

**Case No. 12-17668**

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**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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BEVERLY SEVCIK, et al.

*Plaintiffs-Appellants,*

v.

BRIAN SANDOVAL, et al.,

*Defendants-Appellees,*

and

COALITION FOR THE PROTECTION OF MARRIAGE,

*Intervenor-Defendant-Appellee.*

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On Appeal from the United States District Court

for the District of Nevada

Case No. 2:12-CV-00578-RCJ-PAL

The Honorable Robert C. Jones, District Judge.

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**UNOPPOSED MOTION TO EXPEDITE HEARING**

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**Attorneys for Plaintiffs-Appellants**

## INTRODUCTION AND BACKGROUND

Pursuant to Ninth Circuit Rules 27-12, 34-3 and 28 U.S.C. § 1657, Plaintiffs-Appellants Beverly Sevcik and Mary Baranovich, Antioco Carrillo and Theodore Small, Karen Goody and Karen Vibe, Fletcher Whitwell and Greg Flamer, Mikyla Miller and Katrina Miller, Adele Terranova and Tara Newberry, Caren Cafferata-Jenkins and Farrell Cafferata-Jenkins, and Megan Lanz and Sara Geiger respectfully move the Court for an order expediting the hearing date in this appeal. No other party opposes this request.

This appeal involves an issue of profound significance: whether Nevada officials may deprive same-sex couples of due process and equal protection by denying them the freedom to marry. As the Supreme Court long has recognized, civil marriage plays a unique role in society as the universally recognized and celebrated hallmark of a couple's commitment to build family life together. *See Loving v. Virginia*, 388 U.S. 1, 12 (1967) ("The freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men."). This Court's recent decision that sexual orientation-based classifications must receive heightened scrutiny further underscores the importance of the rights at stake. *SmithKline Beecham Corp. v. Abbott Laboratories*, Nos. 11-17357, 11-17373, slip op. 26, 30 (9th Cir. Jan. 21, 2014) ("*Windsor*'s reasoning reinforces the constitutional urgency of ensuring that

individuals are not excluded from our most fundamental institutions because of their sexual orientation.”).

Plaintiffs-Appellants are eight loving and committed same-sex couples who filed suit on April 10, 2012 challenging the constitutionality of Nevada state and local officials’ refusal to allow them to marry, or to recognize the valid marriages some of them have entered in other jurisdictions. Plaintiffs-Appellants sought a declaration that excluding them from marriage based on their sexual orientation and their sex violates constitutional guarantees secured to them by the Fourteenth Amendment. Plaintiffs-Appellants also sought to permanently enjoin Defendant-Appellee Governor Brian Sandoval and three county clerks, all named in their official capacity, from denying same-sex couples (i) access to marriage, or (ii) recognition of the marriages of those couples who validly have married in another jurisdiction. The Coalition for the Protection of Marriage, a Nevada advocacy group that campaigned for the passage of Nevada’s state constitutional amendment barring marriage for same-sex couples, was permitted to intervene as a Defendant-Intervenor.

In an order dated November 26, 2012, the District Court granted in part a motion to dismiss, granted summary judgment for Defendants-Appellees, and denied Plaintiffs’ motion for summary judgment. ER 2-42. In granting Defendants-Appellees summary judgment, the District Court held that Nevada’s

exclusion of Plaintiffs-Appellants from marriage was subject only to rational basis review under the Equal Protection Clause, which is now clear error under *SmithKline*. ER 29. The District Court also held that the exclusion serves a legitimate government interest, because it is conceivable that “a meaningful percentage of heterosexual persons” would choose not to marry if same-sex couples were permitted to do so. ER 32. Plaintiffs-Appellants noticed this appeal on December 3, 2012. ER 43.

