

No. 10-16751
Argued December 6, 2010
(Reinhardt, Hawkins, N. 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

COUNTY OF IMPERIAL, et al.,
Movants-Appellants.

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

**DEFENDANT-INTERVENORS' RESPONSE
IN SUPPORT OF MOTION TO INTERVENE**

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and ProtectMarriage.com*

Dennis Hollingsworth, Gail J. Knight, Martin F. Gutierrez, Mark A. Jansson, and ProtectMarriage.com (collectively, “Proponents”), Defendant-Intervenors below and Appellants in Case No. 10-16696, respectfully submit that this Court should grant the motion submitted by Imperial County Clerk Chuck Storey (“Imperial County”) to intervene as an appellant in this case. Proponents support the motion for the reasons stated by Imperial County and because Imperial County has acted promptly to cure the defect identified by the panel with respect to Imperial County’s standing (the fact that the County’s Clerk was not seeking to intervene), a defect that was first identified at oral argument.

In addition, it may be proper to hold Imperial County’s motion in abeyance during the pendency of the California Supreme Court’s consideration of the question certified to it by this Court. This Court’s certification order states that “further proceedings in this court are stayed pending final action by the Supreme Court of California.” Certification Order at 18, No. 10-16696 (Doc. No. 292). And while, as a technical matter, that order was entered in our appeal and not this one, the Court to date has kept these two appeals in procedural lockstep. *See* Order of August 17, 2010 (Doc. No. 3) (ordering that “[t]his appeal shall be calendared with case No. 10-16696”); Order of November 26, 2010 (Doc. No. 49) (“For purposes of clarification, these appeals are consolidated for oral argument.”); Opinion at 14 (Doc. No. 65-1) (“The deadline for filing a petition for panel

rehearing or rehearing en banc is hereby EXTENDED until the deadline for such petitions in No. 10-16696, which will be 14 days after an opinion is filed in that appeal. The Clerk is DIRECTED to stay the issuance of the mandate in this case until the mandate issues in No. 10-16696.”).

Dated: March 7, 2011

Respectfully Submitted,

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9th Circuit Case Number(s) 10-16751

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