

1 DAVID C. DINIELLI (SB No. 177904)
David.Dinielli@mto.com
2 LIKA C. MIYAKE (SB No. 231653)
Lika.Miyake@mto.com
3 BRAM ALDEN (SB No. 272858)
Bram.Alden@mto.com
4 MUNGER, TOLLES & OLSON LLP
355 South Grand Avenue, Thirty-Fifth Floor
5 Los Angeles, CA 90071-1560
Telephone: (213) 683-9100
6 Facsimile: (213) 687-3702

7 MICHELLE FRIEDLAND (SB No. 234124)
Michelle.Friedland@mto.com
8 MUNGER, TOLLES & OLSON LLP
560 Mission Street, Twenty-Seventh Floor
9 San Francisco, CA 94105-2907
Telephone: (415) 512-4000
10 Facsimile: (415) 512-4077

11 Attorneys for EQUALITY CALIFORNIA
12 Proposed Intervenor

SHANNON MINTER (SB No. 168907)
SMinter@nclrights.org
CHRISTOPHER STOLL (SB No. 179046)
cstoll@nclrights.org
NATIONAL CENTER FOR LESBIAN
RIGHTS
870 Market Street, Suite 360
San Francisco, CA 94102
Telephone: (415) 392-6257
Facsimile: (415) 392-8442

13 UNITED STATES DISTRICT COURT
14 EASTERN DISTRICT OF CALIFORNIA
15 SACRAMENTO DIVISION

16 DAVID PICKUP, CHRISTOPHER H.
17 ROSIK, PH.D., JOSEPH NICOLosi,
PH.D, ROBERT VAZZO, NATIONAL
18 ASSOCIATION FOR RESEARCH AND
THERAPY OF HOMOSEXUALITY
19 (NARTH), AMERICAN ASSOCIATION
OF CHRISTIAN COUNSELORS (AACC)
20 JOHN DOE 1, by and through JACK
AND JANE DOE 1, JACK DOE 1,
21 individually, and JANE DOE 1,
individually, JOHN DOE 2, by and through
22 JACK AND JANE DOE 2, JACK DOE 2,
individually, JANE DOE 2, individually;

23 Plaintiffs,

24 vs.

25 EDMUND G. BROWN, Jr. Governor of
26 the State of California, in his official
capacity; et al.,

27 Defendants.
28

CASE NO. 2:12-CV-02497-KJM-EFB

**EQUALITY CALIFORNIA'S *EX PARTE*
APPLICATION TO SHORTEN TIME ON
EQUALITY CALIFORNIA'S MOTION TO
INTERVENE, OR IN THE
ALTERNATIVE, FOR LEAVE TO
PARTICIPATE IN THE PROCEEDINGS
ON PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION;**

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF;
AND DECLARATION OF CHRISTOPHER
STOLL.**

Judge: Hon. Kimberly J. Mueller
Courtroom: #3, 15th Floor
Complaint filed: October 4, 2012

1 **TO PLAINTIFFS AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that Proposed Intervenor Equality California hereby moves *ex*
3 *parte* for an order shortening time for briefing and hearing on Equality California's concurrently
4 filed Motion To Intervene As Party Defendant.

5 Good cause exists to grant Equality California's application. Equality California's Motion
6 for Intervention has been noticed for hearing on November 30, 2012, the first currently available
7 hearing date. As explained in full in Equality California's Motion to Intervene, Equality
8 California has direct and substantial interests in this litigation, including in the outcome of
9 Plaintiffs' Motion for Preliminary Injunction, interests that will not adequately be represented by
10 the named Defendants. Equality California is filing its Motion to Intervene as early as
11 practicable, just four days after the named Defendants were served with the Complaint. However,
12 Plaintiffs have already filed their Motion for Preliminary Injunction and the parties have agreed to
13 stipulate to a briefing schedule where opposition briefs to the Motion for Preliminary Injunction
14 will be due on November 9, 2012. Equality California seeks to have its intervention motion heard
15 as soon as possible to ensure that the question about its ability to participate in this matter is
16 settled in time for Equality California to participate in briefing and any hearing on Plaintiffs'
17 Motion for Preliminary Injunction.

18 Equality California respectfully requests that if the Court wishes to hear oral argument on
19 its Motion for Intervention, such oral argument be scheduled for Friday, November 2, 2012 (or
20 such other date as the Court deems appropriate), and requests that the Court set the following
21 briefing schedule (or such other schedule as the Court deems appropriate):

22 **MOTION:** Friday, October 19, 2012 (already filed)

23 **OPPOSITION:** Thursday, October 25, 2012

24 **REPLY:** Monday, October 29, 2012

25 **HEARING:** Friday, November 2, 2012, at 10:00 a.m.

