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11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA

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14 **KRISTIN M. PERRY, et al.,**

15 Plaintiffs,

16 v.

17 **ARNOLD SCHWARZENEGGER, et al.,**

18 Defendants.
19

Case No. 09-cv-02292-VRW

**ATTORNEY GENERAL'S OPPOSITION
TO DEFENDANT-INTERVENORS'
MOTION FOR STAY PENDING
APPEAL**

Action Filed: May 27, 2009

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21 The Attorney General opposes Defendant-Intervenors' Request for a Stay of this Court's
22 August 4, 2010 Order permanently enjoining the application or enforcement of Proposition 8
23 pending appeal of that Order. As the Attorney General has consistently stated and as was
24 convincingly demonstrated at trial, Proposition 8 violates the Fourteenth Amendment of the
25 United States Constitution. Defendant-Intervenors thus cannot demonstrate a likelihood of
26 success on the merits in their appeal of this Court's Order. Moreover, as this Court has concluded
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1 that Proposition 8 is unconstitutional, the public interest weighs against its continued
2 enforcement.

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

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

1 Dated: August 6, 2010

Respectfully submitted,

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