This case was initially stayed for several months based on the Supreme Court’s grant of certiorari in *Hollingsworth v. Perry* and *United States v. Windsor* and the possibility that those cases might decide one or more issues presented here. ECF Nos. 11, 13. Additionally, in the interests of judicial economy, the briefing schedule in this case was linked to another appeal pending in this Court (*Jackson v. Abercrombie* (Nos. 12-16995, 12-16998)) involving a challenge to the exclusion of same-sex couples from marriage in Hawaii. ECF No. 7. The briefing schedule in that appeal was extended given the likelihood that state legislation permitting same-sex couples to marry in Hawaii would moot the appeal. ECF No. 17 at 5. That legislation was enacted into law in November 2013. Haw. Rev. Stat. § 572-1.

Plaintiffs-Appellants in this case filed their proposed overlength opening brief on October 18, 2013, which the Court accepted on December 20, 2013. ECF No. 105. Defendants-Appellees filed their answering briefs on January 21, 2014,

ECF Nos. 110-3, 112, and 113; and Plaintiffs-Appellants will file their reply brief on or before February 24, 2014. While Plaintiffs-Appellants sued Nevada Governor Brian Sandoval, the clerks of Clark County and Washoe County and the Clerk-Recorder of Carson City, the clerks of Clark County and Washoe County never sought to defend Nevada's exclusion of same-sex couples from marriage in this case. Although Defendants-Appellees Carson City Clerk-Recorder Alan Glover and Governor Brian Sandoval did defend below and filed answering briefs with this Court, on January 28, 2014 Mr. Glover moved to withdraw his answering brief and filed a statement of non-opposition to Plaintiffs-Appellants' claims. ECF No. 142. The Court granted his motion on January 30, 2014. ECF No. 149. Governor Sandoval likewise moved to withdraw his answering brief and announced his non-opposition to Plaintiffs-Appellants' claims on February 10, 2014. ECF No. 171. Intervenor-Defendant-Appellee, the proponent of Nevada's constitutional amendment barring same-sex couples from marriage, now is the only remaining party defending the challenged laws.

For the reasons described below, Plaintiffs-Appellants respectfully request that the Court set a hearing for this appeal on the earliest available date following the completion of briefing.

## ARGUMENT

Good cause exists to expedite the hearing of this appeal under Ninth Circuit Rules 27-12, 34-3 and 28 U.S.C. § 1657 because Plaintiffs-Appellants suffer ongoing irreparable harm, and this case is thus entitled to priority in hearing.<sup>1</sup>

Ninth Circuit Rule 27-12(3) provides that a motion to expedite hearing an appeal “will be granted upon a showing of good cause,” which exists when irreparable harm may otherwise occur. Ninth Circuit Rule 34-3(5) also provides that appeals are entitled to priority in hearing for good cause shown pursuant to 28 U.S.C. § 1657. Good cause exists “if a right under the Constitution of the United States or a Federal Statute . . . would be maintained in a factual context that indicates that a request for expedited consideration has merit.” 28 U.S.C. § 1657(a). Additionally, hearing priority is afforded to civil cases seeking injunctive relief, which Plaintiffs-Appellants seek here. Ninth Cir. R. 34-3(3).

Irreparable harm in the deprivation of constitutional rights is undeniably present here. Plaintiffs-Appellants and thousands of other same-sex couples throughout the circuit are subjected to daily deprivation of their right to equal treatment and substantive due process of law under the Fourteenth Amendment. “It is well established that the deprivation of constitutional rights unquestionably

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<sup>1</sup> Pursuant to Circuit Rule 27-12, Plaintiffs-Appellants confirm that a transcript of the one hearing held before the District Court has been completed and is included in Plaintiffs-Appellants’ Excerpts of Record. ER 640.

constitutes irreparable injury.” *Rodriguez v. Robbins*, 715 F.3d 1127, 1144 (9th Cir. 2013) (internal quotation marks omitted) (quoting *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976))). Because no award of damages can restore the loss of dignity accompanying a governmental badge of inferiority, or unlawful deprivation of one’s liberty, “an alleged constitutional infringement *will often alone* constitute irreparable harm.” *United States v. Arizona*, 641 F.3d 339, 366 (9th Cir. 2011) (emphasis added) (quoting *Assoc. Gen. Contractors v. Coal. for Econ. Equity*, 950 F.2d 1401, 1412 (9th Cir. 1991)); *Monterey Mech. Co. v. Wilson*, 125 F.3d 702, 715 (9th Cir. 1997).

