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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

VIVID ENTERTAINMENT, LLC;)	Case No. CV 13-00190 DDP (AGRx)
CALIFA PRODUCTIONS, INC.;)	
JANE DOE a/k/a KAYDEN KROSS,)	ORDER DENYING PLAINTIFFS' MOTION
)	FOR RECONSIDERATION
Plaintiffs,)	
)	[Docket No. 63]
v.)	
)	
JONATHAN FIELDING, DIRECTOR)	
OF LOS ANGELES COUNTY)	
DEPARTMENT OF PUBLIC HEALTH;)	
JACKIE LACEY, LOS ANGELES)	
COUNTY DISTRICT ATTORNEY,)	
and COUNTY OF LOS ANGELES,)	
)	
Defendants.)	
)	
)	

I. Introduction

On November 6, 2012, Los Angeles County approved Measure B, which requires producers of adult films to obtain a permit from the Los Angeles County Department of Public Health before production can take place. (Compl. ¶¶ 36, 41.) Measure B also requires the use of condoms by performers for all acts of anal or vaginal sex during the production of adult films. (*Id.* ¶ 42.) Plaintiffs Vivid Entertainment, LLC ("Vivid"), Califa Productions, Inc., Jane Doe,

1 and John Doe are in the adult film industry. (Id. ¶¶ 10-11.)
2 Plaintiffs have sued Jonathan Fielding, Director of Los Angeles
3 County Department of Public Health; Jackie Lacie, Los Angeles
4 County District Attorney; and County of Los Angeles (the "County
5 Defendants") for Declaratory and Injunctive Relief, claiming that
6 Measure B is unconstitutional. (See generally id.) The County
7 Defendants have declined to defend Measure B's constitutionality.
8 (Order at 9.) The County, however, has taken steps to begin
9 enforcing Measure B. (Docket No. 56 Ex. 1.)

10 On April 16, 2013 this Court granted Michael Weinstein,
11 Marijane Jackson, Arlette De La Cruz, Mark McGrath, Whitney
12 Engeran, the Campaign Committee Yes on B, and Major Funding by the
13 AIDS Healthcare Foundation's ("Intervenors") Motion to Intervene.
14 (See generally Order Granting Motion to Intervene ("Order"), Docket
15 No. 44.) "Intervenors were the official proponents of Measure B;"
16 they "drafted the language that would become Measure B, collected
17 signatures to qualify the Measure for the November 2012 ballot,
18 submitted the signatures for verification, raised funds, and
19 drafted an argument for the appearance of the Measure on the
20 ballot." (Order at 2.)

21 In light of the recent Supreme Court decision in
22 Hollingsworth v. Perry, 133 S.Ct. 2652 (2013), Plaintiffs have
23 filed a Motion to Reconsider ("Motion") this Court's Order.
24 (Docket No. 63)

25 **II. Legal Standard**

26 Local Rule 7-18 provides the framework under which non-final
27 judgments may be reconsidered. In relevant part, it states that
28 reconsideration is appropriate when there is a "material difference

1 in fact or law from that presented to the Court before such
2 decision that in the exercise of reasonable diligence could not
3 have been known to the party moving for reconsideration at the time
4 of such decision."

5 **III. Analysis**

6 In Perry the Supreme Court held that the interveners, who were
7 also Proposition 8's proponents, did not have standing to appeal
8 the district court's judgment. Perry, 133 S. Ct. at 2668.
9 Plaintiffs claim that Perry requires Interveners to show they have
10 standing independent of the County Defendants. The Court
11 disagrees.

12 In Perry, as here, the government officials, who were named as
13 defendants enforced but "refused to defend the law." Id. at 2660.
14 The district court allowed Proposition 8's proponents to intervene.
15 Id. When the district court declared Proposition 8
16 unconstitutional, the defendants elected not to appeal to the Ninth
17 Circuit, but the Interveners did. Id. The Supreme Court later
18 vacated the Ninth Circuit's ruling because the Interveners did not
19 have standing to appeal the district court. Id. at 2668. The
20 Supreme Court made clear that initiative proponents do not have
21 standing to defend their ballot measures after those measures
22 become law. Id. at 2663 ("[O]nce Proposition 8 was approved by the
23 voters, the measure became a duly enacted constitutional amendment
24 or statute. Petitioners have no role—special or otherwise—in the
25 enforcement of Proposition 8.") (internal quotation marks and
26 citations omitted). However, the Supreme Court, left the district
27 court's judgment intact. Id. at 2668. In so doing, it implicitly
28 approved of the framework currently at issue: at the district court

1 level, intervention by initiative proponents is proper when the
2 government is enforcing the initiative but refuses to defend it,
3 regardless of whether the interveners have standing independent of
4 the government defendants.

5 Additionally, as the Order recognized, Ninth Circuit
6 precedent, though somewhat ambiguous, generally indicates that
7 interveners are not required to demonstrate Article III standing
8 independent of the defendants. (Order at 4-5); see State of
9 California Dep't of Soc. Servs. v. Thompson, 321 F.3d 835, 846 (9th
10 Cir. 2003) ("Ms. Rosales did not need to meet Article III standing
11 requirements to intervene.") Thus, unless Perry "undercut the
12 theory or reasoning underlying the prior circuit precedent in such
13 a way that the cases are clearly irreconcilable," the Court must
14 follow the Ninth Circuit precedent. Miller v. Gammie, 335 F.3d
15 889, 900 (9th Cir. 2003). Because Perry only held that interveners
16 must have independent standing to bring an appeal that the
17 government defendants decline to, it did not undercut prior
18 authority indicating that interveners do not need to establish
19 independent standing at the district court level.

20 Finally, denying intervention in this case would upend one of
21 the key purposes of standing doctrine. One reason standing is
22 required is to "sharpen[] the presentation of issues upon which
23 the court so largely depends for illumination of difficult ...
24 questions." Baker v. Carr, 369 U.S. 186, 204 (1992). Even without
25 Interveners, there would still be standing to resolve this case
26 because the County is enforcing Measure B. See United States v.
27 Windsor, 133 S. Ct. 2675, 2685 (2013) ("Even though the Executive's
28 current position was announced before the District Court entered


1 its judgment, the Government's agreement with Windsor's position
2 would not have deprived the District Court of jurisdiction to
3 entertain and resolve the refund suit; for her injury (failure to
4 obtain a refund allegedly required by law) was concrete,
5 persisting, and unredressed.") Because the Defendants refuse to
6 defend Measure B's constitutionality, Interveners are needed to
7 sharpen the issues this Court will be required to answer.

8 **III. Conclusion**

9 For the reasons stated herein, the Motion is DENIED.

10 IT IS SO ORDERED.

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12
13 Dated: August 2, 2013


DEAN D. PREGERSON
United States District Judge