

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

NO. 11-17255

KRISTIN PERRY, *et al.*,
Plaintiffs-Appellees,

vs.

EDMUND G. BROWN, JR., *et al.*,
Defendants,

and

DENNIS HOLLINGSWORTH, *et al.*,
Defendant-Proponents-Appellants.

On Appeal from the United States District Court
for the Northern District of California

Civil Case No. 09-CV-2292 JW (Hon. James Ware)

NON-PARTY MEDIA COALITION'S MOTION TO INTERVENE

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Coalition LOS ANGELES TIMES
COMMUNICATIONS, LLC; THE
McCLATCHY COMPANY; CABLE
NEWS NETWORK; IN SESSION
(formerly known as "COURT TV");
THE NEW YORK TIMES CO.; FOX
NEWS; NBC NEWS; HEARST
CORPORATION; DOW JONES &
COMPANY, INC.; THE
ASSOCIATED PRESS; KQED INC.,
on behalf of KQED News and the
California Report; THE REPORTERS
COMMITTEE FOR FREEDOM OF
THE PRESS; and, THE NORTHERN
CALIFORNIA CHAPTER OF RADIO
& TELEVISION NEWS DIRECTORS
ASSOCIATION

Come now, Los Angeles Times Communications, LLC; The McClatchy Company; Cable News Network; In Session (formerly known as “Court TV”); The New York Times Co.; Fox News; NBC News; Hearst Corporation; Dow Jones & Company, Inc.; The Associated Press; KQED Inc., on behalf of KQED News and the California Report; The Reporters Committee for Freedom of the Press; and, The Northern California Chapter of Radio & Television News Directors Association (the “Non-Party Media Coalition”), pursuant to Rule 27 of the Federal Rules of Appellate Procedure, and respectfully submit this Motion to Intervene in this proceeding as an Appellee for all purposes, including opposing the “Emergency Motion for Stay Pending Appeal” filed by Appellants and currently pending before this Court (the “Motion”), and participating in the merits briefing.

Thus, the Non-Party Media Coalition respectfully request that the Court accept the concurrently-lodged “Non-Party Media Coalition’s Opposition to Emergency Motion to Stay Pending Appeal” (the “Opposition”) in evaluating the Motion. Should the Court, for any reason, deny this motion for leave to intervene, The Non-Party Media Coalition, in the alternative, move for leave to file the attached Opposition as an *amicus curiae*.

The Non-Party Media Coalition actively participated in proceedings relating to the potential broadcast of the trial, culminating in the U.S. Supreme Court’s decision in *Hollingsworth v. Perry*, 130 S. Ct. 705 (2010). In addition, the Non-

Party Media Coalition has actively participated in proceedings related to the pending Motion, including arguments to the District Court (as stated at page 4 n.7 of the Order on appeal) and this Court (in Case Nos. 10-70063 and 10-16696), seeking an order unsealing the video recordings of the trial in this matter. This Court's Order entered April 27, 2011, in Case No. 10-16696 referred the Non-Party Media Coalition's papers filed with this Court to the district court for resolution, and the district court then allowed the Non-Party Media Coalition to participate in proceedings related to the Order on appeal (as reflected in the Order on appeal at 4 n.7).

As this Court repeatedly has recognized, the media has standing to assert the public's – and its own – constitutional right of access to court records and proceedings. *See, e.g., Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 609 n.25 (1982) (“representatives of the press and the general public must be given an opportunity to be heard on the question of their exclusion”). Thus, this Court has held that non-parties must be permitted to intervene for the purpose of challenging any restrictions on the First Amendment right of access. *See Beckman Industries, Inc. v. Int'l Ins. Co.*, 966 F.2d 470, 473 (9th Cir. 1992). This Court also has recognized that non-parties challenging restrictions on public access need not file a formal complaint in intervention. *See id.*; *see also In re Associated Press*, 162 F.3d 503, 508 (7th Cir. 1998) (“*Associated Press II*”) (reversing district court and

instructing that “the Press ought to have been able to intervene in order to present arguments against limitations on the constitutional or common law right of access”).

As the Non-Party Media Coalition explains in their concurrently-lodged Opposition, the issue pending before this Court is of profound interest to members of the public, who have followed this matter closely as it worked its way through the trial court and to this Court and the California Supreme Court. The access issue presented in the appeal now pending before the Court is one frequently litigated by members of the media – whether a presumptive right of access attaches to materials in a court file and, if so, whether those who seek the sealing of those materials have met their heavy burden to justify that sealing. The majority of the Non-Party Media Coalition has already participated in this case, as discussed above.¹ Thus, the interest of the Non-Party Media Coalition in the questions pending before this Court cannot be denied.

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¹ Indeed, given their prior participation in this case, which the district court expressly noted (in the Order on appeal at 4 n.7), the Non-Party Media Coalition contend that Appellants should have served their Stay Motion on the Non-Party Media Coalition.

For the foregoing reasons, the Non-Party Media Coalition respectfully requests that this Court grant this Motion and give the Non-Party Media Coalition the right to intervene as a party in this appeal. Alternatively, the Non-Party Media Coalition requests that the Court grant the Non-Party Media Coalition the right to file the concurrently-submitted Opposition as a brief of *amicus curiae*.

RESPECTFULLY SUBMITTED this 3rd day of October, 2011.

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