

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 RULING ON PENDING MOTION
FOR LEAVE TO FILE AMICUS-CURIAE BRIEF**

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I. INTRODUCTION

Pending before this Court are two related appeals concerning the constitutionality of the California constitutional measure commonly referred to as Proposition 8. Proposed Amicus Curiae Equality California, which is California's largest lesbian, gay, bisexual, and transgender civil rights organization, timely submitted on October 25, 2010, distinct amicus-curiae briefs in each of the two appeals. In Appeal No. 10-16751 ("Imperial County Appeal"), Equality California's proposed brief argued that the Imperial County Appellants lack standing to bring that appeal. In Appeal No. 10-16696 ("Proponents' Appeal"), Equality California submitted a brief making separate arguments as to why the official proponents of Proposition 8 lack standing to appeal from the District Court's judgment.

Although this Court accepted for filing Equality California's amicus-curiae brief in the Proponents' Appeal (which had been filed with the consent of all the parties), the Court has not yet ruled on Equality California's pending motion (Docket No. 33) for leave to file its brief in the Imperial County Appeal even though this Court accepted other amici-curiae briefs filed by parties in both actions, and no party submitted any opposition to Equality California's motion seeking leave to file its brief in the Imperial County Appeal. In the event that the lack of a ruling on Equality California's pending motion for leave to file an amicus

curiae brief in the Imperial County Appeal is inadvertent, Equality California hereby respectfully requests that the Court grant Equality California’s pending Motion for Leave to File Amicus-Curiae Brief in Support of Plaintiffs-Appellees and Plaintiff-Intervenor-Appellee and in Support of Affirmance (Docket No. 33 in Imperial County Appeal) and that the Court accept Equality California’s brief for filing.

II. PROCEDURAL BACKGROUND

A. *The Proponents’ Appeal*

All of the main parties to the Proponents’ Appeal filed Notices of Consent to the Filing of Amicus Curiae Briefs in that appeal. [Docket Nos. 16, 17, & 18 of Proponents’ Appeal.] Citing the main parties’ consent, this Court issued an order dismissing as unnecessary all motions for leave to become amici and ordering the Clerk to file the amicus briefs in the Proponents’ Appeal. [Docket No. 217 of Proponents’ Appeal.]

On October 25, 2010, Equality California timely submitted a stand-alone amicus brief without an accompanying motion in the Proponents’ Appeal. [Docket No. 200 of Proponents’ Appeal.] Equality California’s amicus brief addressed the Proponents’ lack of Article III standing, an issue about which this Court specifically requested briefing at the outset of these appeals. [Order dated August 16, 2010, Docket No. 14 of Proponents’ Appeal (requesting “discussion of why

this appeal should not be dismissed for lack of Article III standing”].] On October 26, the Court entered the appearance of Equality California in that appeal, accepted filing of Equality California’s amicus brief in that appeal, and ordered Equality California to file seven paper copies of its amicus brief in that appeal. [Docket Nos. 214 & 215 of Proponents’ Appeal.] On October 29, 2010, Equality California timely complied with this Court’s order. [Docket No. 239 of Proponents’ Appeal.]

B. The Imperial County Appeal

Although some of the parties to the Imperial County Appeal filed separate Notices of Consent to the Filing of Amicus Curiae Briefs in that appeal, the Imperial County Appellants did not submit such a consent. [Docket Nos. 10, 14, & 15 of Imperial County Appeal.] And unlike in the Proponents’ Appeal, this Court did not issue an order in the Imperial County Appeal dismissing as unnecessary all motions for leave to file amicus-curiae briefs.

Equality California accordingly timely submitted on October 25, 2010, an amicus brief in the Imperial County Appeal *with* an accompanying Motion for Leave to File Amicus-Curiae Brief. [Docket No. 33 of Imperial County Appeal.] Equality California’s amicus brief in the Imperial County Appeal addressed an issue not addressed in Equality California’s amicus brief in the Proponents’ Appeal—namely, the reasons that the Imperial County Appellants lack Article III standing to maintain this appeal. To this date, no party has opposed Equality

California's Motion for Leave to File Amicus-Curiae Brief in the Imperial County Appeal; nevertheless it appears that the Court has taken no action on Equality California's Motion and that its amicus brief has not been accepted for filing.

III. DISCUSSION: THIS COURT SHOULD ISSUE A RULING GRANTING EQUALITY CALIFORNIA'S PENDING MOTION TO FILE AMICUS-CURIAE BRIEF IN THE IMPERIAL COUNTY APPEAL

Given the above procedural history and the approaching oral argument date of December 6, 2010, Equality California respectfully requests that this Court accept its amicus-curiae brief in the Imperial County Appeal. Equality California's brief meets the criteria set forth in Rule 29(b) of the Federal Rules of Appellate Procedure. As required by Rule 29(b)(1), both its pending amicus brief and its accompanying Motion for Leave to File Amicus-Curiae Brief in the Imperial County Appeal set forth Equality California's clear interest in the issues raised on appeal. Also, as required by Rule 29(b)(2), Equality California's pending amicus brief is desirable and discusses matters that are relevant to the disposition of the Imperial County Appeal. Equality California's brief in the Imperial County Appeal appears to be the only amicus curiae brief in the Imperial County Appeal that challenges the Article III standing of the Appellants, an issue about which this Court has specifically requested argument. Therefore, Equality California's pending amicus brief in the Imperial County Appeal offers a perspective that is not provided by any other amicus curiae in the Imperial County Appeal.

IV. CONCLUSION

Given that this Court has accepted for filing all other amicus briefs in both appeals and given that no party has opposed Equality California's Motion for Leave to File Amicus-Curiae Brief in the Imperial County Appeal, Equality California respectfully requests that the Court grant Equality California's pending Motion for Leave to File Amicus-Curiae Brief in the Imperial County Appeal.

DATED: November 23, 2010

Respectfully submitted,

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By /s/ David C. Codell

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CERTIFICATE OF SERVICE

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

U.S. Court of Appeals Docket Number(s): 10-16751

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 November 23, 2010.

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: /s/ Charles Robinson