The District Court’s ruling here – issued before the Supreme Court’s decision in *Windsor*, and before this Court interpreted *Windsor* to require heightened judicial scrutiny of government discrimination based on sexual orientation in *SmithKline* – is an increasingly isolated and discredited interpretation of the Fourteenth Amendment’s requirements. Courts across the country have concluded in rapid succession that denying same-sex couples the freedom to marry is constitutionally unsupportable. In the last two months alone, five federal courts have issued rulings requiring states to allow same-sex couples to marry, or to recognize same-sex couples’ marriages in various circumstances. *See Bishop v. United States ex rel. Holder*, No. 04-CV-848-TCK-TLW, 2014 U.S. Dist. LEXIS



4374 (N.D. Ok. Jan. 17, 2014) (finding that Oklahoma's exclusion of same-sex couples from marriage is unconstitutional); *Kitchen v. Herbert*, No. 2:13-cv-217, 2013 U.S. Dist. LEXIS 179331 (D. Utah Dec. 20, 2013) (holding that Utah officials must allow same-sex couples to marry); *Obergefell v. Wymyslo*, No. 1:13-cv-501, 2013 U.S. Dist. LEXIS 179550 (S.D. Ohio Dec. 23, 2013) (holding that Ohio officials must recognize same-sex couples' valid marriages from other jurisdictions for purposes of completing death certificates); *Lee v. Orr*, No. 13-cv-8719, 2013 U.S. Dist. LEXIS 173801 (N.D. Ill. Dec. 10, 2013) (holding that a certified class of same-sex couples in Illinois with a critically ill partner must be allowed to marry); *Gray v. Orr*, No. 13 C 8449, 2013 U.S. Dist. LEXIS 171473 (N.D. Ill. Dec. 5, 2013) (holding that Illinois officials must permit same-sex couple to marry immediately because of one partner's terminal illness). For some same-sex couples, such as those facing a terminal illness, their opportunity to marry may be irretrievably lost due to the passage of time while an appeal is pending. The U.S. Court of Appeals for the Tenth Circuit recently recognized the exigency of these issues by expediting consideration of challenges to bans on marriage for same-sex couples in Utah and Oklahoma. *See* Decl. of Tara L. Borelli ("Borelli Decl."), Ex. A. Briefing concludes in the Utah challenge on March 4, 2014, and argument will be held on April 10, 2014. *See id.*, Exs. B and C. Briefing

concludes in the Oklahoma challenge on April 7, 2014, and argument will be held on April 17, 2014. *See id.*, Exs. D and E.

This Court has previously expedited a similar appeal, *Perry v. Brown*, 10-16696, involving the right of same-sex couples to marry in California. After staying the district court's order granting injunctive relief to same-sex couples, this Court ordered, *sua sponte*, that briefing be completed over approximately three months and held oral argument approximately one month after the completion of briefing. Borelli Decl. Ex. F.

Regardless of how the Court resolves the merits of this appeal, the question of whether states may constitutionally bar the doors of marriage to same-sex couples is of profound importance for not only thousands of same-sex couples in Nevada, but in five other states in the Circuit. *See, e.g., Connolly v. Brewer*, No. 2:14-cv-00024-JWS (D. Ariz. Jan. 6, 2014) (seeking marriage for same-sex couples in Arizona); *Rummell v. Kitzhaber*, No. 6:13-cv-02256-TC (D. Or. Dec. 19, 2013) (seeking marriage for same-sex couples in Oregon); *Geiger v. Kitzhaber*, No. 6:13-cv-01834-MC (D. Or. Oct. 15, 2013) (seeking marriage for same-sex couples in Oregon); *Latta v. Otter*, No. 1:13-cv-00482-CWD (D. Idaho Nov. 8, 2013) (seeking marriage for same-sex couples in Idaho); *cf. In re Fonberg*, 736 F.3d 901, at \*6-7 (9th Cir. EDR Op. 2013) (Kozinski, C.J., Clifton, J., and Beistline, J.) (referring to a same-sex couple “treated unequally vis-à-vis same-sex

couples in other states in the circuit, who may marry and thus gain [the federal] benefits [of marriage] under *Windsor*”).

