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* Admitted *pro hac vice*

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KRISTIN M. PERRY, SANDRA B. STIER, PAUL T. KATAMI, and JEFFREY J. ZARRILLO,

Plaintiffs,

v.

ARNOLD SCHWARZENEGGER, in his official capacity as Governor of California; EDMUND G. BROWN, JR., in his official capacity as Attorney General of California; MARK B. HORTON, in his official capacity as Director of the California Department of Public Health and State Registrar of Vital Statistics; LINETTE SCOTT, in her official capacity as Deputy Director of Health Information & Strategic Planning for the California Department of Public Health; PATRICK O'CONNELL, in his

CASE NO. 09-CV-2292 VRW

DEFENDANT-INTERVENOR PROPOSITION 8 PROPONENTS' OPPOSITION TO MOTION TO SHORTEN TIME

Date: None
Time: None
Judge: Chief Judge Vaughn R. Walker
Location: None

official capacity as Clerk-Recorder for the County of Alameda; and DEAN C. LOGAN, in his official capacity as Registrar-Recorder/County Clerk for the County of Los Angeles,

Defendants,

and

PROPOSITION 8 OFFICIAL PROPONENTS DENNIS HOLLINGSWORTH, GAIL J. KNIGHT, MARTIN F. GUTIERREZ, HAK-SHING WILLIAM TAM, and MARK A. JANSSON; and PROTECTMARRIAGE.COM – YES ON 8, A PROJECT OF CALIFORNIA RENEWAL,

Defendant-Intervenors.

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ARGUMENT

Proposed-Intervenors Our Family Coalition, Lavender Seniors of the East Bay, and Parents, Families, and Friends of Lesbians and Gays ("PFLAG") (collectively referred to as "Proposed Intervenors") present this Court with an unreasonable request to shorten the briefing and hearing schedule for their Motion to Intervene. Their counsel—which includes the ACLU Foundation of Northern California, Lambda Legal Defense and Education Fund, Inc., and the National Center for Lesbian Rights—have unnecessarily delayed in filing their Motion to Intervene. And, now, to avoid the consequences of that delay, they ask this Court to impose a schedule that unduly prejudices the parties.

This Court will grant an order shortening time only when the moving party (or proposed party) shows that the standard motion timeline will cause a "substantial harm or prejudice" to that party. *See* Local Civil Rule 6-3(a)(3). But such harm is typically lacking where that party has not moved expediently. *See, e.g., People v. Tahoe Reg'l Planning Agency*, 766 F.2d 1316, 1318 (9th Cir. 1985) (upholding the district court's refusal to shorten time on a motion to intervene because, *inter alia*, the restraining order it sought to challenge had already been in place for over a month). Because Proposed Intervenors have inexplicably delayed in filing their Motion to Intervene, they cannot satisfy the "substantial harm or prejudice" requirement.

Both Proposed Intervenors and their counsel knew about this highly publicized case when it commenced, yet they chose not to file their Motion to Intervene until more than six weeks after it began. Indeed, their counsel previously filed an *amicus* brief in support of Plaintiffs' Motion for Preliminary Injunction. By filing an *amicus* brief, counsel for Proposed Intervenors consciously decided to rely on the adequacy of the representation by plaintiffs' counsel. (*See* Doc. # 62.) Now, apparently having reconsidered that initial decision, they seek to unduly prejudice the parties with an onerous and unreasonable briefing schedule.

Counsel for Proposed Intervenors seek to excuse their delay by suggesting that they were not prompted to intervene until they learned of "the possible need" to address "certain factual issues." (Doc. # 85 at 3.) But, as organizations with admitted experience litigating these types of cases, they are familiar with the relevant legal questions and, thus, the possible need to present

evidence on certain issues. Their delay, therefore, is not justified under these circumstances.

Proposed Intervenors further allege that denying their Motion to Shorten Time will cause them prejudice, by preventing their "participat[ion] in the parties' joint case management conference statement and in the second case management conference scheduled for August 19, 2009." (Doc. # 85 at 3.) But that argument rests on the unsupportable assumption that Plaintiffs' counsel will inadequately represent Proposed Intervenors' interests in preparing the joint case-management statement. Proposed Intervenors, however, have not asserted any basis for that assumption; thus, they have failed to satisfy their burden of demonstrating that they will suffer "substantial prejudice" if their Motion to Shorten Time is not granted. *See* Local Civil Rule 6-3(a)(3).

While Proposed Intervenors, as nonparties to this case, assert that they will be prejudiced if their Motion to Intervene is not expedited, they fail to acknowledge the direct prejudice that their request will impose on the parties. Currently, the parties are devoting all their energy to preparing the joint case-management statement, which is due on August 7, 2009. Compiling that statement requires, first and foremost, that the parties determine their overall litigation strategy—which includes, among other things, extensive legal research and factual investigation. In addition, the parties must confer about the intricacies of the relevant legal and factual questions, determine which issues can be agreed upon, and decide how best to address the disputed questions. In short, the parties have much to do between now and August 7, 2009, and granting the Motion to Shorten Time unnecessarily adds to their immediate tasks and detracts from the substantive work at hand.

It is clear that some of the parties will oppose the Motion to Intervene; indeed, the Proposition 8 Proponents certainly intend to do so. But Proposed Intervenors have proffered an unreasonable briefing schedule that would require the parties to respond by July 14, 2009. (Doc. # 85 at 4.) This would give the parties only a few days to respond to that motion, which is wholly inadequate under the circumstances, considering that they are already engaged in substantial work compiling the joint case-management statement. Thus, requiring the parties to respond to the Motion to Intervene in the next few days unduly prejudices their ability to oppose it.

As for plaintiffs' suggestion that the Court establish a deadline for all intervention motions

and consider all such motions at the August 19 case management conference, we endorse that proposal.

CONCLUSION

In sum, Proposed Intervenors have not satisfied their burden of showing that they will suffer "substantial harm or prejudice" if the Court does not grant their Motion to Shorten Time. Simply put, they have unnecessarily delayed in filing their Motion to Intervene and have not shown any harm flowing from continued reliance on plaintiffs' counsel to represent their interests during the pendency of their motion. As a result, the Court should deny Proposed Intervenors' Motion to Shorten Time.

Dated: July 10, 2009

COOPER AND KIRK, PLLC
ATTORNEYS FOR DEFENDANT-INTERVENOR DENNIS HOLLINGSWORTH, GAIL J. KNIGHT, MARTIN F. GUTIERREZ, HAK-SHING WILLIAM TAM, MARK A. JANSSON, AND PROTECTMARRIAGE.COM – YES ON 8, A PROJECT OF CALIFORNIA RENEWAL

By: s/Charles J. Cooper
Charles J. Cooper