



March 3, 2011

Honorable Tani Cantil-Sakauye, Chief Justice and
Associate Justices of the California Supreme Court
350 McAllister Street
San Francisco, CA 94102-4797

Re: *Perry v. Schwarzenegger*, Case No. S189476
Briefing And Oral Argument Schedule

Dear Chief Justice Cantil-Sakauye and Associate Justices,

The Courage Campaign is a nonprofit California-based social justice organization comprised of hundreds of thousands of Californians and is supported by thousands of small financial donors. We write to encourage the Court to expedite the briefing and oral argument schedule in *Perry v. Schwarzenegger*.

Statement of Interest

Derence Kernek, a 79 year old Courage Campaign member from Palm Springs, has been in a loving relationship with his partner, Ed Phillips, 78, for over forty years. They met at California Polytechnic School in 1970 and were united in a commitment ceremony in Kansas City in 1989. Ed was recently diagnosed with Alzheimer's disease and his mental condition is rapidly degrading. Fearing that Ed may soon lose his mental capacity, couple wants to be married while Ed is still cognizant of his situation. A delay in this Court's decision on the certified question could deprive Derence and Ed of the chance to be legally married.

Jerry Peterson, 73, and his partner, Bob Smith, 79, are Courage Campaign members from San Diego. When same-sex marriage became legal in 2008, Jerry and Bob planned for a wedding date in about a year, to allow for time to make all of the arrangements. With the passage of Proposition 8, they had to cancel those plans. However, Judge Walker's decision in *Perry v. Schwarzenegger* gave them hope. They desperately want to marry in California, but given their ages, they worry about additional litigation delays.

Shane Mayer and John Quintana, both 28 year old members of the Courage Campaign, have been together for two years. The San Francisco couple recently decided that they wanted to get married, but wanted to wait until it was legal in their home state. However, Shane's father was recently diagnosed with cancer. While his prognosis has improved for the time being, they desperately want to marry, legally, in the presence of their entire family. Any further delay could cause serious and irreparable harm to the couple and their family.

Sylvia, a 72 year old Courage Campaign member from Sun City, CA, recently lost her partner, Maryellen Smith after a long illness. Maryellen died while the couple was waiting

for marriage equality and they never had the chance to marry. Sylvia and her partner had been surviving on her social security and her partner's pension, but because the couple could not legally wed, Sylvia is now barely surviving on her social security benefits. While the Court expediting its decision in this matter will not help Sylvia, it will help the thousands of other couples who are waiting for the chance to legally wed.

Public Policy

California has set forth a general public policy preference for speedy court action when parties with substantial interests are over the age of 70 and their health would prejudice their interest in the litigation. [Code of Civ. Proc. § 36(a)]¹

While the named parties in this action may not be entitled to preference, many of the individuals whose rights are being litigated in this case would be entitled to preference if they were parties. For example, Mr. Kernek and his partner are both over the age of 70, and their right to marry depends on the outcome of this litigation. A speedy resolution by this Court of the question certified from the U.S. Court of Appeals for the Ninth Circuit would remove an impediment that otherwise prevents them from marrying before one or both of them die. Many other Courage Campaign members, who are also over the age of 70, have similar stories. A speedy resolution on this question could mean the chance at equality for hundreds of couples who may not otherwise have that chance.

Conclusion

Plaintiffs have requested a briefing and argument schedule commencing on March 14, and argument during the week of May 23, as compared to the Court's original with an oral argument date in late September 2011. The proposed schedule would not prejudice the Proponents, as it preserves the allotted time for proponents. However, the four months difference could give many couples across the state the ability to marry the person they love before it is too late.

For these reasons, we respectfully request that the California Supreme Court adopt the Plaintiffs' proposed schedule.

Respectfully submitted,
Richard Jacobs
Chair
Courage Campaign
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¹36. (a) A party to a civil action who is over 70 years of age may petition the court for a preference, which the court shall grant if the court makes both of the following findings:

(1) The party has a substantial interest in the action as a whole.

(2) The health of the party is such that a preference is necessary to prevent prejudicing the party's interest in the litigation.

