

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

**APPELLANTS' UNOPPOSED MOTION TO STAY PROCEEDINGS
PENDING DISPOSITION OF *RAICH V. GONZALES*, NO. 03-15481**

ROBERT A. RAICH (SBN 147515)
1970 Broadway, Suite 1200
Oakland, California 94612
Telephone: (510) 338-0700

RANDY BARNETT
Boston University School of Law
765 Commonwealth Avenue
Boston, Massachusetts 02215
Telephone: (617) 353-3099

GERALD F. UELMEN (SBN 39909)
Santa Clara University School of Law
Santa Clara, California 95053
Telephone: (408) 554-5729

ANNETTE P. CARNEGIE (SBN 118624)
HEATHER A. MOSER (SBN 212686)
MORRISON & FOERSTER LLP
425 Market Street
San Francisco, California 94105-2482
Telephone: (415) 268-7000

Additional counsel listed on next page.

GREGORY L. ANTON (SBN 75371)
359 Meadow Way
San Geronimo, California 94963
Telephone: (415) 789-8358

SUSAN B. JORDAN (SBN 49969)
515 South School Street
Ukiah, California 95482
Telephone: (707) 462-2151

Pursuant to Federal Rule of Appellate Procedure 27, 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") hereby move this Court for an order extending the stay of appellate proceedings until October 14, 2006, pending this Court's disposition of a related case, *Raich v. Gonzales*, Ninth Circuit Case No. 03-15481 ("*Raich*").¹ (Declaration of Annette P. Carnegie in Support of Appellants' Unopposed Motion to Stay Proceedings Pending Disposition of *Raich v. Gonzales*, No. 03-15481 ("Carnegie Decl.") ¶ 2.)

By the Time Schedule Order of this Court, dated August 2, 2005, the OCBC Appellants' opening brief and excerpts of record were originally due on November 14, 2005. (Carnegie Decl. ¶ 3, Ex. A.) Prior to the deadline for the opening brief, the OCBC Appellants filed a motion for an extension of briefing schedule pursuant to Circuit Rule 31-2.2. (Carnegie Decl. ¶ 3.)

On September 29, 2005, Marin Appellants moved this Court to consolidate their appeal with that of the OCBC Appellants. (Carnegie Decl. ¶ 4.) In an order

¹ 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.

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. (Carnegie Decl. ¶ 4, Ex. B.)

On October 20, 2005, this Court issued an Order ("Stay Order") in which it construed the OCBC Appellants' motion as a motion to stay appellate proceedings pending disposition of *Raich*, granted the motion in part, and stayed the proceedings with respect to the OCBC and Marin Appellants until April 14, 2006. (Carnegie Decl. ¶ 5, Ex. C.) The Stay Order further provided that Appellee's brief and supplemental excerpts of record are due on May 15, 2006, and Appellants' reply brief is due fourteen (14) calendar days after the filing of Appellee's brief. (Carnegie Decl. ¶ 5, Ex. C.)

After the Stay Order was entered with respect to the OCBC and Marin Appellants, on November 15, 2005, the United States moved to consolidate the Ukiah Appellants with the previously consolidated *OCBC* and *Marin* appeals. In an order dated November 18, 2005, this Court granted Appellee's motion and consolidated the Appellants' appeals. (Carnegie Decl. ¶ 6, Ex. D.) The November 18 Order further provided that the briefing schedule set forth in the previous Stay Order "shall govern these consolidated appeals." (Carnegie Decl., Ex. D.)

In addition to staying the three consolidated appeals until April 14, 2006, the Stay Order provided that, "[o]n or before the expiration of the stay, appellants may

move for further appropriate relief.” (Carnegie Decl., Ex. C.) Appellants respectfully submit that a substantial need exists for extending the stay of appellate proceedings pending the disposition by this Court in *Raich*. Several of the central issues in *Raich* are similar to those in the consolidated appeals. (Carnegie Decl. ¶ 7.) Two of the primary issues to be decided in the consolidated appeals are: (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 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. ¶ 7, Exs. E-G.) Both of these issues of constitutional interpretation are also raised in *Raich*. (Carnegie Decl. ¶ 8, Ex. H at 1-2.) Finally, this Court previously granted a six-month stay pending the disposition of *Raich*. (Carnegie Decl. ¶¶ 5, 9.)

Because *Raich* is scheduled for oral argument before this Court on March 27, 2006, it is unlikely that an opinion will be filed in *Raich* before the stay of appellate proceedings expires on April 14, 2006. (Carnegie Decl. ¶ 10.) In the interest of judicial economy and efficiency, Appellants respectfully request that the stay of appellate proceedings be extended until October 14, 2006, pending the disposition by this Court in *Raich*.