In addition, all government officials named as defendants in the suit now have abandoned any defense of Nevada’s exclusion of same-sex couples from marriage. ECF Nos. 142, 171. The only party left advocating for Nevada’s exclusion of same-sex couples from marriage is a third-party intervenor, with no direct stake in the outcome and nothing more than a “generalized grievance” about Plaintiffs-Appellants’ claims. *See Hollingsworth v. Perry*, 133 S. Ct. 2652, 2662 (2013). While *Hollingsworth* permits this appeal to proceed given that the government defendants are still not providing the relief sought by plaintiffs, 133 S. Ct. at 2662, the fact that the government defendants no longer are defending Nevada’s exclusion of same-sex couples from marriage makes any delay in Plaintiffs-Appellants securing the relief they seek particularly intolerable.

Plaintiffs-Appellants and their children are marked daily with a badge of second-class citizenship, a harm particularly deserving of swift review and decision. Plaintiffs-Appellants respectfully request that the Court hear this appeal at its earliest opportunity to help speed that final resolution.

### **OPPOSING COUNSEL’S POSITION**

Plaintiffs-Appellants have conferred with all other counsel in the case about this motion. Borelli Decl. ¶ 8. All parties either support the relief requested, do

not oppose it, or take no position:

1. Counsel for Defendant-Appellee Governor Sandoval indicated that he does not oppose this request. Borelli Decl. ¶ 8(a).

2. Counsel for Defendant-Appellee Clark County Clerk Diana Alba indicated that she has no position on this request. Borelli Decl. ¶ 8(b).

3. Counsel for Defendant-Appellee Washoe County Clerk Nancy Parent indicated that she does not oppose this request.<sup>2</sup> Ms. Parent's counsel does *not* plan to present oral argument, but may want to make an appearance at the argument, and is unavailable from March 31, 2014 through April 11, 2014. Borelli Decl. ¶ 8(c).

4. Counsel for Defendant-Appellee Carson City Clerk-Recorder Alan Glover indicated that he does not oppose this request because he will not seek to participate in oral argument, pursuant to Mr. Glover's withdrawal of his answering brief and notice of non-opposition to Plaintiffs-Appellants' opening brief. Borelli Decl. ¶ 8(d).

5. Counsel for Intervenor-Defendant-Appellee Coalition for the Protection of Marriage ("Coalition") indicated that his client affirmatively supports and joins this request, on the condition that Plaintiffs-Appellants inform the Court that Intervenor's counsel will participate in the argument set by the Tenth Circuit

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<sup>2</sup> Pursuant to Federal Rule of Appellate Procedure 43(c)(2), Washoe County Clerk Nancy Parent is substituted for her predecessor, Amy Harvey.

on April 10, 2014 in *Kitchen v. Herbert*, No. 13-4178, as a member of the legal team representing Defendants-Appellants. Intervenor's counsel accordingly requests that argument not be set in this case for April 9-11, 2014. Borelli Decl. ¶ 8(e).

### CONCLUSION

For the reasons stated above, Plaintiffs-Appellants respectfully request that this Court expedite the hearing in this appeal.

DATE: February 10, 2014

Respectfully submitted,

Jon W. Davidson  
Tara L. Borelli  
Peter C. Renn  
LAMBDA LEGAL DEFENSE AND  
EDUCATION FUND, INC.

Carla Christofferson  
Dawn Sestito  
Dimitri Portnoi  
Melanie Cristol  
Rahi Azizi  
O'MELVENY & MYERS LLP

Kelly H. Dove  
Marek P. Bute  
SNELL & WILMER LLP

By: s/ Tara L. Borelli  
Tara L. Borelli

Attorneys for Plaintiffs-Appellants

## **CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on February 10, 2014.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

s/ Tara L. Borelli

**Case No. 12-17668**

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**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

---

BEVERLY SEVCIK, et al.

