

20-16375

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

KRISTIN M. PERRY, et al.,

Plaintiffs-Appellees,

**CITY AND COUNTY OF SAN
FRANCISCO,**

Intervenor-Plaintiff-Appellee,

KQED, INC.,

Intervenor-Appellee,

v.

GAVIN NEWSOM, Governor; et al.,

Defendants-Appellees.

DENNIS HOLLINGSWORTH; et al.,

Intervenor-Defendants-Appellants,

and

PATRICK O'CONNELL; et al.,

Defendants.

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

No. 3:09-cv-02292-WHO
The Honorable William H. Orrick, Judge

**STATEMENT OF OPPOSITION TO MOTION
FOR STAY PENDING APPEAL**

XAVIER BECERRA
Attorney General of California
THOMAS S. PATTERSON
Senior Assistant Attorney General
BENJAMIN M. GLICKMAN
Supervising Deputy Attorney General
SETH E. GOLDSTEIN
Deputy Attorney General
State Bar No. 238228
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 210-6063
Fax: (916) 324-8835
Email: Seth.Goldstein@doj.ca.gov
Attorneys for Defendants-Appellees

State Defendants-Appellees oppose the motion for stay pending appeal. Dkt. # 2-1. In order to obtain a stay, appellants must (1) make a strong showing that they are likely to succeed on the merits, and (2) demonstrate that they will be irreparably injured absent a stay. *Al Otro Lado v. Wolf*, 952 F.3d 999, 1006-7 (9th Cir. 2020). Appellants have done neither.

As the district court found:

[T]he Proponents again failed to submit any evidence by declaration that any Proponent or witness who testified on behalf of the Proponents wants the trial recordings to remain under seal. There is no evidence that any Proponent or trial witness fears retaliation or harassment if the recordings are released. Nor is there any evidence that any Proponent or trial witness on behalf of the Proponents believed at the time or believes now that Judge Walker's commitment to personal use of the recordings meant that the trial recordings would remain under seal forever.

Dkt. # 2-1, App. 3. The district court was correct, nothing has changed on appeal, and Appellants' motion therefore must be denied.

It has now been more than ten years since the historic trial in this action. Given the strong presumption in favor of access to court records, and the public interest in transparency, this Court should deny the motion and allow the release of the video recordings on August 12 pursuant to the district court's order. *See Wolf*, 952 F.3d at 1007 (in determining whether to stay an order pending appeal, court considers "where the public interest lies"); *Courthouse News Serv. v. Planet*, 947 F.3d 581, 589 (9th Cir. 2020) ("Openness in judicial proceedings enhances both

the basic fairness of the proceeding and the appearance of fairness so essential to public confidence in the system . . . and forms an indispensable predicate to free expression about the workings of government.”) (citations and internal quotations omitted).

Dated: July 27, 2020

Respectfully Submitted,

XAVIER BECERRA
Attorney General of California
THOMAS S. PATTERSON
Senior Assistant Attorney General
BENJAMIN M. GLICKMAN
Supervising Deputy Attorney General

/s/ SETH GOLDSTEIN

SETH E. GOLDSTEIN
Deputy Attorney General
Attorneys for Defendants-Appellees

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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CERTIFICATE OF SERVICE

Case Name: **Kristin M. Perry, et al. v.
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[Appeal]**

No. **20-16375**

I hereby certify that on July 27, 2020, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

STATEMENT OF OPPOSITION TO MOTION FOR STAY PENDING APPEAL

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system on the following:

Theodore B. Olson
Matthew D. McGill
Amir C. Tayrani
Gibson, Dunn & Crutcher, LLP
1050 Connecticut Avenue, NW
Washington, D.C. 20036
tolson@gibsondunn.com
*Attorneys for Plaintiffs Kristin M. Perry,
Sandra B. Stier, Paul T. Katami, and Jeffrey
J. Zarrillo*

Jeremy M. Goldman
Dennis J. Herrera
Ronald P. Flynn
Yvonne R. Mere
Christine Van Aken
Ronald P. Flynn
Danny Yeh Chou
City and County of San Francisco
Office of the City Attorney
One Dr. Carlton b. Goodlett Place, Room 234
San Francisco, CA 94102-4682
Jeremy.goldman@sfcityatty.org
*Attorneys for Plaintiff-Intervenor City and
County of San Francisco*

John T. Seyman
Office of the County Counsel
County of Alameda
1221 Oak Street, Suite 450
Oakland, CA 94612
John.seyman@acgov.org
Attorney for Defendant Patrick O'Connell

Patrick J. Salseda
Los Angeles County Counsel
648 Kenneth Hahn Hall of Admin
500 W. Temple St.
Los Angeles, CA 90012
psalseda@counsel.lacounty.gov
Attorney for Defendant Dean C. Logan

Thomas R. Burke
Davis Wright Tremaine LLP
505 Montgomery Street, Suite 800
San Francisco, CA 94111
thomasburke@dwt.com
Attorney for Intervenor KQED, Inc.

Charles J. Cooper
David H. Thompson
Peter A. Patterson
John D. Ohlendorf
Cooper and Kirk, PLLC
1523 New Hampshire Ave., NW
Washington, D.C. 20036
ccooper@cooperkirk.com
*Attorneys for Intervenor-Defendants-
Appellants*

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on July 27, 2020, at Sacramento, California.

Tracie Campbell
Declarant

/s/ Tracie Campbell
Signature

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