26 In the alternative, Equality California respectfully requests this Court's leave to file an
27 opposition brief to Plaintiffs' Motion for Preliminary Injunction, and to otherwise participate in
28

1 proceedings on Plaintiffs' Motion.

2 Equality California gave proper notice of this *Ex Parte* Application. Pursuant to this
3 Court's Standing Order, on October 17, 2012, counsel for Equality California met and conferred
4 with Plaintiffs' counsel, Mary McAllister of Liberty Counsel, by telephone, informing them of
5 this Application and of the specific relief requested, and seeking a stipulation for an abbreviated
6 schedule for briefing and hearing Equality California's Motion to Intervene. (Declaration of
7 Christopher Stoll, at ¶ 3.) Plaintiffs' counsel responded with an email objecting to the
8 abbreviated schedule Equality California proposed. (*Id.*) On October 17, 2012, Counsel for
9 Equality California also met and conferred with Defendants' counsel, Paul Stein of the California
10 Attorney General's Office, by telephone. Mr. Stein stated that Defendants did not oppose this *Ex*
11 *Parte* Application and would agree to have Equality California's Motion to Intervene heard on
12 November 2, 2012, and to an abbreviated briefing schedule. (*Id.* at ¶ 6.)

13 This Application is based upon this Notice, the Memorandum of Points and Authorities,
14 and the Declaration of Christopher Stoll, attached hereto, all pleadings, papers, and records in the
15 Court's file, and upon such oral argument as may be made at the hearing on this application.

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| 16 DATED: October 19, 2012 | 17 Munger, Tolles & Olson LLP 18 DAVID C. DINIELLI 19 MICHELLE FRIEDLAND 20 LIKA C. MIYAKE 21 BRAM ALDEN 22 By: _____ /s/ David C. Dinielli 23 24 Attorneys for EQUALITY CALIFORNIA 25 Proposed Intervenor 26 27 28 |
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MEMORANDUM OF POINTS AND AUTHORITIES

I. **INTRODUCTION**

Proposed Intervenor Equality California respectfully requests that the Court issue an order shortening time for the briefing and hearing on Equality California’s Motion To Intervene As Party Defendant (“Motion To Intervene”), filed concurrently with this Application. Good cause exists for granting Equality California’s requested relief because Equality California has direct and substantial interests in the outcome of this litigation. Moreover, because of the urgency with which Plaintiffs seek to resolve core merits issues in this matter—Plaintiffs already have filed a Motion for Preliminary Injunction and have agreed to a schedule that will have that Motion heard on November 30—the question of Equality California’s ability to participate in this matter cannot wait until the next available motion hearing date, which is also November 30, 2012. Equality California needs to know whether it can intervene in time for it to participate in the briefing on Plaintiffs’ preliminary injunction motion, and in the hearing on that motion. Thus, Equality California seeks an order abbreviating the briefing and hearing schedule on its Motion To Intervene.

Equality California respectfully requests that if the Court wishes to hear oral argument on its Motion for Intervention, such oral argument be scheduled for Friday, November 2, 2012 (or on such other date as the Court deems appropriate), and requests the following briefing schedule (or such other schedule as the Court deems appropriate):

MOTION: Friday, October 19, 2012 (already filed)

OPPOSITION: Thursday, October 25, 2012

REPLY: Monday, October 29, 2012

HEARING: Friday, November 2, 2012, at 10:00 a.m.

In the alternative, Equality California respectfully requests this Court’s leave to file an opposition brief to Plaintiffs’ Motion for Preliminary Injunction, and to otherwise participate in proceedings on Plaintiffs’ Motion.

1 II. **DISCUSSION**

2 A. **Background**

3 Plaintiffs filed their Complaint, along with a summons and civil cover sheet, on October 4,
4 2012. On the same day, Plaintiffs filed a Motion for Preliminary Injunction. (Dkt. #3.) Four
5 days later, on October 8, 2012, Plaintiffs filed a “Notice of Hearing,” purporting to notice the
6 hearing on their Motion for Preliminary Injunction for November 9, 2012. (Dkt. #16.)
7 Defendants received service of the Complaint, the Motion for Preliminary Injunction, and the
8 “Notice of Hearing” on Monday, October 15, 2012. (Declaration of Christopher Stoll, at ¶ 5
9 (“Stoll Decl.”).) Subsequently, Plaintiffs and Defendants reached an agreement on a briefing and
10 hearing schedule for the Motion for Preliminary Injunction. (Stoll Decl. ¶ 7.) That schedule is as
11 follows: Plaintiffs will re-file an opening brief of 30 pages on Monday, October 22; opposition
12 brief due November 9; reply brief due November 16; and the hearing on November 30, 2012.

13 (*Id.*)

14 The earliest hearing date available for a regularly noticed motion, according to this
15 Court’s standing orders, is November 30, 2012. (Stoll Decl. ¶ 2.)

