO
101 Parkshore Dr., Ste. 100
Folsom, CA 95630
T: (916) 608-3065
F: (916) 608-3066
andrew@pugnolaw.com

Brian W. Raum
James A. Campbell
ALLIANCE DEFENSE FUND
15100 N. 90th St.
Scottsdale, AZ 85260
T: (480) 444-0020
F: (480) 444-0028
braum@telladf.org
jcampbell@telladf.org

***Attorneys for Defendant-
Intervenors Hollingsworth, Knight,
Gutierrez, Jansson, and
ProtectMarriage.com***

Gordon Burns
Tamar Pachter
OFFICE OF THE ATTORNEY
GENERAL
1300 I Street, Suite 125
P.O Box. 944255
Sacramento, CA 94244-2550
T: (415) 703-5970
F: (415) 703-1234
gordon.burns@doj.ca.gov
tamar.pachter@doj.ca.gov

***Attorneys for Defendant Attorney
General Edmund G. Brown, Jr.***

Elizabeth M. Cortez
Judy W. Whitehurst
THE OFFICE OF CITY COUNSEL
648 Kenneth Hahn Hall of
Administration
500 West Temple Street
Los Angeles, CA 90012-2713
T: (213) 974-1845
F: (213) 617-7182
jwhitehurst@counsel.lacounty.gov

***Attorneys for Defendant Dean C.
Logan Registrar-Recorder/County
Clerk, County of Los Angeles***

Theodore B. Olson
Matthew C. McGill
Amir Tayrani
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, DC 20036-5306
T: (202) 955-8500
F: (202) 467-0539
tolson@gibsondunn.com
mmcgill@gibsondunn.com
atayrani@gibsondunn.com

Theodore Boustrous, Jr.
Christopher Dusseault
Theane Kapur
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90072-1512
T: (213) 229-7000
F: (213) 229-7520
tboutrous@gibsondunn.com
cdusseault@gibsondunn.com
tkapur@gibsondunn.com
smalzahn@gibsondunn.com

Ethan Dettmer
Enrique Monagas
GIBSON, DUNN & CRUTCHER LLP
555 Mission Street, Suite 3000
San Francisco, CA 94105
T: (415) 393-8200
F: (415) 393-8306
edettmer@gibsondunn.com
spiepmeier@gibsondunn.com
emonagas@gibsondunn.com
rjustice@gibsondunn.com
mjanky@gibsondunn.com

David Boies
Rosanne C. Baxter
BOIES, SCHILLER & FLEXNER LLP
333 Main St. Armonk, NY 10504
T: (914) 749-8200
F: (914) 749-8300
dboies@bsfllp.com

Jeremy Michael Goldman
Theodore Uno
BOIES, SCHILLER & FLEXNER LLP
1999 Harrison Street, Suite 900
Oakland, CA 94612
T: (510) 874-1000
F: (510) 874-1460
jgoldman@bsfllp.com
tuno@bsfllp.com
brichardson@bsfllp.com
rbettan@bsfllp.com
jischiller@bsfllp.com

***Attorneys for Plaintiffs Kristin M.
Perry et al.***

s/ Jennifer L. Monk
Email: jmonk@faith-freedom.com