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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

KRISTIN M. PERRY, et al., Plaintiffs, **v.** **ARNOLD SCHWARZENEGGER, et al.,** Defendants.	Case No. 09-cv-02292-VRW **ATTORNEY GENERAL'S OPPOSITION TO DEFENDANT-INTERVENORS' MOTION FOR STAY PENDING APPEAL** Action Filed: May 27, 2009

The Attorney General opposes Defendant-Intervenors' Request for a Stay of this Court's August 4, 2010 Order permanently enjoining the application or enforcement of Proposition 8 pending appeal of that Order. As the Attorney General has consistently stated and as was convincingly demonstrated at trial, Proposition 8 violates the Fourteenth Amendment of the United States Constitution. Defendant-Intervenors thus cannot demonstrate a likelihood of success on the merits in their appeal of this Court's Order. Moreover, as this Court has concluded

that Proposition 8 is unconstitutional, the public interest weighs against its continued enforcement.

Defendant-Intervenors' argument that the Attorney General's opposition to Plaintiffs' initial request for a preliminary injunction supports their request for a stay pending appeal ignores the fact that there has now been a trial on the merits that conclusively demonstrated that Proposition 8 is unconstitutional. In opposing the request for a preliminary injunction, the Attorney General argued that "the parties, the Court, and, indeed, the general public would benefit" from having the constitutionality of Proposition 8 "decided on the merits following full briefing and argument by the parties." (Attorney General's Opposition to Plaintiffs' Motion for Preliminary Injunction at 11–12.) That has now occurred. And while there is still the potential for limited administrative burdens should future marriages of same-sex couples be later declared invalid, these potential burdens are outweighed by this Court's conclusion, based on the overwhelming evidence, that Proposition 8 is unconstitutional. Accordingly, the harm to the plaintiffs outweighs any harm to the state defendants.

There is now a final determination that Proposition 8 is unconstitutional. Each of the four factors this Court must consider in determining whether a stay is warranted weigh against a stay. *See Golden Gate Rest. Ass'n v. San Francisco*, 512 F.3d 1112, 115 (9th Cir. 2008). Accordingly, the Attorney General respectfully requests that Defendant-Intervenors' request for a stay pending appeal be denied.

Dated: August 6, 2010

Respectfully submitted,

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