

No. 10-16751

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

KRISTIN M. PERRY, et al.
Plaintiffs-Appellees,

v.

ARNOLD SCHWARZENEGGER, et al.
Defendants.

Appeal from United States District Court for the Northern District of California
Civil Case No. 09-cv-2292 VRW (Honorable Vaughn R. Walker)

EMERGENCY MOTION UNDER CIRCUIT RULE 27-3

**JOINDER OF DEFENDANT-INTERVENORS-APPELLANTS DENNIS
HOLLINGSWORTH, GAIL J. KNIGHT, MARTIN F. GUTIERREZ,
MARK A. JANSSON, AND PROTECTMARRIEGE.COM'S EMERGENCY
MOTION FOR STAY PENDING APPEAL AND REQUEST FOR
JUDICIAL NOTICE**

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9th Cir. R. 27-3 Certificate

Pursuant to 9th Cir. R. 27-3, Appellants respectfully certify that their motion for stay pending appeal is an emergency motion requiring “relief ... in less than 21 days” to “avoid irreparable harm.”

Appellants are the County of Imperial of the State of California, the Board of Supervisors of County of Imperial, and Isabel Vargas in her official capacity as Deputy Clerk/Deputy Commissioner of Civil Marriages for the County of Imperial. On August 4, 2010, the district court ruled that Prop 8 is unconstitutional and ordered its enforcement permanently enjoined. The district court temporarily stayed entry of its judgment to consider a motion for stay pending appeal. On August 12, the district court denied the stay motion, lifted the temporary stay on the entry of judgment, and entered judgment. *See* Doc. No. 727, Doc. No. 728. At the same time, the district court ordered another limited stay, this time until “August 18, 2010 at 5 PM PDT” in order to “permit the court of appeals to consider the issue [of a stay pending appeal] in an orderly manner.” Doc. No 727 at 2, 11. It is thus imperative that a stay pending appeal be entered on or before August 18, 2010 at 5 p.m. to avoid the confusion and irreparable injury that would flow from the creation of a class of purported same-sex marriages. *See, e.g., Advisory: If Judge Walker Says It’s OK to Get Married*, GLTNN.com, Aug. 11, 2010, *available at* <http://gltnewsnow.com/2010/08/11/advisory-if-judge-walker->

says-it's-ok-to-get-married/ (reporting that West Hollywood stands ready to marry gay couples “[a]s soon as the federal judge lifts the stay,” and that Los Angeles County “is prepared to take immediate action to implement the court’s orders if the stay is lifted”) (quotations marks omitted).

Before filing their motion, Appellants notified counsel for the other parties by email and also emailed them a service copy of the motion.

Pursuant to 9th Cir. R. 27-3(a)(3)(i), the telephone numbers, email addresses, and office addresses of the attorneys for the parties are as follows:

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Dated: August 13, 2010

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County of Imperial of the State of California (“County”), Board of Supervisors of Imperial County (“Board”), and Isabel Vargas in her official capacity as Deputy Clerk/Deputy Commissioner of Civil Marriages for the County of Imperial (“Deputy Clerk”) respectfully join the emergency motion for immediate stay pending appeal filed yesterday by Appellants Hollingsworth, Knight, Gutierrez, Jansson, and ProtectMarriage.com (“Proponents”).

The County of Imperial respectfully requests that this Court take judicial notice of the Emergency Motion for Stay Pending Appeal filed by Dennis Hollingsworth, Gail J. Knight, Martin F. Gutierrez, Mark A. Jansson, and ProtectMarriage.Com – Yes On 8, A Project of California Renewal, which was filed in *Perry v. Schwarzenegger* (Ninth Circuit Case No. 10-16696). *U.S. v. Wilson*, 631 F.2d 118, 119 (9th Cir. 1980).

The County plays a vital and indispensable official role in the regulation of marriage in California. Its clerks and deputy clerks are “commissioner[s] of civil marriages.” Cal. Fam. Code § 401(a); Cal. Gov’t Code §§ 24100, 24101. Deputy Clerk Vargas’s duties thus include, among other things, issuing marriage licenses, Cal. Fam. Code § 350, and performing civil marriages, *id.* § 400. The Board has the statutory duty to “supervise the official conduct of all county officers,” including county clerks and their deputies, and “see that they faithfully perform their duties” under the law. Cal. Gov’t Code §§ 25303, 24000(c), 24100. As with

other County officials, the Board also allocates resources for and prescribes the compensation of county clerks, *see id.* § 25300, and directs and controls the conduct of litigation involving the office of county clerk, *id.* § 25203.

In light of the significantly protectable interests created by their official responsibilities with respect to marriage—and in light of the fact that none of the government officials named as defendants are defending Proposition 8, the County of Imperial and its Deputy Clerk have moved to intervene in this litigation in district court. *See* Doc. No. 311. The district court, however, has denied their motion to intervene. They have appealed that decision along with the district court's merits decision to this Court.

The district court's rulings on the merits, denying the County's motion to intervene, and denying a stay pending appeal, are inconsistent in relation to the intervention of the County, Board, and Deputy Clerk, and the significantly protectable interests of the same provided above. *See* Doc. No. 708, Doc. No. 709, Doc. No. 727. While correctly identifying in the ruling on the merits that none of the government officials named as defendants are defending Proposition 8, the district court relied on the fact that the interests of the County and Deputy Clerk were represented by the other government defendants to justify its denial of the County and Deputy Clerk's motion to intervene. *See* Doc. No. 708, Doc. No. 709. Furthermore, the district court's denial of a stay pending appeal suggested that the

Proponents may lack standing to pursue an appeal, and would need a government defendant to appeal. *See* Doc. No. 727. Something the County, a governmental entity, has already done. The County, Board, and its Deputy Clerk sought intervention prior to trial in order to assure the district court order was appealable and Proposition 8 was defended by a governmental agency. *See* Doc. No. 311. The intervention correctly relied upon the County and Deputy Clerk's duty to enforce the law, conduct civil marriages, issue marriage licenses, and generally implement all laws pertaining to or defining marriage within the State of California – including Proposition 8. *See* Doc. No. 311. They clearly have a protectable interest that is not only inadequately represented, but not represented whatsoever by other government officials.

For the reasons stated in Proponents' emergency motion for immediate stay, which the County, Board, and Deputy Clerk hereby join, we respectfully request that the district court's judgment be stayed during the pendency of this appeal. As the district court's ruling provides that the stay currently in effect will be lifted on August 18, 2010 at 5 p.m., we respectfully request that the immediate stay pending appeal be granted on or before August 18, 2010. We further respectfully request that should this Court be inclined to deny the requested stay of the district

court's judgment, sufficient time be provided to submit an emergency application for immediate stay pending appeal to the United States Supreme Court for its review and consideration.

Respectfully submitted,

ADVOCATES FOR FAITH AND FREEDOM

Dated: August 13, 2010

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CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of August 2010, I caused to be served on the following counsel a true and correct copy for the foregoing via electronic mail.

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