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4 ATTORNEY FOR DEFENDANT-INTERVENOR HAK-SHING WILLIAM TAM

5
6 **UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

7 KRISTIN M. PERRY, SANDRA B. STIER,
8 PAUL T. KATAMI, and JEFFREY J.
9 ZARRILLO,

10 Plaintiffs,

11 v.

12 ARNOLD SCHWARZENEGGER, in his official
capacity as Governor of California; EDMUND
13 G. BROWN, JR., in his official capacity as At-
torney General of California; MARK B. HOR-
14 TON, in his official capacity as Director of the
California Department of Public Health and State
15 Registrar of Vital Statistics; LINETTE SCOTT,
16 in her official capacity as Deputy Director of
Health Information & Strategic Planning for the
17 California Department of Public Health; PAT-
RICK O'CONNELL, in his official capacity as
18 Clerk-Recorder for the County of Alameda; and
19 DEAN C. LOGAN, in his official capacity as
Registrar-Recorder/County Clerk for
20 the County of Los Angeles,

21 Defendants,

22 and

23 PROPOSITION 8 OFFICIAL PROPONENTS
DENNIS HOLLINGSWORTH, GAIL J.
24 KNIGHT, MARTIN F. GUTIERREZ, HAK-
SHING WILLIAM TAM, and MARK A. JANS-
25 SON; and PROTECTMARRIAGE.COM – YES
26 ON 8, A PROJECT OF CALIFORNIA RE-
NEWAL,

27 Defendant-Intervenors.
28

CASE NO. 09-CV-2292 VRW

**DEFENDANT-INTERVENOR HAK-
SHING WILLIAM TAM'S MOTION
FOR LEAVE TO FILE MOTION TO
STRIKE AND/OR RECONSIDER**

Judge: Chief Judge Vaughn R. Walker
Location: Courtroom 6, 17th Floor

1 **TO THE PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that pursuant to Local Rule 7-9 Defendant Intervenor Hak-Shing
3 William Tam will and hereby does move this Court for leave to file the attached motion to strike
4 and/or reconsider its prior orders and rulings on Defendant-Intervenor's assertion of First Amendment
5 privilege, and also the attached declaration in support of that motion.
6

7 **MEMORANDUM AND POINTS OF AUTHORITIES**

8 1. L.R. 7-9(a) provides that a party must obtain leave of the Court to file a motion for re-
9 consideration of an interlocutory order “[b]efore the entry of a judgment adjudicating all of the claims
10 and the rights and liabilities of all the parties in a case.” In a motion for leave, the moving party must
11 show:

- 12 (1) That at the time of the motion for leave, a material difference in fact or law exists
13 from that which was presented to the Court before entry of the interlocutory order for
14 which reconsideration is sought. The party also must show that in the exercise of reason-
15 able diligence the party applying for reconsideration did not know such fact or law at the
16 time of the interlocutory order; or
17 (2) The emergence of new material facts or a change of law occurring after the time of
18 such order; or
19 (3) A manifest failure by the Court to consider material facts or dispositive legal argu-
20 ments which were presented to the Court before such interlocutory order.

21 L.R. 7-9(b).

22 2. In *Perry v. Schwarzenegger*, 591 F.3d 1147 (9th Cir. 2010) (hereinafter *Perry I*), the
23 Ninth Circuit held that “[i]mplicit in the right to associate with others to advance one’s shared
24 political beliefs is the right to exchange ideas and formulate strategy and messages, and to do so in
25 private.” *Id.* at 1162. The privilege is not limited to “official proponents of initiatives and referen-
26 dums, but also [extends] to the myriad social, economic, religious and political organizations that
27 publicly support or oppose ballot measures.” *Id.* at 1158. Footnote 12 stated that the “holding is ...
28 limited to communications among the core group of *persons* engaged in the formulation of campaign
strategy and messages,” *id.* at 1165 n.12, and this Court interpreted that language to mean that the

1 privilege was restricted to communications solely among those persons in a single organization or
2 entity. *See, e.g.* Trial Tr. 1615-1621.

3 On April 12, 2010 the Ninth Circuit stated:

4 [T]he district court said as a matter of law that “the First Amendment privilege does not
5 cover communications between [or among] separate organizations.” Doc #623 at 13
6 (brackets in original). If the district court meant that the privilege cannot apply to per-
7 sons who are part of a political association spanning more than one organization or entity,
8 then this interpretation was questionable. Under *Perry I*, the privilege applies to the core
9 group of *persons* engaged in the formulation of strategy and messages, whether or not
10 they are members of a single organization or entity. The operative inquiry is whether
11 they are part of an *association* subject to First Amendment protection. We did not hold
12 that the privilege cannot apply to a core group of associated persons spanning more than
13 one entity.

14 Order, *Perry v. Schwarzenegger*, No. 10-15649 (9th Cir. Apr. 12, 2010), at 8-9. And as the Ninth
15 Circuit stated in its January 4 opinion, the associations subject to First Amendment privilege are simply
16 those persons who come together “to advance one’s shared political beliefs,” including “myriad social,
17 economic, religious and political organizations.” *Perry I*, 591 F.3d at 1158, 1162.

18 3. Because the Ninth Circuit has provided clarification on the meaning of its prior mandate
19 there is now “a material difference in ... law ... from that which was presented to the Court before
20 entry of the interlocutory order for which reconsideration is sought.” L.R. 7-9(b)(1).

21 CONCLUSION

22 For the foregoing reasons, Defendant-Intervenor Tam respectfully requests that the Court grant
23 leave to file the attached motion to reconsider and/or strike exhibits and associated portions of the trial
24 transcript, and also the attached declaration in support of that motion.

25 Dated: April 26, 2010

Respectfully submitted,

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By: /s/ Terry L. Thompson
Terry L. Thompson