*Plaintiffs-Appellants,*

v.

BRIAN SANDOVAL, et al.,

*Defendants-Appellees,*

and

COALITION FOR THE PROTECTION OF MARRIAGE,

*Intervenor-Defendant-Appellee.*

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On Appeal from the United States District Court  
for the District of Nevada

Case No. 2:12-CV-00578-RCJ-PAL

The Honorable Robert C. Jones, District Judge.

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**DECLARATION OF TARA L. BORELLI**

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**Attorneys for Plaintiffs-Appellants**

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Atlanta, GA 30308-1210  
Tel.: (404) 897-1880

**Attorneys for Plaintiffs-Appellants**



I, Tara L. Borelli, declare as follows:

1. I am an attorney with Lambda Legal Defense and Education Fund, Inc., counsel for Plaintiffs-Appellants Beverly Sevcik and Mary Baranovich; Antioco Carrillo and Theodore Small; Karen Goody and Karen Vibe; Fletcher Whitwell and Greg Flamer; Mikyla Miller and Katrina Miller; Adele Terranova and Tara Newberry; Caren Cafferata-Jenkins and Farrell Cafferata-Jenkins; and Megan Lanz and Sara Geiger. I make this declaration in support of Plaintiffs-Appellants' Unopposed Motion To Expedite Hearing. I have personal knowledge of the facts set forth herein.

2. Attached as Exhibit A is a true and correct copy of the Order Denying Emergency Motion for Stay and Temporary Motion for Stay issued by the United States Court of Appeals for the Tenth Circuit on December 24, 2013 in *Kitchen v. Herbert* (No. 13-4178).

3. Attached as Exhibit B is a true and correct copy of the Order issued by the United States Court of Appeals for the Tenth Circuit on January 21, 2014 in *Kitchen v. Herbert* (No. 13-4178), setting the briefing schedule for the appeal.

4. Attached as Exhibit C is a true and correct copy of the Order issued by the United States Court of Appeals for the Tenth Circuit on January 29, 2014 in *Kitchen v. Herbert* (No. 13-4178), setting argument for the appeal on April 10, 2014.

5. Attached as Exhibit D is a true and correct copy of the Order issued by the United States Court of Appeals for the Tenth Circuit on January 28, 2014 in *Bishop v. Smith* (Nos. 14-5003, 14-5006), setting the briefing schedule for the appeal.

6. Attached as Exhibit E is a true and correct copy of the Order issued by the United States Court of Appeals for the Tenth Circuit on January 29, 2014 in *Bishop v. Smith* (Nos. 14-5003, 14-5006), setting argument for the appeal on April 17, 2014.

7. Attached as Exhibit F is a true and correct copy of the Order issued by this Court on August 16, 2010 in *Perry v. Brown* (No. 10-16696), ordering *sua sponte* that the appeal be expedited.

8. I have conferred with all other counsel in this case about Plaintiffs-Appellants' request. No other party opposes Plaintiffs-Appellants' request:

a. Counsel for Defendant-Appellee Governor Sandoval indicated that he does not oppose this request.

b. Counsel for Defendant-Appellee Clark County Clerk Diana Alba indicated that she has no position on this request.

c. Counsel for Defendant-Appellee Washoe County Clerk Nancy Parent indicated that she does not oppose this request. Ms. Parent's counsel does not plan to present oral argument, but may want to make an appearance at the

argument, and is unavailable from March 31, 2014 through April 11, 2014.<sup>1</sup>

d. Counsel for Defendant-Appellee Carson City Clerk-Recorder Alan Glover indicated that he does not oppose this request because he will not seek to participate in oral argument, pursuant to Mr. Glover's withdrawal of his answering brief and notice of non-opposition to Plaintiffs-Appellants' opening brief.

e. Counsel for Intervenor-Defendant-Appellee Coalition for the Protection of Marriage ("Coalition") indicated that his client affirmatively supports and joins this request, on the condition that Plaintiffs-Appellants inform the Court that Intervenor's counsel will participate in the argument set by the Tenth Circuit on April 10, 2014 in *Kitchen v. Herbert*, No. 13-4178, as a member of the legal team representing Defendants-Appellants. Intervenor's counsel accordingly requests that argument not be set in this case for April 9-11, 2014.

