

**U.S. Court of Appeals Case No. 10-16751**

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

---

**KRISTIN PERRY, ET AL.**  
*Plaintiffs-Appellees,*

v.

**ARNOLD SCHWARZENEGGER, ET AL.**  
*Defendants*  
and  
**COUNTY OF IMPERIAL, ET AL.,**  
*Movants-Appellants,*

---

On Appeal From The United States District Court, Northern District of California  
Case No. 09-CV-2292 VRW  
The Honorable Vaughn R. Walker

---

**PROPOSED AMICUS CURIAE EQUALITY CALIFORNIA'S  
MOTION FOR LEAVE TO FILE AMICUS-CURIAE BRIEF  
IN SUPPORT OF PLAINTIFFS-APPELLEES AND PLAINTIFF-  
INTERVENOR-APPELLEE AND IN SUPPORT OF AFFIRMANCE**

---

CALDWELL LESLIE & PROCTOR, PC  
David C. Codell, *Of Counsel*, State Bar No. 200965  
Linda M. Burrow, State Bar No. 194668  
Albert Giang, State Bar No. 224332  
Benjamin A. Au, State Bar No. 237854  
1000 Wilshire Boulevard, Suite 600  
Los Angeles, California 90017-2463  
Telephone: (213) 629-9040  
Facsimile: (213) 629-9022  
*Attorneys for Equality California*

Pursuant to Rule 29(b) of the Federal Rules of Appellate Procedure (“FRAP”), proposed Amicus Curiae Equality California respectfully moves for leave to file an amicus-curiae brief in support of Plaintiffs-Appellees Kristin M. Perry *et al.* and Plaintiff-Intervenor-Appellee City and County of San Francisco.

Equality California is a state-wide advocacy group protecting the needs and interests of lesbian, gay, bisexual, and transgender Californians and their families, including members of same-sex couples and their children. It is also California’s largest lesbian, gay, bisexual, and transgender civil rights organization, with tens of thousands of members. Equality California’s members include registered voters in every county in the State of California. Equality California’s members also include same-sex couples who wish to marry in the state of California but cannot do so while Proposition 8 is being enforced; same-sex couples who married in California before Proposition 8’s enactment; same-sex couples who are married under the laws of other jurisdictions; and same-sex couples who have registered with the state of California as domestic partners. The issues raised in this appeal will directly affect Equality California’s members and supporters.

Equality California also has developed extensive expertise regarding legal and factual issues raised in this appeal. Equality California regularly sponsors legislation in the California Legislature. Over the past decade, Equality California has successfully sponsored more than 60 pieces of civil rights legislation for the

lesbian, gay, bisexual, and transgender community in California, including many of the state's anti-discrimination laws and laws concerning marriage and domestic partnership.

Equality California also frequently participates in litigation in support of the rights of lesbian, gay, bisexual, and transgender persons, and has done so by bringing lawsuits as a plaintiff, by intervening as a plaintiff, by intervening as a defendant in support of California enactments, and by participating as an amicus curiae. As both a frequent sponsor of legislation and a membership organization, Equality California is familiar with standards governing participation by sponsors of legislation in litigation in federal and California courts, including the limits on such participation.

Equality California has been a party in other judicial proceedings concerning marriage equality. For example, Equality California was a plaintiff in *In re Marriage Cases*, 183 P.3d 384 (2008), and was a petitioner in *Strauss v. Horton*, 207 P.3d 48, 68 (Cal. 2009). Equality California also spearheaded the "No" on Proposition 8 campaign, and was one of the leading fund-raising organizations for the campaign. Geoffrey Kors, the Executive Director of Equality California, was a co-chair of "No-On-8." As a result of its involvement in marriage equality advocacy, Equality California has developed significant expertise in the movement for the rights of lesbian, gay, bisexual, and transgender persons; the marriage

equality movement; the legal issues surrounding marriage rights in the states and at the federal level; and state and federal constitutional issues specific to Proposition 8.

The accompanying brief that Equality California seeks leave to file as an amicus curiae addresses the Article III standing issues raised by the appeal filed by Movant-Appellants County of Imperial, the Board of Supervisors of the County of Imperial, and Deputy Clerk Isabel Vargas (“Imperial Movants”). Not only is Article III standing an “irreducible constitutional minimum” to invoke the jurisdiction of federal courts, *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992), it is an issue on which this Court has specifically requested briefing in the related appeal by the Intervenors who were the Proponents of Proposition 8. *See* Court Order Dated August 16, 2010 [Docket No. 14 of Appeal No. 10-16696] (directing parties to discuss in their opening briefs “why this appeal should not be dismissed for lack of Article III standing”). In response to the Court’s request, Imperial Movants addressed the issue of whether they have standing. *See* Imperial Movants’ Opening Brief [Docket No. 8 of Appeal No. 10-16751] at 7-25. Equality California respectfully submits its amicus-curiae brief to address the Article III standing arguments raised by the Imperial Movants.

In addition, Equality California’s amicus-curiae brief discusses the unprecedented ways in which Proposition 8 violates the Equal Protection guarantee

of the Fourteenth Amendment. Equality California's amicus-curiae brief explains that Proposition 8 runs afoul of the Equal Protection Clause's prohibition of "a classification of persons undertaken for its own sake," not in furtherance of any legitimate interest. *Romer v. Evans*, 517 U.S. 620, 635 (1996).

DATED: October 25, 2010

Respectfully submitted,

CALDWELL LESLIE & PROCTOR, PC  
DAVID C. CODELL, *Of Counsel*  
LINDA M. BURROW  
ALBERT GIANG  
BENJAMIN A. AU

By /s/ David C. Codell

DAVID C. CODELL, *Of Counsel*

Attorneys for Proposed Amicus Curiae  
EQUALITY CALIFORNIA