

No. S189476

IN THE SUPREME COURT OF CALIFORNIA

KRISTIN M. PERRY et al.,
Plaintiffs and Respondents,

CITY AND COUNTY OF SAN FRANCISCO,
Plaintiff, Intervenor and Respondent,

v.

ARNOLD SCHWARZENEGGER, as Governor, etc. et al.,
Defendants,

DENNIS HOLLINGSWORTH et al.,
Defendants, Intervenors and Appellants.

SUPREME COURT
FILED

FEB 17 2011

Frederick K. Onirich Clerk

Deputy

Question Certified from the United States Court
of Appeals for the Ninth Circuit
The Honorable Stephen R. Reinhardt, Michael Daly Hawkins,
and N. Randy Smith, Circuit Judges, Presiding
Ninth Circuit Case No. 10-16696

APPLICATION TO SHORTEN TIME

THEODORE J. BOUTROUS, JR., SBN 132099
CHRISTOPHER D. DUSSEAULT, SBN 177557
THEANE EVANGELIS KAPUR, SBN 243570
SARAH E. PIEPMEIER, SBN 227094
ENRIQUE A. MONAGAS, SBN 239087
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071
(213) 229-7000

THEODORE B. OLSON, SBN 38137
Counsel of Record
AMIR C. TAYRANI, SBN 229609
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 955-8500

ATTORNEYS FOR PLAINTIFFS AND RESPONDENTS,
KRISTIN M. PERRY, SANDRA B. STIER,
PAUL T. KATAMI, AND JEFFREY J. ZARRILLO

Pursuant to Rule 8.68 of the California Rules of Court, Kristin M. Perry, Sandra B. Stier, Paul T. Katami, and Jeffrey J. Zarrillo (“plaintiffs”) respectfully urge the Court to consider shortening the briefing schedule in this matter as set forth in its order of February 16, 2011, and to set the case for oral argument during the week of May 23, 2011. Expedited treatment is warranted because, as explicitly held by the United States District Court for the Northern District of California after a thorough and exhaustive trial, plaintiffs suffer intolerable, irreparable deprivation of their federal constitutional rights each day that Proposition 8 continues to deny them the right to marry. *See* D.E. 727 at p. 9 (Aug. 12, 2010) (“the trial record left no doubt that Proposition 8 inflicts harm on plaintiffs and other gays and lesbians in California”).

Throughout this case, courts have expedited their consideration of plaintiffs’ claims to the greatest possible extent. *See* District Court D.E. 76 at p. 9 (June 30, 2009) (“The just, speedy and inexpensive determination of these issues would appear to call for proceeding promptly to trial.”). For example, the United States District Court for the Northern District of California gave the parties less than 15 weeks to conduct pre-trial discovery, and set the case for trial less than eight months after the complaint was filed. District Court D.E. 160 (Aug. 19, 2009). Indeed, the district court denied plaintiffs’ application for a preliminary injunction on the express understanding that their rights would be adjudicated on an

expedited basis. *See* District Court D.E. 76. Similarly, when proponents sought the Ninth Circuit’s review of an interlocutory discovery order, the case was briefed and argued within seven weeks. *See Perry v. Schwarzenegger*, No. 09-17241 (9th Cir.). And when proponents appealed the district court’s final judgment striking down Proposition 8 and denying them a stay of the judgment, the Ninth Circuit, although granting a stay, again set a highly expedited briefing and argument schedule that set oral argument five weeks after the conclusion of briefing. *See* Ninth Circuit D.E. 14 at p. 2 (Aug. 16, 2010).

This Court has already recognized the need for greatly expedited consideration of the constitutionality of Proposition 8. In *Strauss v. Horton* (2009) 46 Cal.4th 364, the Court held oral argument two months after the conclusion of briefing. In the strongest possible terms, plaintiffs contend that a similarly expedited schedule is appropriate here. Indeed, it is in all parties’ interests for the Court to decide the Certified Question as soon as possible and promptly to provide the Ninth Circuit with the guidance that court deems necessary to resolve the appeal that remains pending before it. The need for expedition is particularly acute for plaintiffs, who—as a result of the ongoing enforcement of Proposition 8—remain subject to a discriminatory and unconstitutional measure that deprives them of their fundamental right to marry and their right to equal dignity under the law. This Court has already held that denial to California citizens of the right to

marry based on their sexual orientation brands them as “second-class citizens.” *In re Marriage Cases* (2008) 43 Cal.4th 757, 785.

As a result of this ongoing irreparable harm, plaintiffs also plan to ask the Ninth Circuit to lift its stay of the district court’s order permanently enjoining the enforcement of Proposition 8. The federal district court has already found that proponents cannot demonstrate that they will suffer any harm as a result of the immediate enforcement of its decision. *See* D.E. 727 at p. 8.

Plaintiffs respectfully request that this Court set the briefing and argument schedule for the resolution of this case as follows:

Opening Brief:	March 14
Answer Brief:	March 28
Reply Brief:	April 11
<i>Amicus</i> Briefs:	April 11
Reply to <i>Amicus</i> Briefs:	April 18
Oral Argument:	Week of May 23

The proposed schedule—which does not alter the length of time this Court afforded proponents to file their briefs—will not prejudice any party. At the same time, it will ensure that the serious underlying constitutional issues presented by the case pending in the federal courts—which affect the

daily lives of hundreds of thousands of gay and lesbian Californians and their families—will be resolved as promptly as possible.