I declare, under penalty of perjury under the laws of the United States, that these facts are true and correct and that this Declaration is executed this 10th day of February 2014 in Atlanta, Georgia.

s/ Tara L. Borelli  
Tara L. Borelli

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<sup>1</sup> Pursuant to Federal Rule of Appellate Procedure 43(c)(2), Washoe County Clerk Nancy Parent is substituted for her predecessor, Amy Harvey.

# **Exhibit A**

FILED

United States Court of Appeals  
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

December 24, 2013

Elisabeth A. Shumaker  
Clerk of Court

DEREK KITCHEN, individually;  
MOUDI SBEITY, individually;  
KAREN ARCHER, individually;  
KATE CALL, individually;  
LAURIE WOOD, individually;  
KODY PARTRIDGE, individually,

Plaintiffs-Appellees,

v.

GARY R. HERBERT, in his official  
capacity as Governor of Utah; JOHN  
SWALLOW, in his official capacity as  
Attorney General of Utah,

Defendants-Appellants,

and

SHERRIE SWENSEN, in her official  
capacity as Clerk of Salt Lake County,

Defendant.

No. 13-4178  
(D.C. No. 2:13-CV-00217-RJS)  
(D. Utah)

**ORDER DENYING EMERGENCY MOTION FOR STAY AND TEMPORARY  
MOTION FOR STAY**

Before **HOLMES** and **BACHARACH**, Circuit Judges.

This is an appeal from a district court order concluding that Utah's prohibition on same-sex marriage is unconstitutional as a violation of due process and equal

protection. Defendants-Appellants seek a stay pending appeal and a temporary stay while the court considers the stay request. Plaintiffs-Appellees have filed a response.

A stay pending appeal is governed by the following factors: (1) the likelihood of success on appeal; (2) the threat of irreparable harm if the stay is not granted; (3) the absence of harm to opposing parties if the stay is granted; and (4) any risk of harm to the public interest. *Homans v. City of Albuquerque*, 264 F.3d 1240, 1243 (10th Cir.2001); 10th Cir. R. 8.1. The first two factors are the most critical, and they require more than a mere possibility of success and irreparable harm, respectively. *Nken v. Holder*, 556 U.S. 418, 434-35 (2009).

Having considered the district court's decision and the parties' arguments concerning the stay factors, we conclude that a stay is not warranted. Accordingly, we deny Defendants-Appellants' emergency motions for a stay pending appeal and for a temporary stay. In addition, we direct expedited consideration of this appeal. The Clerk is directed to issue a separate order setting deadlines for briefing.

Entered for the Court

A handwritten signature in black ink, reading "Elisabeth A. Shumaker". The signature is fluid and cursive, with a long horizontal flourish at the end.

ELISABETH A. SHUMAKER, Clerk

# **Exhibit B**

**FILED**

**United States Court of Appeals  
Tenth Circuit**

**UNITED STATES COURT OF APPEALS**

**FOR THE TENTH CIRCUIT**

**January 21, 2014**

**Elisabeth A. Shumaker  
Clerk of Court**

DEREK KITCHEN, individually, et al.,

Plaintiffs - Appellees,

v.

GARY R. HERBERT, in his official  
capacity as Governor of Utah, et al.,

Defendants - Appellants,

and

SHERRIE SWENSEN, in her official  
capacity as Clerk of Salt Lake County,

Defendant.

