

Bird Marella Prevails as Ninth Circuit Upholds Constitutionality of Voters' Initiative Requiring Use of Condoms in Pornographic Films

Bird Marella attorneys [Tom Freeman](#) and Mitch Kamin and the AIDS Healthcare Foundation represented the Proponents of Measure B, the "Safer Sex in the Adult Film Industry Act," which requires adult film performers to wear condoms while filming within Los Angeles County.

After Measure B passed with overwhelming voter support, Vivid Enterprises and other members of the pornographic film industry filed suit in federal court, arguing that requiring performers to wear condoms while performing high-risk acts violated their First Amendment right to freedom of expression. Despite the popular support for Measure B, the County took a "position of neutrality," refusing to defend the law's constitutionality. When Vivid asked the district court to enter a preliminary injunction precluding the County from imposing the regulations, the Proponents of Measure B intervened and successfully argued to the district court that the condom-use and permitting requirements were constitutional.

When Vivid and the other pornographic film industry plaintiffs appealed that ruling, Bird Marella was retained to defend the measure and the Proponents' right to defend Measure B in the court proceedings. Vivid argued that the Proponents lacked Article III standing to participate in the Ninth Circuit proceedings and again contested the measure's constitutionality.

The Ninth Circuit issued a 30-page published opinion on December 15, 2014. After rejecting Vivid's effort to preclude the Measure B Proponents from participating in the appellate proceedings, the Ninth Circuit affirmed the district court's ruling in full. It held that the district court did not abuse its discretion in finding that Measure B would likely survive the constitutional challenge because the measure serves a substantial government interest in protecting public health and safety, that the law is narrowly tailored to serve that purpose, and the regulations have only a minimal (*de minimis*) effect on freedom of expression.

For more information, please see below:

[Appellate Record](#)

[Opposition to Motion to Dismiss \(Article III Standing\)](#)

[Answering Brief in Support of Measure B](#)

[Oral Argument in Ninth Circuit](#)

[Ninth Circuit Opinion](#)

Press & Media

[ABA Journal](#)

[BBC](#)

[Law360](#)

[Reuters](#)

[The Associated Press](#)

[The Hollywood Reporter](#)

[The National Law Journal \(via Consumerist.com\)](#)

[Washington Post](#)