16 Absent an injunction, SB 1172 will go into effect on January 1, 2013. Cal. Const. Art. 4,
17 § 8(c)(1).

18 B. **Good Cause Exists To Grant *Ex Parte* Relief To Shorten The Time For**
19 **Briefing And Hearing Equality California’s Motion To Intervene**

20 A court may shorten the prescribed period before a hearing on a motion if the moving
21 party demonstrates good cause. Fed. R. Civ. P 6(c)(1)(C); *see also, e.g., United States v. Fitch*,
22 472 F.2d 548, 549, fn. 5 (9th Cir. 1973) (“F.R.Civ.P.[6(c)(1)(C)] allows the district court
23 discretion to shorten time”). Good cause exists here.

24 As explained more fully in its Motion To Intervene, Equality California has a direct and
25 substantial interest in the outcome of this litigation. Equality California was a sponsor of Senate
26 Bill 1172 (“SB 1172”), the law Plaintiffs seek to enjoin, and representatives and members of
27 Equality California provided testimony to the Legislature in support of SB 1172. SB 1172 is a
28 critical part of Equality California’s work to protect lesbian, gay, bisexual, and transgender

1 (“LGBT”) youth from the harms caused by purported sexual orientation change efforts, including
2 on behalf of members of Equality California who are parents of LGBT youth. Further, Equality
3 California’s interests will not be adequately represented by the state officials named as defendants
4 in this action for two principal reasons. First, the State Defendants may argue in favor of a
5 narrowing construction of SB 1172, because the State’s interests are affected by the potential
6 liability it faces under SB 1172 for the actions of public employees who have subjected youth in
7 State care to sexual orientation change efforts. Second, the State will not argue—as Equality
8 California will—that one of the justifications for enacting and enforcing SB 1172 is its role in
9 helping to remedy the State’s own history of promoting sexual orientation change efforts and
10 failing to protect minors from those dangerous and harmful practices. Accordingly, in its Motion
11 To Intervene, Equality California explains that the law permits Equality California’s participation
12 in this lawsuit as a party defendant, both as a matter of right and as a matter of this Court’s
13 discretion.

14 Given Equality California’s substantial and unrepresented interests in this matter, this
15 litigation would be best served by its participation in the lawsuit, including in briefing on the
16 Motion for Preliminary Injunction. However, unless consideration of its Motion to Intervene is
17 expedited, Equality California will be unable to participate meaningfully in the proceedings on
18 the Motion for Preliminary Injunction. Equality California filed its Motion To Intervene as early
19 as practicably possible—indeed, Equality California has filed to intervene in this matter just four
20 days after the Plaintiffs served the Complaint on Defendants. According to the available hearing
21 dates provided on the Court’s website, however, the earliest date on which Equality California
22 could notice its Motion To Intervene to be heard was November 30, 2012. (Stoll Decl. ¶ 2.)

23 Plaintiffs filed their Motion for Preliminary Injunction, and its accompanying documents,
24 on October 4, 2012, the same day they filed their complaint. (Dkt. # 2.) After serving
25 Defendants with the Complaint on October 15, 2012, Plaintiffs reached an agreement with
26 Defendants on a briefing and hearing schedule on their Motion for Preliminary Injunction that
27 requires opposition briefs to be filed by November 9, 2012, and sets the hearing on the Motion for
28 November 30, 2012. (Stoll Decl. ¶ 7.) Accordingly, Equality California cannot have its Motion

1 for Intervention heard under regularly noticed motion procedures and be able to participate in the
2 proceedings on the Motion for Preliminary Injunction, including in the briefing on that motion.
3 Based on the next available motion hearing date, Equality California's Motion to Intervene would
4 not even be heard before opposition briefs would be due on Plaintiffs' Motion for Preliminary
5 Injunction.

6 Further, good cause exists for granting this relief *ex parte* because Equality California
7 cannot obtain the relief requested—an expedited resolution of its Motion to Intervene via an
8 abbreviated motion schedule—under regular noticed motion procedures. *See* William W.
9 Schwarzer et al., Fed. Civ. Proc. Before Trial § 12:170 (2004); *Mission Power Eng'g Co. v.*
10 *Cont'l Casualty Co.*, 883 F. Supp. 488, 492 (C.D. Cal. 1995).

11 Counsel for Equality California met and conferred with counsel for both Plaintiffs and
12 Defendants regarding this *Ex Parte* Application. Plaintiffs refused to stipulate to shortening the
13 time on the Motion To Intervene and stated that they would oppose this *Ex Parte* Application.
14 (Stoll Decl. ¶ 3.) Defendants agreed to stipulate to Equality California's proposed briefing and
15 hearing schedule. (*Id.* ¶ 6.)

