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NINTH CIRCUIT

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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FILED _____
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DATE _____

ANGEL McCLARY RAICH, DIANE MONSON,
JOHN DOE NUMBER ONE, and JOHN DOE NUMBER TWO,
Plaintiffs-Appellants,

v.

JOHN ASHCROFT, as United States Attorney General, and
KAREN TANDY, as Administrator of the Drug Enforcement Administration,
Defendants-Appellants.

Appeal from the United States District Court
for the Northern District of California
Case No. C 02-4872 MJJ.

**MOTION TO ASSIGN RELATED CASES FOR ORAL ARGUMENT
ON THE SAME DATE AND BEFORE THE SAME PANEL
BUT TO BE ARGUED SEPARATELY**

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

DAVID M. MICHAEL
The DeMartini Historical Landmark Building
294 Page Street
San Francisco, California 94102
Telephone: (415) 621-4500

RANDY E. BARNETT
Boston University School of Law
Boston, Massachusetts 02215
Telephone: (617) 353-3099

Appellants Angel McClary Raich, Diane Monson, John Doe Number One, and John Doe Number Two, by and through their attorneys, hereby move this Court to assign their case for oral argument on the same date and before the same panel, but to be argued separately, as the cases of *United States of America v. Okaland Cannabis Buyer's Cooperative, et. al.*, No. 02-16534; *United States of America v. Marin Alliance for Medical Marijuana and Lynette Shaw*, No. 02-16335; and *United States of America v. Ukiah Cannabis Buyer's Club*, No. 02-16715 ("OCBC") as well as *Women's Alliance for Medical Marijuana, et.al. v United States of America*, No. 03-15062. ("WAMM"). These four cases are now scheduled to be heard on oral argument at the same time and before the same panel on 17 September 2003, at 8:30 a.m. See Order of 8 May 2003, attached hereto as Exhibit A. The instant case is scheduled for oral argument "during the week of October 6, 2003, in San Francisco. See Order of 25 July 2003, attached hereto as Exhibit B.

In support of this motion, Appellants provide the following:

1. All three appeals are closely related in that they involve similar legal issues, of first impression before this Court, specifically (1) whether the various Appellants' conduct — their intrastate activities related to cannabis for medical purposes as recommended by patients' physicians pursuant to California State law

— represents a *separate and distinct class of activity* which is beyond the reach of Congress under the Commerce Clause, pursuant to *United States v. Lopez*, 514 U.S. 549 (1995), *United States v. Morrison*, 529 U.S. 598 (2000), and *United States v. McCoy*, 323 F.3d 1114 (9th Cir. 2003); (2) whether, under principles of federalism embodied in the Tenth Amendment, Appellants’ wholly intrastate activity related to medical cannabis pursuant to State law is a valid exercise of the police power reserved to the State of California, requiring protection from infringement by the federal government; and, (3) whether, under the Due Process Clause of the Fifth Amendment and the Ninth Amendment, Appellants’ conduct, involving liberty and unenumerated constitution rights to bodily integrity, to ameliorate pain, to prolong live, and to the sanctity of the physician-patient relationship, requires protection from infringement by the federal government.

2. Although the issues are similar in all the cases referred to herein, there exist significant factual differences between them, such as the fact that there is a complete lack of any “distribution” or “economic activity” whatsoever related to the medical cannabis of Appellants in the instant appeal, nor are they organizations that exist for the purpose of distributing cannabis. Therefore, Appellants herein request that they be able to present separate arguments before the Court which will assist the Court in understanding the different factual and

procedural posture of these cases. Counsel for Appellants will confer with other counsel in order to avoid any repetition of the arguments presented.

3. Pursuant to Ninth Circuit Rule 28-2.6(c), all of these cases have previously been identified by Appellants' here and the government as related. *See* Appellants' Opening Brief, filed 23 April 2003; Government's Brief for Appellees, filed 28 May 2003.

4. *Amicus curiae* State of California, County of Alameda, and City of Oakland have requested that this Court include their previously filed amicus brief in *OCBC* as part of its consideration in the instant case. *See* 29 April 2003 letter of Attorney General Bill Lockyer, attached hereto as Exhibit C. The County of Butte has joined in said *amicus curiae* brief. *See* 17 June 2003 letter of District Attorney Michael Ramsey, attached hereto as Exhibit D.

5. *Amicus curiae* California Medical Association has filed amicus briefs in both this case and *OCBC*.

