

1 GIBSON, DUNN & CRUTCHER LLP
Theodore B. Olson, SBN 38137
2 *tolson@gibsondunn.com*
Matthew D. McGill, *pro hac vice*
3 Amir C. Tayrani, SBN 229609
1050 Connecticut Avenue, N.W., Washington, D.C. 20036
4 Telephone: (202) 955-8668, Facsimile: (202) 467-0539

5 Theodore J. Boutrous, Jr., SBN 132009
tboutrous@gibsondunn.com
6 Christopher D. Dusseault, SBN 177557
Ethan D. Dettmer, SBN 196046
7 Sarah E. Piepmeier, SBN 227094
Theane Evangelis Kapur, SBN 243570
8 Enrique A. Monagas, SBN 239087
333 S. Grand Avenue, Los Angeles, California 90071
9 Telephone: (213) 229-7804, Facsimile: (213) 229-7520

10 BOIES, SCHILLER & FLEXNER LLP
David Boies, *pro hac vice*
11 *dboies@bsflp.com*
Theodore H. Uno, SBN 248603
12 333 Main Street, Armonk, New York 10504
Telephone: (914) 749-8200, Facsimile: (914) 749-8300
13

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

15 **UNITED STATES DISTRICT COURT**
16 **NORTHERN DISTRICT OF CALIFORNIA**

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

19 Plaintiffs,

20 v.

21 ARNOLD SCHWARZENEGGER, in his official
capacity as Governor of California; EDMUND
22 G. BROWN, JR., in his official capacity as
Attorney General of California; MARK B.
23 HORTON, in his official capacity as Director of
the California Department of Public Health and
State Registrar of Vital Statistics; LINETTE
24 SCOTT, in her official capacity as Deputy
Director of Health Information & Strategic
25 Planning for the California Department of Public
Health; PATRICK O'CONNELL, in his official
26 capacity as Clerk-Recorder for the County of
Alameda; and DEAN C. LOGAN, in his official
27 capacity as Registrar-Recorder/County Clerk for
the County of Los Angeles,

28 Defendants.

CASE NO. 09-CV-2292 VRW

**PLAINTIFFS' OPPOSITION TO
DEFENDANT-INTERVENORS' MOTION
FOR ADMINISTRATIVE LEAVE TO
EXCEED PAGE LIMITATIONS**

Judge: Chief Judge Walker
Location: Courtroom 6, 17th Floor

1 Plaintiffs respectfully request that the Court deny Defendant-Intervenors' request to file a
2 100-page brief. The Defendant-Intervenors seek to file a brief that is *four times* the length allowed by
3 this Court's rules, despite their failure to (1) timely seek the Court's prior approval, (2) confer with
4 Plaintiffs about the matter before the day of filing, or (3) demonstrate good cause. While this case is
5 indisputably important, its importance does not itself warrant such an enormous increase in the
6 amount of paper put before the Court. Indeed, principal briefs filed before the United States Supreme
7 Court on significant constitutional questions are limited to well under half the length requested here.
8 When Defendant-Intervenors first contacted Plaintiffs about this matter on the day of filing, Plaintiffs
9 offered reasonable compromises in an effort to solve the problem caused by Defendant-Intervenors'
10 failure to raise this issue in advance of the filing, but Defendant-Intervenors insisted on pushing
11 forward. Plaintiffs respectfully request that the Court and the Plaintiffs not bear the burden of
12 Defendant-Intervenors' failure to abide by this Court's rules and sensible case management.

13 Civil Local Rule 7-2(b) restricts the length of a motion to "one filed document not exceeding
14 25 pages in length." In the rare event a party believes that it is necessary to file a brief that exceeds
15 the 25-page limit and is able to demonstrate good cause in support thereof, the party must seek and
16 obtain the Court's approval to exceed the page restriction *prior to* the motion's due date. *See* Civ.
17 L.R. 7-4(b), 7-11. Defendant-Intervenors contend that Local Rule 7.4(b) and its command that
18 requests for extensions of the page limit be "made prior to the due date" apply only to those opposing
19 motions and not to those making them. Doc #172 at 2 n.1. This is, to say the least, a tendentious
20 interpretation of a Local Rule that governs the length of a party's "Brief or Memorandum of Point
21 And Authorities." L.R. 7-4(b) ("Length"); *see also* William W. Schwarzer et al., *Cal. Practice*
22 *Guide: Federal Civil Procedure Before Trial* § 12:62.2 (The Rutter Group 2009) ("If you need to
23 exceed the local rules page limit, be sure to request permission ... *before the brief is due!* ... If you
24 fail to obtain advance permission, the court may simply refuse to consider or even strike your
25 overlong brief, which may result in the motion not being heard at all if it was filed on or near the
26 motion cut-off date.") (emphasis in the original). The Court's Local Rules have not historically been
27 given interpretations that are at odds with principles of orderly case management, basic fairness, and
28 common sense, and Defendant-Intervenors suggest no reason why this Court should start now.

