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PROJECT OF CALIFORNIA RENEWAL

16 * Admitted *pro hac vice*

17 **UNITED STATES DISTRICT COURT**
18 **NORTHERN DISTRICT OF CALIFORNIA**

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

21 Plaintiffs,

22 v.

23 ARNOLD SCHWARZENEGGER, in his official
24 capacity as Governor of California; EDMUND
25 G. BROWN, JR., in his official capacity as
26 Attorney General of California; MARK B.
27 HORTON, in his official capacity as Director of
the California Department of Public Health and
28 State Registrar of Vital Statistics; LINETTE
SCOTT, in her official capacity as Deputy
Director of Health Information & Strategic

CASE NO. 09-CV-2292 VRW

**DEFENDANT-INTERVENORS’
MOTION FOR ADMINISTRATIVE
LEAVE TO EXCEED PAGE
LIMITATIONS**

Date: October 14, 2009
Time: 10:00 a.m.
Judge: Chief Judge Vaughn R. Walker
Location: Courtroom 6, 17th Floor

1 Planning for the California Department of Public
2 Health; PATRICK O'CONNELL, in his official
3 capacity as Clerk-Recorder for the County of
4 Alameda; and DEAN C. LOGAN, in his official
capacity as Registrar-Recorder/County Clerk for
the County of Los Angeles,

5 Defendants,

6 and

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

12 Defendant-Intervenors.

13 Additional Counsel for Defendant-Intervenors

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1 Pursuant to Civil Local Rule 7-11, Defendant-Intervenors (“Proponents”) respectfully seek
2 the Court’s leave to file a summary judgment motion in excess of the twenty-five pages allotted
3 by local rule. *See* Civ. L.R. 7-2(b). Specifically, Proponents respectfully submit that an expanded
4 page limit of one-hundred pages is warranted by the complex nature of the numerous important
5 issues presented in this case, and request the Court’s leave to file a motion of that length.
6 Furthermore, Proponents request that, should the Court grant this request, it deem the proposed
7 summary judgment motion, attached as Exhibit 1, filed today.
8

9 This case is of momentous importance: at stake is the constitutionality of Proposition 8, an
10 amendment to the California Constitution reestablishing the venerable definition of marriage as
11 the union of a man and a woman. A ruling invalidating Proposition would no doubt likewise doom
12 similar provisions governing the institution of marriage in 43 other states and the federal
13 government. The Court has accordingly recognized that this case touches on “serious questions”
14 that demand careful consideration. *See* July 2, 2009 Tr. at 9:17-18.
15

16 Not only are the questions profoundly serious, but they are numerous and complex. As an
17 initial matter, the Court must determine the precedential effect of prior decisions of the Supreme
18 Court and the Ninth Circuit. Should it find that those cases do not control the outcome, it then
19 must grapple with difficult questions of constitutional law, including the proper contours of the
20 fundamental right to marry protected by the Due Process Clause and whether or not to mint a new
21 suspect classification under the Equal Protection Clause, not to mention the numerous and
22 contested issues of legislative fact that may underpin the Court’s decision on these and other
23 issues. *See* June 30, 2009 Order, Doc. # 76 at 6-9.
24

25 Indeed, the Court recognized that while the parties’ briefing in connection with Plaintiffs’
26 preliminary injunction motion was “fine, in a preliminary way,” it was “hardly of an extent ... that
27 would enable the Court to make a decision on a full record.” July 2 Tr. at 17-22. As the motion
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1 we propose to file demonstrates, *see* Exhibit 1, we have sought to balance economy and
2 comprehensiveness in providing the Court with points and authorities necessary to resolve this
3 case.

4 The number and complexity of the issues presented by this case are well illustrated by the
5 lengthy treatment state courts have given to similar state-law challenges to the institution of
6 marriage. *See, e.g., In re Marriage Cases*, 183 P.3d 384 (Cal. 2008). One hundred pages is by no
7 means excessive in light of the profound importance of the institution of marriage and the
8 complexity of the issues involved. As for the burden of responding to our proposed brief, the
9 burdens flow from the multiplicity of issues and should not be allowed to trump Defendant-
10 Intervenors' ability to mount a robust and comprehensive defense of Proposition 8. This is
11 especially true since Proponents are the only party defending the law. We had hoped to secure
12 Plaintiffs' agreement to our proposal but were unable to secure such consent.¹

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14
15 As noted above, in addition to our request for leave to file a motion consisting of one
16 hundred pages, we thus request that should the Court grant our request it deem the attached
17 proposed summary judgment motion filed today. Since a copy of that motion is attached to our
18 Motion to Exceed Page Limitations, any party wishing to respond to the motion for summary
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¹ Plaintiffs' counsel has suggested that our motion is governed by this Court's Local Rule 7-4(b), which provides in pertinent part: "Unless the Court expressly orders otherwise pursuant to a party's request made prior to the due date, briefs or memoranda filed with opposition papers may not exceed 25 pages of text and the reply brief or memorandum may not exceed 15 pages of text." Consistent with the plain language of the rule, we have been interpreting it to apply only to "briefs or memoranda filed with opposition papers" and "reply briefs," and thus not to apply to our summary judgment motion. If we have
(Continued)

1 judgment will not be prejudiced by deeming the brief filed today.

2
3 Dated: September 9, 2009

4 COOPER AND KIRK, PLLC
5 ATTORNEYS FOR DEFENDANTS-INTERVENORS
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10 OF CALIFORNIA RENEWAL

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

27 (Cont'd)
28 misinterpreted the rule, we sincerely apologize to the Court and to the other parties for our
mistake.