

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

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I, Annette P. Carnegie, declare:

1. I am an attorney duly admitted to practice in the State of California and before the United States Court of Appeals for the Ninth Circuit. I am a partner in the law firm of Morrison & Foerster LLP, one of counsel of record for Defendants and Appellants Oakland Cannabis Buyers' Cooperative and Jeffrey Jones (collectively "Appellants"). If called to testify, I would state the following based on my own personal knowledge:

2. Appellants move this Court for an order extending the time in which to file their opening brief from November 14, 2005 until forty-five (45) days after this Court's disposition of the related case of *Raich v. Gonzales*, Ninth Circuit Case No. 03-15481 (hereinafter "*Raich*").

3. Pursuant to this Court's Time Schedule Order filed on August 2, 2005, Appellants' opening brief and excerpts of records are due on November 14, 2005. Appellee's brief is due on December 12, 2005, and Appellants' reply brief is due within fourteen (14) days of service of Appellee's brief. A true and correct copy of the August 2, 2005 Time Scheduling Order is attached hereto as Exhibit A.

4. A substantial need exists for delaying the briefing schedule until this Court's disposition of *Raich*. Both appeals involve overlapping constitutional issues of first impression. There are five issues to be decided in this appeal:

(1) whether, pursuant to its police powers under the Tenth Amendment, 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 Fifth Amendment and the Ninth Amendment of the United States Constitution confer a fundamental right on seriously ill patients to an effective means to ameliorate their debilitating pain, blindness, starvation and possible death; (3) whether 21 U.S.C. § 885(d) conferred statutory immunity on duly authorized officers of the City of Oakland in enforcing California laws related to medical cannabis; (4) whether Appellee met its burden for summary judgment and for a permanent injunction; and (5) whether Appellants were entitled to additional discovery in support of their opposition to Appellee's summary judgment motion. A true and correct copy of Appellants' Ninth Circuit Civil Appeals Docketing Statement, outlining the issues to be decided on appeal, is attached hereto as Exhibit B.

5. Similar issues of constitutional interpretation — State sovereignty under the Tenth Amendment and fundamental rights afforded by the Due Process Clause and the Ninth Amendment — are also raised in *Raich*. In a recent submission to this Court, the *Raich* Appellants identified State sovereignty under the Tenth Amendment and individual rights under the Due Process Clause of the Fifth Amendment and the Ninth Amendment as “theories raised in the Complaint but not decided by this Court previously.” A true and correct copy of Plaintiffs’

Motion to Consolidate Proceedings in *Raich*, articulating the issues to be decided on appeal, is attached hereto as Exhibit C.

6. Because both appeals involve similar constitutional issues, the nature and scope of the briefing in this case may be affected by the Court's disposition of *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 the 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). In the interest of judicial economy and efficiency, Appellants respectfully request that the briefing schedule be delayed until forty-five (45) days after this Court's disposition of *Raich*.

7. Counsel has discussed this request with Mark Quinlivan, counsel of record for Appellee, and Mr. Quinlivan indicated that the government would not object to this request. Counsel has also discussed the proposed extension with Susan Jordan, counsel of record in the related case *United States v. Ukiah Cannabis Buyers' Club*, No. 05-16556, Gregory Anton, counsel of record in the consolidated case *United States v. Marin Alliance for Medical Marijuana*, No. 05-16547, Gerald Uelmen, counsel of record in the related case *County of Santa*

*Cruz v. Gonzales*, No. 04-16291, and Robert Raich, counsel of record in *Raich*.

All counsel contacted endorsed this request.

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

I declare under penalty of perjury under the laws of the United States of America and the laws of the State of California that the foregoing is true and correct.

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

  
Annette P. Carnegie