No. 13-4178

(D.C. No. 2:13-CV-00217-RJS)

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**ORDER**

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This matter is before the court on appellants' motion to extend the briefing schedule. We also have a response from the appellees and a reply. Upon consideration, and at the direction of the court, the request is granted as modified. The court will extend the deadline for filing the opening brief by 7 days, and will extend the other dates outlined in our order of December 30, 2013 by a corresponding amount. The new



deadline for filing the opening brief and appendix is February 3, 2014. The deadline for the response brief is February 25, and any reply shall be filed on or before March 4, 2014.

Entered for the Court

A handwritten signature in cursive script, reading "Elisabeth A. Shumaker", followed by a horizontal flourish line.

ELISABETH A. SHUMAKER, Clerk

# **Exhibit C**

FILED

United States Court of Appeals  
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

January 29, 2014

Elisabeth A. Shumaker  
Clerk of Court

DEREK KITCHEN, individually, et al.,

Plaintiffs - Appellees,

v.

GARY R. HERBERT, in his official  
capacity as Governor of Utah, et al.,

Defendants - Appellants,

and

SHERRIE SWENSEN, in her official  
capacity as Clerk of Salt Lake County,

Defendant.

No. 13-4178  
(D.C. No. 2:13-CV-00217-RJS)

ORDER

This matter is before the court to set the date and time for oral argument. The court will hear argument on Thursday April 10, 2014 at 10:00 am at the Byron White United States Courthouse in Denver, Colorado. The parties will receive additional information regarding the argument, including acknowledgment forms, via a separate communication.

Entered for the Court



ELISABETH A. SHUMAKER, Clerk

# **Exhibit D**

**FILED**

**United States Court of Appeals  
Tenth Circuit**

**UNITED STATES COURT OF APPEALS**

**FOR THE TENTH CIRCUIT**

**January 28, 2014**

**Elisabeth A. Shumaker  
Clerk of Court**

MARY BISHOP, et al.,

Plaintiffs - Appellees,

and

SUSAN G. BARTON, et al.,

Plaintiffs - Appellees/Cross-  
Appellants,

v.

SALLY HOWE SMITH, in her official  
capacity as Court Clerk for Tulsa County,  
State of Oklahoma,

Defendant - Appellant/Cross-  
Appellee,

and

UNITED STATES OF AMERICA, ex rel.  
ERIC H. HOLDER, JR., in his official  
capacity as Attorney General of the United  
States of America,

Defendant.

-----  
  
BIPARTISAN LEGAL ADVISORY  
GROUP OF THE U.S. HOUSE OF  
REPRESENTATIVES, et al.,

Intervenors-Defendants.

Nos. 14-5003 & 14-5006  
(D.C. No. 4:04-CV-00848-TCK-TLW)

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**ORDER**

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These matters are before the court on Sally Howe Smith's *Motion to Expedite Appeal*, which was filed in number 14-5003 on January 17, 2014. Since the motion was filed, we have opened cross appeal number 14-5006. The directives in this order apply in both cases.

In the motion, Ms. Smith requests an expedited briefing schedule, assignment of the cases to the same panel considering number 13-4178, *Kitchen, et al. v. Herbert, et al.*, and also asks the court to permit amicus briefs to be filed jointly in number 13-4178 and these matters. The motion notes plaintiffs consent to the requests in full.

Upon consideration, and at the direction of the court, the motion is granted. These cases will be assigned to the same panel considering number 13-4178, but the appeals will brief separately and be set for oral argument separately. The parties will be advised of the date and time for the oral argument setting in numbers 14-5003 and 14-5006 via separate order.

In addition, amicus parties may, consistent with Federal Rule of Appellate Procedure 29, file briefs jointly in all three cases. In that regard, jointly filed briefs shall be submitted electronically in these matters and number 13-4178, and shall include all three cases numbers on the brief. Counsel need only forward a total of 7 hard copies of the briefs to the clerk's office, however, consistent with 10th Circuit local rule 31.5. Unless an alternate schedule is approved via submission of a motion and upon order of

the court, any joint amicus briefs submitted shall be filed in accord with the briefing timeline in number 13-4178. *See* Fed. R. App. P. 29(e)(setting deadlines for filing amicus briefs).