16 C. **In The Alternative, Equality California Should Be Granted Leave To Participate In**
17 **the Proceedings On Plaintiffs' Motion For Preliminary Injunction**

18 In the alternative, Equality California respectfully requests that this Court grant it leave to
19 file a brief opposing Plaintiffs' Motion for Preliminary Injunction, and participate in any
20 discovery or other proceedings in connection with that Motion, pending resolution of its Motion
21 to Intervene. Equality California will follow any schedule for the Motion for Preliminary
22 Injunction ordered by the Court.

23 III. **CONCLUSION**

24 For the foregoing reasons, Equality California respectfully requests that the Court grant its
25 *ex parte* application to set an abbreviated briefing and hearing schedule on its Motion To

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1 Intervene, or, in the alternative, for leave to participate in the proceedings on Plaintiffs' Motion
2 for Preliminary Injunction pending resolution of Equality California's Motion to Intervene.

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DATED: October 19, 2012

Munger, Tolles & Olson LLP
DAVID C. DINIELLI
MICHELLE FRIEDLAND
LIKA C. MIYAKE
BRAM ALDEN

By: /s/ David C. Dinielli

Attorneys for EQUALITY CALIFORNIA
Proposed Intervenor

DECLARATION OF CHRISTOPHER STOLL

I, Christopher Stoll, do hereby state and declare as follows:

1. I am a Senior Staff Attorney at the National Center for Lesbian Rights and counsel for proposed Intervenor-Defendant Equality California. I am duly licensed to practice law before the courts of the State of California and have been admitted to appear in the Eastern District of California. I have personal knowledge of the facts set forth in this declaration, and could and would testify competently to them if called upon to do so.

2. On October 18, 2012, I visited the “Court Calendar” page on the website for the U.S. District Court for the Eastern District of California, at <http://www.caed.uscourts.gov/wconnect/wc.dll?caedprocess~CourtRoomCalendar~>. I clicked on the “More Calendaring Information” link on that page to access calendaring information for Judge Mueller’s courtroom. The “More Calendaring Information” page provides the available motion dates in Judge Mueller’s courtroom, and indicates that the first available motion date is November 30, 2012.

3. On October 17, 2012, at approximately 9:30 a.m. PST, I called counsel for Plaintiffs, Mary McAllister of Liberty Counsel. In that telephone call, I informed Ms. McAllister that Equality California would seek an abbreviated briefing and hearing schedule on its Motion to Intervene, with a hearing on November 2, 2012, and with a briefing schedule requiring the Opposition to this Motion be due 6 calendar days from the date of the filing of this Motion and the Reply be due 4 calendar days thereafter. I asked Ms. McAllister if Plaintiffs would stipulate to this schedule for Equality California’s Motion to Intervene. Ms. McAllister responded by email on October 17, 2012, stating that Plaintiffs would not stipulate to the proposed schedule.

4. On October 17 and 18, 2012, I spoke with Paul Stein of the California Attorney General’s Office. He stated that he is counsel for all of the Defendants in this action.

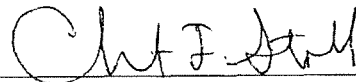
5. Mr. Stein stated that the named Defendants in this matter were served with the Complaint in this matter on Monday, October 15, 2012. Mr. Stein also indicated that Defendants received service of Plaintiffs’ Motion for Preliminary Injunction and a “Notice of

1 Hearing” purporting to notice a hearing date of November 9, 2012, for their Motion for
2 Preliminary Injunction, on the same day, October 15, 2012.

3 6. I informed Mr. Stein that Equality California planned to seek an
4 abbreviated briefing and hearing schedule on its Motion to Intervene, with a hearing on
5 November 2, 2012, and a briefing schedule requiring the Opposition to this Motion be due 6
6 calendar days from the date of the filing of this Motion and the Reply be due 4 calendar days
7 thereafter. I asked Mr. Stein if Defendants would stipulate to this schedule for Equality
8 California’s Motion to Intervene. Mr. Stein responded that Defendants would stipulate to the
9 proposed schedule and do not oppose this *Ex Parte* Application.

10 7. On October 18, 2012, Mr. Stein left me a voicemail, in which he stated that
11 the Defendants had reached a stipulated briefing schedule with Plaintiffs on Plaintiffs’ Motion for
12 Preliminary Injunction. Mr. Stein stated that the schedule agreed to by the parties was as follows:
13 Plaintiffs’ revised opening brief due on October 22, 2012; opposition brief due on November 9,
14 2012; reply brief due on November 16, 2012; and hearing on November 30, 2012.

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16 I declare under penalty of perjury that the foregoing is true and correct. Executed
17 this 19th day of October 2012, at San Francisco, California.

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19 CHRISTOPHER STOLL

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