Counsel for Appellee has indicated that the United States supports Appellants' motion to extend the stay. (Carnegie Decl. ¶ 11.) Counsel in all related cases are also in favor of this request. (Carnegie Decl. ¶ 11.)

For the foregoing reasons, Appellants respectfully request that this Court enter an order extending the stay of appellate proceedings until October 14, 2006, pending the disposition of the case by the panel in *Raich*.

Dated: March 13, 2006

MORRISON & FOERSTER LLP

By: Annette P. Carnegie
Annette P. Carnegie

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

Dated: March __, 2006

By: _____
Gregory L. Anton

Attorneys for Defendants-Appellants
MARIN ALLIANCE FOR MEDICAL
MARIJUANA and LYNETTE SHAW

Dated: March 23, 2006

By: Susan B. Jordan HAW of
Susan B. Jordan permission

Attorneys for Defendants-Appellants
UKIAH CANNABIS BUYER'S CLUB,
CHERRIE LOVETT and MARVIN AND
MILDRED LEHRMAN

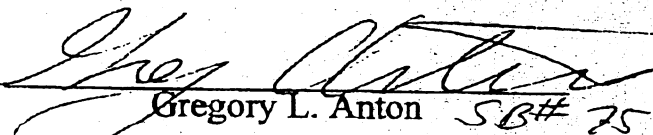
Dated: March __, 2006

MORRISON & FOERSTER LLP

By: _____
Annette P. Carnegie

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

Dated: March 23, 2006

By: 
Gregory L. Anton SB# 75371

Attorneys for Defendants-Appellants
MARIN ALLIANCE FOR MEDICAL
MARIJUANA and LYNETTE SHAW

Dated: March __, 2006

By: _____
Susan B. Jordan

Attorneys for Defendants-Appellants
UKIAH CANNABIS BUYER'S CLUB,
CHERRIE LOVETT and MARVIN AND
MILDRED LEHRMAN

**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' UNOPPOSED MOTION TO STAY PROCEEDINGS
PENDING DISPOSITION OF *RAICH V. GONZALES*, NO. 03-15481**

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

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:

SEE ATTACHED SERVICE LIST

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 24th day of March, 2006.

Carol J. Peplinski
(typed)

(signature)

SERVICE LIST

United States of America

Mark T. Quinlivan
United States Attorneys' Office
John Joseph Moakley Courthouse
One Courthouse Way
Suite 9200
Boston, MA 02210

Oakland Cannabis Buyers' Cooperative and Jeffrey Jones

Robert A. Raich
A Professional Law Corporation
1970 Broadway, Suite 1200
Oakland, CA 94612

Gerald F. Uelmen
Santa Clara University
School of Law
Santa Clara, CA 95053

Randy Barnett
Boston University School of Law
765 Commonwealth Avenue
Boston, MA 02215

Marin Alliance for Medical Marijuana and Lynette Shaw

Gregory Anton
359 Meadow Way
San Geronimo, CA 94963

Amicus Curiae California Medical Association

Alice P. Mead
California Medical Association
221 Main Street, Third Floor
San Francisco, CA 94120-7690

Julie M. Carpenter
Jenner & Block
601 13th Street, N.W.
Washington, D.C. 20005

Ukiah Cannabis Buyer's Club, Cherrie Lovett, Marvin and Mildred Lehrman

Susan B. Jordan
515 South School Street
Ukiah, CA 95482

Amicus Curiae County of Alameda

Richard E. Winnie
Alameda County Counsel
1221 Oak Street, #450
Oakland, CA 94612

Amicus Curiae City of Oakland

John A. Russo, City Attorney
Barbara J. Parker, Chief Asst. City Atty.
City Hall
One Frank Ogawa Plaza, 6th Floor
Oakland, CA 94612

Amicus Curiae American Civil Liberties Union

Graham A. Boyd
American Civil Liberties Union Foundation
1101 Pacific Avenue, Suite 333
Santa Cruz, CA 95060

Ann Brick
American Civil Liberties Union
Foundation of Northern California, Inc.
1663 Mission Street
San Francisco, CA 94103

Jordan C. Budd
American Civil Liberties Union Foundation
of San Diego & Imperial Counties, Inc.
450 B Street, Suite 1420
San Diego, CA 92101

Amicus Curiae State of California

Bill Lockyer, Atty. General of California
Peter Siggins, Chief Deputy Atty. General
Taylor S. Carey, Special Asst. Atty. General
1300 I Street
Sacramento, CA 95814