DATED: February 17, 2011

GIBSON, DUNN & CRUTCHER LLP

By: *Theodore B. Olson /cc*
THEODORE B. OLSON

Attorneys for Plaintiffs and Respondents
KRISTIN M. PERRY, SANDRA B.
STIER, PAUL T. KATAMI,
AND JEFFREY J. ZARRILLO

CERTIFICATE OF SERVICE

I declare that I am, and was at the time of service hereinafter mentioned, at least 18 years of age and not a party to the above-entitled action. I am employed in the City and County of San Francisco. My business address is 555 Mission Street, Suite 3000, San Francisco, California 94105. On February 17, 2011, I caused to be served the following documents:

PLAINTIFFS-RESPONDENTS' APPLICATION TO SHORTEN TIME

by placing a true copy thereof in an envelope addressed to each of the persons named below at the address shown, in the following manner:

SEE SERVICE LIST BELOW

- BY MAIL:** I placed a true copy in a sealed envelope for deposit in the U.S. Postal Service through the regular mail collection process at Gibson, Dunn & Crutcher LLP on the date indicated above. I am familiar with the firm's practice for collection and processing of correspondence for mailing with the U.S. Postal Service. It is deposited with the U.S. Postal Service with postage prepaid on that same day in the ordinary course of business. I am aware that on motion of a party served, service is presumed invalid if the postal cancellation date or the postage meter date is more than one day after the date of deposit for mailing in the declaration.
- BY EMAIL:** By agreement of the parties, a copy was emailed to the email addresses listed below.

Counsel

Charles J. Cooper
David H. Thompson
Howard C. Nielson, Jr.
Peter A. Patterson
Cooper & Kirk, PLLC
1523 New Hampshire Avenue, N.W.
Washington, DC 20036
ccooper@cooperkirk.com
dthompson@cooperkirk.com

Andrew P. Pugno
Law Offices of Andrew P. Pugno
101 Parkshore Drive, Suite 100
Folsom, CA 95630
andrew@pugnolaw.com

Attorneys For

Attorneys for Defendants-
Intervenors-Appellants

Attorneys for Defendants-
Intervenors-Appellants

Brian W. Raum
James A. Campbell
Alliance Defense Fund
15100 North 90th Street
Scottsdale, AZ 85260
braum@telladf.org
jcampbell@telladf.org

Attorneys for Defendants-
Intervenors-Appellants

Dennis J. Herrera
Therese Stewart
Christine Van Aken
San Francisco City Attorney's Office
City Hall 234
One Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4682
therese.stewart@sfgov.org
christine.van.aken@sfgov.org

Attorneys for Plaintiff-Intervenor-
Appellee City and County of San
Francisco

Tamar Pachter
Daniel Powell
Deputy Attorney General
California Department of Justice
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102
tamar.pachter@doj.ca.gov

Attorneys for Defendant Edmund G.
Brown, Jr., in his official capacity as
Attorney General of California

Kenneth C. Mennemeier, Jr.
Andrew W. Stroud
Mennemeier, Glassman & Stroud LLP
980 9th Street, Suite 1700
Sacramento, CA 95814
kcm@mgsllaw.com
stroud@mgsllaw.com

Attorneys for Defendants Arnold
Schwarzenegger, in his official
capacity as Governor of California;
Mark B. Horton, in his official
capacity as Director of the California
Department of Public Health & State
Registrar of Vital Statistics; and
Linette Scott, in her official capacity
as Deputy Director of Health
Information & Strategic Planning for
the California Department of Public
Health (the "Administration
Defendants")

Claude Franklin Kolm
Office of County Counsel
1221 Oak Street, Suite 450
Oakland, CA 94612-4296
claud.kolm@acgov.org

Attorneys for Defendant Patrick
O'Connell, in his official capacity as
Clerk-Recorder for the County of
Alameda

Judy W. Whitehurst
Principal Deputy County Counsel
Los Angeles County Counsel
648 Kenneth Hahn Hall of
Administration
500 West Temple Street, 6th Floor
Los Angeles, CA 90012-2713
jwhitehurst@counsel.lacounty.gov

Attorneys for Defendant Dean C.
Logan, in his official capacity as
Registrar-Recorder/County Clerk for
the County of Los Angeles

Office of the Governor
Attn: Legal Department
State Capitol Building
Sacramento, CA 95814
(VIA U.S. MAIL ONLY)

Attorneys for the Governor
Edmund G. Brown, Jr.

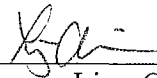
Office of the Attorney General
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
(VIA U.S. MAIL ONLY)

Attorneys for the Attorney General
Kamala D. Harris

Ms. Molly C. Dwyer
Clerk of the Court
United States Court of Appeals
for the Ninth Circuit
James Browning Courthouse
95 7th Street
San Francisco, CA 94103
(VIA U.S. MAIL ONLY)

United States Court of Appeals for
the Ninth Circuit

I certify under penalty of perjury that the foregoing is true and correct, that the foregoing document(s) were printed on recycled paper, and that this Certificate of Service was executed by me on February 17, 2011, at San Francisco, California.



Ling Chiou