1 But even if Local Rule 7.4(b) permitted Defendant-Intervenors to seek leave to file 75 excess
2 pages on the day their brief is due, leave still should be denied. The profound importance of this case
3 does not remotely justify the quantity of excess pages Defendant-Intervenors request. At this stage in
4 the case—when not a single discovery response or document has yet been produced—a 100-page
5 motion is grossly excessive and an abuse of this Court’s and the parties’ resources. Indeed, the
6 United States Supreme Court limits principal briefs on the merits to 15,000 words (or approximately
7 40 pages of 12-point, double-spaced type). S. Ct. R. 33.1(g). And sometimes the Supreme Court
8 requires that briefs be even shorter: As one timely example, on the same day that Defendant-
9 Intervenors filed their motion, the Supreme Court heard re-argument in *Citizens United v. Federal*
10 *Election Commission*, a case that *The New York Times* editorial board said “may be about to radically
11 change politics” in America (Editorial, *A Threat to Fair Elections*, N.Y. Times, Sept. 8, 2009
12 available at <http://www.nytimes.com/2009/09/08/opinion/08tue1.html>), and that *The Wall Street*
13 *Journal* observed “tests not only a central pillar of federal campaign-finance law but the court’s own
14 respect for precedent.” Jess Bravin and T. W. Farnam, *Justices to Revisit Campaign Finance*, Wall
15 St. J., Sept. 3, 2009, available at <http://online.wsj.com/article/SB125193454105181373.html>.
16 Despite the gravity of the legal and social issues presented in *Citizens United*, the Supreme Court
17 restricted the parties to 6,000 words (or approximately 15 pages) for their opening supplemental
18 briefs and 3,000 words for their replies. *Citizens United v. Federal Election Comm’n*, No. 08-205
19 (U.S. June 29, 2009) (order setting reargument and briefing). While Plaintiffs are certainly open to a
20 reasonable extension of the page limitations, Defendant-Intervenors simply cannot justify a 100-page
21 brief at this stage in the proceedings.

22 Moreover, the belated nature the Defendant-Intervenors’ request has maximized the prejudice
23 to Plaintiffs. Defendant-Intervenors’ 100-page brief clearly has undoubtedly been in the works for
24 several weeks. Defendant-Intervenors could have alerted Plaintiffs and the Court of their intention to
25 file an overlong brief on any number of occasions: two filed case management statements, two case
26 management conferences before the Court where dispositive motions were discussed, and any
27 number of informal conferences between the parties to discuss case management issues. Yet,
28 Defendant-Intervenors never once raised even the possibility of needing additional pages for their

1 motion. Instead, they waited until the day the brief was due, perhaps hoping that doing so would
2 minimize the risk that the Court would deny their request, or perhaps that springing such a long brief
3 at the last minute might force a delay in the schedule of briefing and argument. Such tactics should
4 not be rewarded.

5 Despite this, and in a good-faith effort to reach a compromise, when Defendant-Intervenors'
6 counsel first contacted Plaintiffs about this matter on the morning of September 9, Plaintiffs offered
7 to stipulate to a more reasonable extension of the page limit, but Defendant-Intervenors refused to
8 discuss a shorter page limit. Declaration of Matthew D. McGill, ¶ 2. Plaintiffs also offered to
9 stipulate to a late filing of a summary judgment motion that conformed to the local rules, provided
10 that the hearing date and reply brief filing date remained the same, that Plaintiffs be given extra days
11 to oppose the motion, and that those extra days be deducted from Defendant-Intervenors' time to
12 reply; Defendant-Intervenors refused to discuss this solution, as well. *Id.* at ¶ 3. By first raising the
13 issue on the day their motion was due, and by not agreeing to any compromise, Defendant-
14 Intervenors force Plaintiffs to either oppose this massively over-length brief within the 14 days
15 provided by the local rules, or, on the other hand, seek a continuance of the expedited schedule and
16 perpetuate the ongoing harm to Plaintiffs. Neither option is acceptable or fair, and Plaintiffs
17 respectfully request that the Court require the Defendant-Intervenors to bear to consequences of their
18 failure to confer in advance.

19 Based on the foregoing, Plaintiffs request that the Court deny Defendant-Intervenors' Motion
20 for Administrative Leave to Exceed Page Limitations. Doc #172. Plaintiffs respectfully suggest that
21 the Court reject the proposed motion for summary judgment as defective and untimely. Defendant-
22 Intervenors should not be heard to protest that this result is too severe given that they, and they alone,
23 controlled the timing of their request and could have avoided this circumstance by seeking leave well
24 before the due date. As an alternative, if the Court is not inclined to reject the motion outright,
25 Plaintiffs respectfully request that the Court order a brief complying with the page limits to be filed
26 by September 11, 2009, and further order that Plaintiffs' opposition is due on or before September 25,
27 2009, and that Defendant-Intervenors' reply remains due on September 30, with the current hearing
28 date to remain unchanged.

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Respectfully submitted,

DATED: September 10, 2009

GIBSON, DUNN & CRUTCHER LLP

By: _____ /s/
Theodore B. Olson

and

BOIES, SCHILLER & FLEXNER LLP

David Boies

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