

No. 02-16534

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee,

v.

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

Appeal from Final Judgment Entered by the United States District Court
for the Northern District of California
Case No. C 98-00088 CRB
entered on July 29, 2002, by Judge Charles R. Breyer.

**DECLARATION OF ANNETTE P. CARNEGIE IN SUPPORT OF
APPELLANTS' MOTION FOR LEAVE TO FILE A BRIEF
EXCEEDING THE TYPE-VOLUME LIMITATION OF
FEDERAL RULE OF APPELLATE PROCEDURE 32(A)(7)(B)**

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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' brief contains 24,627 words, counted in accordance with Federal Rule of Appellate Procedure 32(a)(7)(B)(iii). The brief is due November 18, 2002, pursuant to an order dated August 7, 2002.

3. There are two related cases *United States v. Marin Alliance for Medical Marijuana*, No. 02-16335 and *United States v. Ukiah Cannabis Buyers' Club*, No. 02-16715, pending in this Court. The parties have agreed to consolidate the cases and a motion will be filed jointly. It is anticipated that Appellants' brief in this case will serve as the main brief with respect to the consolidated appeals.

4. This case presents important constitutional issues of first impression concerning the authority of the federal government under the Controlled Substances Act to prohibit medical cannabis dispensaries, acting under authority of state law, from distributing cannabis to seriously ill patients for whom physicians have recommended cannabis as an appropriate medical treatment. These issues are of concern to the State of California, to the United States government, and to States that have passed laws allowing the limited use of cannabis for medical purposes by their citizens. The constitutional issues raised in this case extend beyond the narrow issue of medical cannabis and implicate the federal government's general authority to regulate in areas traditionally reserved to States. All of these issues require an extensive analysis of the jurisprudence of the United States Supreme Court and this Court concerning the scope and limits of that authority.

5. The significance and legal complexity of the constitutional issues raised by this case is confirmed by the fact that this case was appealed to this Court and to the Supreme Court. Both Courts issued opinions and remanded the case for further proceedings in the district court. *See United States v. Oakland Cannabis Buyers' Coop.*, 190 F.3d 1109 (9th Cir. 1999); *United States v. Oakland Cannabis Buyers' Coop.*, 532 U.S. 483 (2001). All of the constitutional issues raised by Appellants in their present brief were expressly left open by the United States Supreme Court for decision by this Court.

6. The importance of this case also has been confirmed by the participation of several noteworthy *amici curiae*, including the State of California, the City of Oakland, the County of Alameda, and the California Medical Association.

7. The case is procedurally complex. This appeal involves five separate dispositive motions raising legal and factual issues: (a) the district court's refusal to modify or dissolve the preliminary injunction; (b) the district court's grant of summary judgment in favor of the government; (c) the issuance of a permanent injunction enjoining Appellants from distributing medical cannabis to its patient-members; (d) the district court's denial of Appellants' motion to dismiss for failure to state a claim; and (e) the district court's denial of Appellants' motion to dismiss the action for lack of jurisdiction. Appellants also appeal the district court's rulings on their objections to the government's evidence on summary judgment, and the denial of Appellants' motion for further discovery pursuant to Federal Rule of Civil Procedure 56(f).

8. To address all of the issues raised by the orders appealed from, it is necessary to brief the significant constitutional arguments raised in the trial court, including: (a) an "as applied" challenge to the Controlled Substances Act under the Commerce Clause; (b) the constraints that the Necessary and Proper Clause imposes on Congressional power to enact federal legislation pursuant to its powers

under the Commerce Clause; (c) state sovereignty and the breadth, scope, and applicability of the Tenth Amendment; and (d) unenumerated fundamental rights under the Fifth and Ninth Amendments. Appellants also must address the legal defenses to the injunction raised and rejected below, including statutory immunity under 21 U.S.C. § 885(d). Finally, Appellants must address the procedural and evidentiary errors committed by the district court in granting summary judgment and issuing a permanent injunction.

9. Counsel has diligently attempted to present the foregoing arguments within the word count allotted by the Court. However, counsel has not been able to do so. Because a compelling need exists to present fully the significant constitutional issues raised in this case, counsel requests that Appellants be permitted to file a brief that exceeds the word count by 10,627 words.

10. Counsel has discussed this request with Mark Quinlivan, attorney for Appellees, and Mr. Quinlivan indicated that the government would not object to this request.

11. Appellants have submitted a true and correct copy of their proposed brief with this motion.

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 18th day of November, 2002 at San Francisco, California.

By: Annette P. Carnegie
Annette P. Carnegie