

No. 02-16335, 02-16534, 02-16715

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 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 AN EXTENSION OF
TIME IN WHICH TO FILE A REPLY BRIEF**

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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 reply brief from February 4, 2003 to March 6, 2003, which constitutes an extension of thirty (30) calendar days. The reply brief was originally due on December 31, 2002, pursuant to an order dated August 7, 2002. On November 18, 2002, in conjunction with a joint motion to consolidate this appeal with two other related appeals, Appellants moved to amend the briefing schedule in all three cases. Pursuant to an order of this Court dated December 20, 2002 granting the joint motion, Appellants' reply brief is due fourteen (14) calendar days from the filing of Appellee's opposition brief. Appellee filed its opposition on January 21, 2003, which set Appellants' reply brief due date at February 4, 2003.

3. Appellants present this motion on the three separate grounds. First, on November 25, 2002, Appellants moved jointly with Appellee to consolidate this appeal with two related appeals *United States v. Marin Alliance for Medical Marijuana*, No. 02-16335 and *United States v. Ukiah Cannabis Buyer's Club*, No. 02-16715 (hereinafter collectively "Consolidated Appellants"). This Court granted the joint motion to consolidate on December 20, 2002. Appellants' briefs in this case serve as the main briefs with respect to the consolidated appeals.

4. Second, this appeal involves numerous and complicated issues of constitutional law requiring extensive briefing by the parties. 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 on reply raised by the opening brief and the opposition brief, it is necessary to brief significant constitutional arguments, 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. As a result of the procedural and legal complexity of this case, Appellants' opening brief consisted of 79 pages and Appellee's opposition brief consisted of 99 pages. Appellants, in conjunction with the Consolidated Appellants, anticipate preparing a reply brief in excess of the 15 pages (or 7,000 words) allotted by Federal Rule of Appellate Procedure 32(a)(7)(B)(ii).

10. 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

David Nelson and William Panzer, counsel of record for the Consolidated Appellants, and both endorsed this request.

11. Per Ninth Circuit Local Rule 31-2.2(b), Appellants represent that they have exercised diligence and will file their reply 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 22nd day of January, 2003 at San Francisco, California.

By: Annette P. Carnegie
Annette P. Carnegie