

Nos. 05-16466, 05-16547, 05-16556

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

OAKLAND CANNABIS BUYERS' COOPERATIVE; et. al.,
Defendants-Appellants.

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

MARIN ALLIANCE FOR MEDICAL MARIJUANA; et. al.,
Defendants-Appellants.

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

UKIAH CANNABIS BUYER'S CLUB; et. al.,
Defendants-Appellants.

Appeal from Entry of Final Judgment by the United States District Court
for the Northern District of California
Nos. CV-98-00086, 98-00087, 98-00088 CRB
entered on June 6, 2005, by Judge Charles R. Breyer

**DECLARATION OF ANNETTE P. CARNEGIE IN SUPPORT OF
APPELLANTS' STATUS REPORT AND UNOPPOSED MOTION TO
STAY PROCEEDINGS PENDING DISPOSITION OF *RAICH V.
GONZALES*, NO. 03-15481**

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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 with the law firm of Morrison & Foerster LLP, one of counsel of record for 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. Consolidated Appellants Oakland Cannabis Buyers' Cooperative, Jeffrey Jones ("OCBC Appellants"), Marin Alliance for Medical Marijuana, Lynette Shaw ("Marin Appellants"), Ukiah Cannabis Buyer's Club, Cherrie Lovett, Marvin Lehrman, and Mildred Lehrman ("Ukiah Appellants") (collectively "Appellants") jointly move this Court for an order to extend the stay of judicial proceedings from February 13, 2007, until April 13, 2007, pending 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, OCBC Appellants' opening brief and excerpts of records were originally due on November 14, 2005. A true and correct copy of the August 2, 2005 Time Scheduling Order is attached hereto as Exhibit A. On October 12, 2005, the

OCBC Appellants filed a motion for an extension of briefing schedule pursuant to Circuit Rule 31-2.2.

4. On September 29, 2005, the Marin Appellants moved this Court to consolidate their appeal with that of the OCBC Appellants. In an order dated October 6, 2005, this Court granted the Marin Appellants' motion, ordering the two appeals consolidated, and set November 21, 2005 as the date for filing of the opening brief and excerpts of record. A true and correct copy of this Court's October 6, 2005 Order is attached hereto as Exhibit B.

5. Pursuant to this Court's Order filed on October 20, 2005, a stay of appellate proceedings was issued until April 14, 2006 pending the disposition of *Raich* ("First Stay Order"). The First Stay Order set April 14, 2006 as the deadline for Appellants' opening brief and excerpts of record, May 15, 2006 as the deadline for Appellee's answering brief, and fourteen (14) days after service of Appellee's brief for Appellants' reply brief. A true and correct copy of the October 20, 2005 Stay Order is attached hereto as Exhibit C.

6. On November 15, 2005, the United States moved to consolidate the Ukiah Appellants' appeal with the previously consolidated *OCBC* and *Marin* appeals. In an order dated November 18, 2005, this Court granted Appellee's motion and consolidated Appellants' appeals. A true and correct copy of this Court's November 18, 2005 Order is attached hereto as Exhibit D.

7. On March 24, 2006 Appellants filed a motion to extend the stay of appellate proceedings pending disposition of *Raich*. Pursuant to this Court's Order filed on April 18, 2006, an extension of the stay of appellate proceedings was issued until October 16, 2006 pending the disposition of *Raich* ("Second Stay Order"). The Second Stay Order set October 16, 2006 as the deadline for Appellants' opening brief and excerpts of record, November 15, 2006 as the deadline for Appellee's answering brief, and fourteen (14) days after service of Appellee's brief for Appellants' reply brief. A true and correct copy of the April 18, 2006 Stay Order is attached hereto as Exhibit E.

8. On September 18, 2006, Appellants filed a status report and motion to extend the stay of appellate proceedings pending disposition of *Raich*. The motion requested a stay of proceedings until February 16, 2007. Pursuant to this Court's Order filed on September 25, 2006, an extension of the stay of appellate proceedings was issued until December 15, 2006 pending the disposition of *Raich* ("Third Stay Order"). The Third Stay Order set December 15, 2006 as the deadline for Appellants' opening brief and excerpts of record, January 16, 2007 as the deadline for Appellee's answering brief, and fourteen (14) days after service of Appellee's brief as the deadline for Appellants' reply brief. A true and correct copy of the September 25, 2006 Stay Order is attached hereto as Exhibit F.

9. On December 4, 2006, Appellants filed a status report and motion to extend the stay of appellate proceedings pending disposition of *Raich*. The motion requested a stay of proceedings until February 16, 2007. Pursuant to this Court's Order filed on December 13, 2006, an extension of the stay of appellate proceedings was issued until February 13, 2007 pending the disposition of *Raich* ("Fourth Stay Order"). The Fourth Stay Order set February 13, 2007 as the deadline for Appellants' opening brief and excerpts of record, March 15, 2007 as the deadline for Appellee's answering brief, and fourteen (14) days after service of Appellee's brief as the deadline for Appellants' reply brief. A true and correct copy of the December 13, 2006 Stay Order is attached hereto as Exhibit G.

10. A substantial need exists for further extending the stay of appellate proceedings pending this Court's disposition of *Raich*. Both *Raich* and the consolidated appeals involve overlapping constitutional issues of first impression. There are five basic issues to be decided in the consolidated appeals: (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; (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 Statements, outlining the issues to be decided on appeal, are attached hereto as Exhibits H-J.

11. 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*. The *Raich* Appellants' Motion to Consolidate Proceedings identified State sovereignty under the Tenth Amendment and individual rights under the Due Process Clause of the Fifth Amendment and the Ninth Amendment as issues to be decided by the Panel. A true and correct copy of Appellants' Motion to Consolidate Proceedings in *Raich* is attached hereto as Exhibit K.

12. Because both the consolidated appeals and the *Raich* appeal involve similar constitutional issues, the nature and scope of the briefing in these appeals may be affected by the Court's disposition of *Raich*. The potential impact of *Raich* on this case is further evidenced by this Court's determination that a stay would be

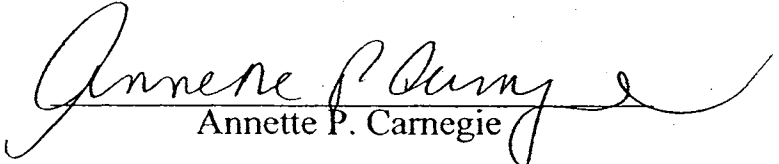
appropriate, and its three Orders extending the stay, pending the disposition of *Raich*.

13. Oral argument was held in *Raich* before this Court on March 27, 2006. It is possible that an opinion will not be filed in *Raich* before the stay of appellate proceedings expires on February 13, 2007. If an opinion is filed in *Raich* before the stay of appellate proceedings expires on February 13, 2007, the parties likely will not have sufficient time fully to address the opinion in their briefing.

14. Counsel has discussed this request with Mark Quinlivan, counsel of record for Appellee, and Mr. Quinlivan indicated that the government is not opposed to this request. Counsel has also discussed the proposed extension with Gerald Uelmen, counsel of record in the related case *County of Santa Cruz v. Gonzales*, No. 04-16291, and Robert Raich and Randy Barnett, counsel of record in *Raich*. All counsel contacted endorsed this request.

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 25th day of January, 2007 at San Francisco, California.


Annette P. Carnegie