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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

VIVID ENTERTAINMENT, LLC; CALIFA PRODUCTIONS, INC.; JANE DOE a/k/a KAYDEN KROSS, Plaintiffs, v. JONATHAN FIELDING, DIRECTOR OF LOS ANGELES COUNTY DEPARTMENT OF PUBLIC HEALTH; JACKIE LACEY, LOS ANGELES COUNTY DISTRICT ATTORNEY, and COUNTY OF LOS ANGELES, Defendants.	Case No. CV 13-00190 DDP (AGRx) ORDER DENYING PLAINTIFFS' MOTION FOR RECONSIDERATION [Docket No. 63]

I. Introduction

On November 6, 2012, Los Angeles County approved Measure B, which requires producers of adult films to obtain a permit from the Los Angeles County Department of Public Health before production can take place. (Compl. ¶¶ 36, 41.) Measure B also requires the use of condoms by performers for all acts of anal or vaginal sex during the production of adult films. (*Id.* ¶ 42.) Plaintiffs Vivid Entertainment, LLC ("Vivid"), Califa Productions, Inc., Jane Doe,

and John Doe are in the adult film industry. (Id. ¶¶ 10-11.) Plaintiffs have sued Jonathan Fielding, Director of Los Angeles County Department of Public Health; Jackie Lacie, Los Angeles County District Attorney; and County of Los Angeles (the "County Defendants") for Declaratory and Injunctive Relief, claiming that Measure B is unconstitutional. (See generally id.) The County Defendants have declined to defend Measure B's constitutionality. (Order at 9.) The County, however, has taken steps to begin enforcing Measure B. (Docket No. 56 Ex. 1.)

On April 16, 2013 this Court granted Michael Weinstein, Marijane Jackson, Arlette De La Cruz, Mark McGrath, Whitney Engeran, the Campaign Committee Yes on B, and Major Funding by the AIDS Healthcare Foundation's ("Interveners") Motion to Intervene. (See generally Order Granting Motion to Intervene ("Order"), Docket No. 44.) "Interveners were the official proponents of Measure B;" they "drafted the language that would become Measure B, collected signatures to qualify the Measure for the November 2012 ballot, submitted the signatures for verification, raised funds, and drafted an argument for the appearance of the Measure on the ballot." (Order at 2.)

In light of the recent Supreme Court decision in Hollingsworth v. Perry, 133 S.Ct. 2652 (2013), Plaintiffs have filed a Motion to Reconsider ("Motion") this Court's Order. (Docket No. 63)

II. Legal Standard

Local Rule 7-18 provides the framework under which non-final judgments may be reconsidered. In relevant part, it states that reconsideration is appropriate when there is a "material difference

in fact or law from that presented to the Court before such decision that in the exercise of reasonable diligence could not have been known to the party moving for reconsideration at the time of such decision."

III. Analysis

In Perry the Supreme Court held that the interveners, who were also Proposition 8's proponents, did not have standing to appeal the district court's judgment. Perry, 133 S. Ct. at 2668. Plaintiffs claim that Perry requires Interveners to show they have standing independent of the County Defendants. The Court disagrees.

In Perry, as here, the government officials, who were named as defendants enforced but "refused to defend the law." Id. at 2660. The district court allowed Proposition 8's proponents to intervene. Id. When the district court declared Proposition 8 unconstitutional, the defendants elected not to appeal to the Ninth Circuit, but the Interveners did. Id. The Supreme Court later vacated the Ninth Circuit's ruling because the Interveners did not have standing to appeal the district court. Id. at 2668. The Supreme Court made clear that initiative proponents do not have standing to defend their ballot measures after those measures become law. Id. at 2663 ("[O]nce Proposition 8 was approved by the voters, the measure became a duly enacted constitutional amendment or statute. Petitioners have no role—special or otherwise—in the enforcement of Proposition 8.") (internal quotation marks and citations omitted). However, the Supreme Court, left the district court's judgment intact. Id. at 2668. In so doing, it implicitly approved of the framework currently at issue: at the district court

level, intervention by initiative proponents is proper when the government is enforcing the initiative but refuses to defend it, regardless of whether the interveners have standing independent of the government defendants.

Additionally, as the Order recognized, Ninth Circuit precedent, though somewhat ambiguous, generally indicates that interveners are not required to demonstrate Article III standing independent of the defendants. (Order at 4-5); see State of California Dep't of Soc. Servs. v. Thompson, 321 F.3d 835, 846 (9th Cir. 2003) ("Ms. Rosales did not need to meet Article III standing requirements to intervene.") Thus, unless Perry "undercut the theory or reasoning underlying the prior circuit precedent in such a way that the cases are clearly irreconcilable," the Court must follow the Ninth Circuit precedent. Miller v. Gammie, 335 F.3d 889, 900 (9th Cir. 2003). Because Perry only held that interveners must have independent standing to bring an appeal that the government defendants decline to, it did not undercut prior authority indicating that interveners do not need to establish independent standing at the district court level.

Finally, denying intervention in this case would upend one of the key purposes of standing doctrine. One reason standing is required is to "sharpen[ ] the presentation of issues upon which the court so largely depends for illumination of difficult ... questions." Baker v. Carr, 369 U.S. 186, 204 (1992). Even without Interveners, there would still be standing to resolve this case because the County is enforcing Measure B. See United States v. Windsor, 133 S. Ct. 2675, 2685 (2013) ("Even though the Executive's current position was announced before the District Court entered

its judgment, the Government's agreement with Windsor's position would not have deprived the District Court of jurisdiction to entertain and resolve the refund suit; for her injury (failure to obtain a refund allegedly required by law) was concrete, persisting, and unredressed.") Because the Defendants refuse to defend Measure B's constitutionality, Interveners are needed to sharpen the issues this Court will be required to answer.

III. Conclusion

For the reasons stated herein, the Motion is DENIED.

IT IS SO ORDERED.

Dated: August 2, 2013

DEAN D. PREGERSON
United States District Judge