These matters (numbers 14-5003 and 14-5006) will be set on a cross appeal briefing schedule. *See* Fed. R. App. P. 28.1(c). The first brief and appendix, *see* 10th Cir. R. 30, shall be filed by Ms. Smith on or before Monday February 24, 2014. The second brief and any supplemental appendix, if needed, shall be filed on or before Monday March 17. The third brief shall be filed on or before Tuesday April 1st, and the final optional reply shall be filed on or before Monday April 7, 2014. In light of the expedited nature of the schedule, requests for extension of time are discouraged.

Finally, a copy of this order shall be forwarded to all counsel of record in number 13-4178, *Kitchen, et al. v. Herbert, et al.*

Entered for the Court

A handwritten signature in cursive script, reading "Elisabeth A. Shumaker", followed by a horizontal flourish line.

ELISABETH A. SHUMAKER, Clerk

# **Exhibit E**



FILED

United States Court of Appeals  
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

January 29, 2014

Elisabeth A. Shumaker  
Clerk of Court

MARY BISHOP, et al.,

Plaintiffs - Appellees,

and

SUSAN G. BARTON, et al.,

Plaintiffs - Appellees/Cross-  
Appellants,

v.

SALLY HOWE SMITH, in her official  
capacity as Court Clerk for Tulsa County,  
State of Oklahoma,

Defendant - Appellant/Cross-  
Appellee,

and

UNITED STATES OF AMERICA, ex rel.  
ERIC H. HOLDER, JR., in his official  
capacity as Attorney General of the United  
States of America,

Defendant.

-----  
BIPARTISAN LEGAL ADVISORY  
GROUP OF THE U.S. HOUSE OF  
REPRESENTATIVES, et al.,

Intervenor-Defendants.

Nos. 14-5003 & 14-5006  
(D.C. No. 4:04-CV-00848-TCK-TLW)

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**ORDER**

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These matters are before the court to set the date and time for oral argument. The court will hear argument on Thursday April 17, 2014 at 1:30 pm at the Byron White United States Courthouse in Denver, Colorado. The parties will receive additional information regarding the argument, including acknowledgment forms, via a separate communication.

Entered for the Court

A handwritten signature in cursive script, reading "Elisabeth A. Shumaker", followed by a horizontal flourish line.

ELISABETH A. SHUMAKER, Clerk

# **Exhibit F**

**FILED**

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

AUG 16 2010

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

KRISTIN M. PERRY; et al.,

Plaintiffs - Appellees,

CITY AND COUNTY OF SAN  
FRANCISCO,Plaintiff - Intervenor-  
Appellee,

v.

ARNOLD SCHWARZENEGGER, in his  
official capacity as Governor of California;  
et al.,

Defendants,

and

DENNIS HOLLINGSWORTH; et al.,

Defendants -Intervenors-  
Appellants.

No. 10-16696

D.C. No. 3:09-cv-02292-VRW  
Northern District of California,  
San Francisco

ORDER

Before: LEAVY, HAWKINS and THOMAS, Circuit Judges.

Appellants' motion for a stay of the district court's order of August 4, 2010  
pending appeal is GRANTED. The court *sua sponte* orders that this appeal be

KS/MOATT

expedited pursuant to Federal Rule of Appellate Procedure 2. The provisions of Ninth Circuit Rule 31-2.2(a) (pertaining to grants of time extensions) shall not apply to this appeal. This appeal shall be calendared during the week of December 6, 2010, at The James R. Browning Courthouse in San Francisco, California.

The previously established briefing schedule is vacated. The opening brief is now due September 17, 2010. The answering brief is due October 18, 2010. The reply brief is due November 1, 2010. In addition to any issues appellants wish to raise on appeal, appellants are directed to include in their opening brief a discussion of why this appeal should not be dismissed for lack of Article III standing. *See Arizonans For Official English v. Arizona*, 520 U.S. 43, 66 (1997).

**IT IS SO ORDERED.**

## **CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on February 10, 2014.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

s/ Tara L. Borelli