6. General Order 3.3(c) provides that: "A case may *** be advanced in calendaring by up to six months in order that it may be heard at the same time as a case that involves the same legal issues."

7. The Notice of Cases Set for Hearing provided by the Office of the Clerk requests that notice be given of "other cases pending in this court which are

related to and which should be calendared with the case(s) *** on the ***calendar". See Notice of Cases Set for Hearing, attached hereto as Exhibit E.

8. Counsel for the government (who is the same in all five cases), has indicated that he does not object to this motion to assign this cases before the same panel for argument on the same date as *OCBC* and *WAMM*.

9. Under the circumstances, assigning these related cases for oral argument on the same date on 17 September 2003 and before the same panel is appropriate under Ninth Circuit Rule 28-2.6(c), General Order 3.3(c) and the Notice of Cases Set for Hearing. Furthermore, such an assignment is in the interests of justice, will conserve judicial resources, and therefore benefit the Court.

WHEREFORE, Appellants Angel McClary Raich, Diane Monson, John Doe Number One, and John Doe Number Two respectfully request that this appeal be assigned for oral argument on the same date on 17 September 2003 and before the same panel as appeal Nos. 02-16335, 02-16534, 02-16715, and 03-15062 and that Appellants be allowed to argue their case separately.

Dated: 12 August 2003

ROBERT A. RAICH
DAVID M. MICHAEL
RANDY E. BARNETT

David M. Michael
Attorneys for Appellants

CERTIFICATE OF SERVICE

I am not a party to the within action and am over eighteen years of age. My business address is 294 Page Street, San Francisco, CA 94102. I hereby certify that on the date this certificate is signed, I served the attached

**MOTION TO ASSIGN RELATED CASES FOR ORAL ARGUMENT
ON THE SAME DATE OF 17 SEPTEMBER 2003 AND BEFORE THE
SAME PANEL**

by causing a copy thereof in a sealed envelope, with postage fully prepaid, to be placed in the United States mail addressed to the following:

John Ashcroft and Karen Tandy

Mark T. Quinlivan
U.S. Department of Justice
20 Massachusetts Avenue, N.W., Room 7128
Washington, D.C. 20530

Appeal No. 02-16534 (Oakland Cannabis Buyer's Cooperative, et al.)

Robert A. Raich
1970 Broadway, Suite 1200
Oakland, California 94612

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

Annette P. Carnegie
Morrison & Foerster LLP
425 Market Street
San Francisco, California 94105

Randy E. Barnett
Boston University School of Law
765 Commonwealth Ave.
Boston, Massachusetts 02138

Appeal No. 02-16335 (Marin Alliance for Medical Marijuana, et al.)

Greg Anton
P.O. Box 299
Lagunitas, California 94938

Appeal No. 02-16715 (Ukiah Cannabis Buyer's Club, et al.)

David Nelson
Nelson & Reimenschneider
106 North School Street
Ukiah, California 95482

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

Appeal No. 03-15602 (Wo/men's Alliance, et al.)

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

Benjamin Rice
331 Soquel Avenue
Suite 110
Santa Cruz, California 95062

Amicus Curiae State of California

Hon. Bill Lockyer
Taylor S. Carey
Office of the Attorney General
1300 I Street, Suite 1720
Sacramento, California 95814

Amicus Curiae County of Alameda

Richard E. Winnie
Alameda County Counsel
1221 Oak Street, Suite 450
Oakland, California 94612

Amicus Curiae City of Oakland

Hon. John A. Russo
Barbara J. Parker
City Attorney's Office
One Frank Ogawa Plaza, 6th Floor
Oakland, California 94612

Amicus Curiae for the County of Butte

Michael L. Ramsey
25 County Center Drive
Oroville, California 95965

Amici Curiae California Medical Association and California Nurses Association

Alice P. Mead
California Medical Association
221 Main Street, Fifth Floor
P.O. Box 7690
San Francisco, California 94120

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

Amici Curiae Marijuana Policy Project, Rick Doblin, Ph.D., and Ethan Russo, M.D.

