

No. 05-16466

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UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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UNITED STATES OF AMERICA,  
Plaintiff-Appellee,

v.

OAKLAND CANNABIS BUYERS' COOPERATIVE and JEFFREY JONES,  
Defendants-Appellants.

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Appeal from Entry of Final Judgment by the United States District Court  
for the Northern District of California  
D.C. No. C 98-00088 CRB  
entered on June 6, 2005, by Judge Charles R. Breyer

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**APPELLANTS' MOTION FOR AN EXTENSION OF BRIEFING  
SCHEDULE (Circuit Rule 31-2.2)**

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Pursuant to Federal Rule of Appellate Procedure 26(b) and Ninth Circuit Local Rule 31-2.2(b), Appellants Oakland Cannabis Buyers' Cooperative and Jeffrey Jones (collectively "Appellants") hereby move this Court for an order extending the time in which Appellants may file their opening brief until forty-five days (45) after this Court's disposition of a related case, *Raich v. Gonzales*, Ninth Circuit Case No. 03-15481 ("*Raich*").<sup>1</sup> (Declaration of Annette P. Carnegie in Support of Appellants' Motion for an Extension of Briefing Schedule ("Carnegie Decl.") ¶ 2.)

By the Time Schedule Order of this Court dated August 2, 2005, Appellants' opening brief and excerpts of record are due on November 14, 2005. (Carnegie Decl. ¶ 3, Ex. A.) Appellee's brief and supplemental excerpts of record are due on December 12, 2005, and Appellants' reply brief is due fourteen (14) calendar days after the filing of Appellee's brief. (Carnegie Decl. ¶ 3, Ex. A.)

Appellants respectfully submit that a substantial need exists for delaying the briefing schedule. Several of the central issues in *Raich* are similar to those in this appeal. (Carnegie Decl. ¶ 4.) Two of the primary issues to be decided in this appeal are (1) whether, pursuant to its police powers under the Tenth Amendment,

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<sup>1</sup> Two separate cases are pending in this Court entitled *Raich v. Gonzales*. Per an order of this Court dated September 16, 2005, the second *Raich* case, No. 04-16296, is in abeyance pending the Court's disposition in this first *Raich* case, No. 03-15481. All references to *Raich* are limited to the first *Raich* case, No. 03-15481.

the State of California has the power to enact laws to protect the health and safety of its citizens by permitting the intrastate possession and cultivation of medical cannabis; and (2) whether the Due Process Clause of the United States Constitution confers a fundamental right on seriously ill patients to an effective means to ameliorate their debilitating pain, blindness, starvation and possible death.

(Carnegie Decl. ¶ 4, Ex. B.) Both of these issues of constitutional interpretation are also raised in *Raich*. (Carnegie Decl. ¶ 5, Ex. C at 2-7.)

Because both appeals involve similar constitutional issues, the nature and scope of the briefing in this case may be affected by the Court's decision in *Raich*. The potential impact of *Raich* on this case is evidenced by this Court's order dated March 24, 2004, in which this Court ordered supplemental briefing — after this case was argued and submitted — regarding the relevance of this Court's opinion in *Raich v. Ashcroft*, 352 F.3d 1222, 1226 (9th Cir. 2003), *vacated and remanded sub. nom. Gonzales v. Raich*, 125 S. Ct. 2195 (2005), to the overlapping Commerce Clause issues raised in Appellants' prior appeal (No. 02-16534).

(Carnegie Decl. ¶ 6.) In the interest of judicial economy and efficiency, Appellants respectfully request that the briefing schedule be delayed until forty-five (45) days after the disposition by this Court in *Raich*.

This motion is unopposed by Appellee. (Carnegie Decl. ¶ 7.) Counsel in all consolidated and related cases are also in favor of this request. (Carnegie Decl. ¶ 7.)

Per Ninth Circuit Local Rule 31-2.2(b), Appellants hereby represent that they have exercised diligence and will file their opening brief within the time requested. (Carnegie Decl. ¶ 8.)

For the foregoing reasons, Appellants respectfully request that this Court enter an order extending the date on which Appellants must file their opening brief until forty-five (45) days after the disposition of the case by the panel in *Raich*.

Dated: October 12, 2005

MORRISON & FOERSTER LLP

By:   
Annette P. Carnegie

Attorneys for Defendants-Appellants  
OAKLAND CANNABIS BUYERS'  
COOPERATIVE and JEFFREY JONES

**PROOF OF SERVICE BY OVERNIGHT DELIVERY  
(FRCP 5)**

I declare that I am employed with the law firm of Morrison & Foerster LLP, whose address is 425 Market Street, San Francisco, California, 94105; I am not a party to the within cause; I am over the age of eighteen years and I am readily familiar with Morrison & Foerster's practice for collection and processing of correspondence for overnight delivery and know that in the ordinary course of Morrison & Foerster's business practice the document described below will be deposited in a box or other facility regularly maintained by United Parcel Service or delivered to an authorized courier or driver authorized by United Parcel Service to receive documents on the same date that it is placed at Morrison & Foerster for collection.

I further declare that on the date hereof I served a copy of:

**APPELLANTS' MOTION FOR AN EXTENSION OF BRIEFING  
SCHEDULE (Circuit Rule 31-2.2)**

**DECLARATION OF ANNETTE P. CARNEGIE IN SUPPORT OF  
APPELLANTS' MOTION FOR AN EXTENSION OF BRIEFING  
SCHEDULE (Circuit Rule 31-2.2)**

**APPELLANTS' CORPORATE DISCLOSURE STATEMENT  
(Circuit Rule 26.1)**

on the following by placing a true copy thereof enclosed in a sealed envelope with delivery fees provided for, addressed as follows for collection by United Parcel Service at Morrison & Foerster LLP, 425 Market Street, San Francisco, California, 94105, in accordance with Morrison & Foerster's ordinary business practices:

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed at San Francisco, California, this 12<sup>th</sup> day of October, 2005.

\_\_\_\_\_  
Carol J. Peplinski  
(typed)

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