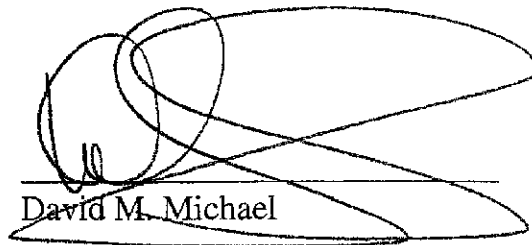
Frederick L. Goss
Law Offices of Frederick L. Goss
1 Kaiser Plaza, Suite 1750
Oakland, California 94612

Rick Doblin, Ph.D.
3 Francis Street
Belmont, Massachusetts 02478

Rob Kampia
Executive Director
Marijuana Policy Project
P.O. Box 77492
Washington, D.C. 20013

Ethan Russo, M.D.
Missoula Medical Plaza, Suite 303
900 North Orange Street
Missoula, Montana 5982

Dated: 12 August 2003



David M. Michael

EXHIBIT A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

MAY 08 2003

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

WOMEN'S ALLIANCE FOR MEDICAL
MARIJUANA, et al.,

Petitioners - Appellants,

v.

UNITED STATES OF AMERICA,

Defendant - Appellee.

Nos. 02-16335
02-16534
02-16715
03-15062

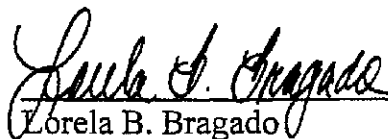
D.C. No. MC-02-07012-JF
Northern District of
California, San Jose

ORDER

Appellants' motion to be heard on oral argument at the same time and before the same panel as appeal nos. 02-16335, 02-16534, and 02-16715 is granted.

The provisions of Ninth Circuit Rule 31-2.2(a) shall not be applicable to this appeal; any Rule 31-2.2(b) request is strongly disfavored.

For the Court:
CATHY A. CATTERSON
Clerk of the Court



Lorela B. Bragado
Deputy Clerk
Ninth Cir. R. 27-7/Appendix A,
General Orders for the
United States Court of Appeals

pro 4.28

EXHIBIT B

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

JUL 25 2003

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

ANGEL MCCLARY RAICH, et al.,

Plaintiffs - Appellants,

v.

JOHN ASHCROFT, Attorney General, as
United States Attorney General; et al.,

Defendants - Appellees.

No. 03-15481

D.C. No. CV-02-04872-MJJ
Northern District of California,
San Francisco

ORDER

Before: LEAVY and HAWKINS, Circuit Judges.

This appeal from the denial of a request for a preliminary injunction is referred to the next available merits panel for disposition. *See* 9th Cir. R. 3-3(d). The appeal shall be placed on the calendar during the week of October 6, 2003, in San Francisco.

CLERK OF THE COURT

EXHIBIT C

BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE



1300 I STREET, SUITE 125
P.O. BOX 944255
SACRAMENTO, CA 94244-2550

Telephone: (916) 324-7562
Facsimile: (916) 322-0206
E-Mail: taylor.carey@doj.ca.gov

April 29, 2003

VIA OVERNIGHT MAIL

Ms. Cathy Catterson
Office of the Clerk
U.S. Court of Appeals
95 Seventh Street
San Francisco, California 94103

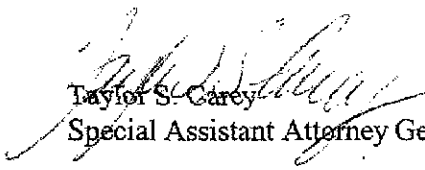
Re: Angel McClary Raich, et al. v. John Ashcroft, et al., No. 03-15481

Dear Ms. Catterson:

The State of California, the County of Alameda, and the City of Oakland, as *amici curiae* in the above referenced appeal, respectfully request that this Court include the enclosed brief as part of the Court's consideration of the above referenced appeal.

This brief was previously filed with the Court in *United States v. Oakland Cannabis Buyers' Cooperative, et al.*, No. 02-16534, and was also made part of the record in this case in the district court below (Docket No. 22-Plaintiffs' Request for Judicial Notice, filed November 26, 2002).

Very truly yours,


Taylor S. Carey
Special Assistant Attorney General

FOR BILL LOCKYER
Attorney General

Enclosure

cc: Mark T. Quinlivan
Robert A. Raich
David M. Michael
Randy E. Barnett

DECLARATION OF SERVICE

Case Name: *Angel McClary Raich, et al. v. John Ashcroft, et al., No. 03-15481*

I declare:

I am employed in the County of Sacramento, California. I am 18 years of age or older and not a party to the within entitled cause; my business address is 1300 I Street, P.O. Box 944255, Sacramento, California 94244-2550.

On April 29, 2003, I served the attached:

Letter to Cathy Catterson, Office of the Clerk, U.S. Court of Appeals dated April 29, 2003 enclosing a copy of the brief in *United States v. Oakland Cannabis Buyers' Cooperative, et al., No. 02-16534* as part of the Court's consideration of the above referenced appeal

by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Sacramento, California, addressed as follows:

Mark T. Quinlivan
U.S. Department of Justice
Civil Division, Room 1048
901 E Street, N.W.
Washington, D.C. 20530

Robert A. Raich
1970 Broadway, Ste 1200
Oakland, CA 94612

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

David M. Michael
The DeMartini Historical Landmark Bldg.
294 Page Street
San Francisco, CA 94102

I declare under penalty of perjury the foregoing is true and correct and that this declaration was executed on April 29, 2003, at Sacramento, California.

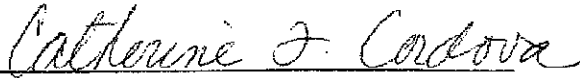
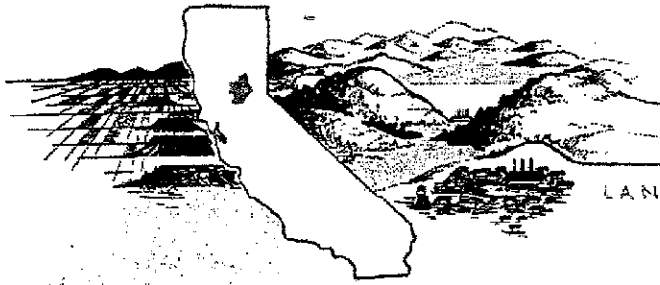

DECLARANT

EXHIBIT D



Butte County

LAND OF NATURAL WEALTH AND BEAUTY

MICHAEL L. RAMSEY

District Attorney

FRANCISCO R. ZARATE
Chief Deputy District Attorney

KRISTIN J. SIMPSON
Chief Investigator

June 17, 2003

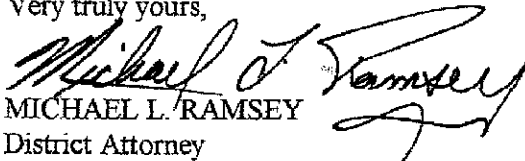
Ms. Cathy Catterson
Office of the Clerk
U.S. Court of Appeals
95 Seventh Street
San Francisco, CA 94103

Re: Angel McClary Raich, et al. V. John Ashcroft, et., No. 03-15481

Dear Ms. Catterson

The District Attorney of the County of Butte, pursuant to Circuit Advisory Committee Note to Rule 29-1, and, by the filing of this letter in lieu of a brief, hereby joins in the factual statements involving Appellant Diane Monson and legal arguments of Appellants, Angel McClary Raich and Diane Monson, and amici curiae, the State of California, the County of Alameda, and the City of Oakland in the above referenced appeal.

Very truly yours,


MICHAEL L. RAMSEY
District Attorney

MLR: dkc

cc: Mark T. Quinfivan
Robert A. Raich
David M. Michael
Randy E. Barnett

Taylor Carey
Special Assistant Attorney General

EXHIBIT E

OFFICE OF THE CLERK
U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT
95 SEVENTH STREET, P.O. BOX 193939
SAN FRANCISCO, CA 94119-3939

NOTICE OF CASES SET FOR HEARING

Your case has been set for hearing as indicated on the attached calendar. Please take special note of the time and place of hearing. In order that the court may make proper arrangements for oral argument, it is essential that you immediately complete the attached acknowledgment of hearing notice and return it to the Clerk's Office address provided.

In preparing for oral argument, the parties should be guided by Rule 34 of the Federal Rules of Appellate Procedure. The following information is provided to ensure the effectiveness of the hearing process:

Possibility of Mootness or Settlement - If your case has become moot or a settlement is imminent, immediately advise this office in writing and **BY TELEPHONE**.

Notification of Related Cases - If you are aware of other cases pending in this court which are related to and which should be calendared with the case(s) checked on the attached calendar, please notify this office.

Admission for Oral Argument - Any attorney who will be presenting oral argument must have been admitted to the bar of this court. If you have not been admitted, please check the appropriate box on the acknowledgment form and return it with a self-addressed franked envelope. This office will provide you with the forms necessary for admission by mail. While admission in open court on the day of hearing is discouraged, you may elect such an admission procedure. Candidates for admission in open court must appear in the Clerk's Office with a sponsor who has already been admitted to the bar of the circuit, and who can orally move the admission before the calendar is called.

Submission Without Oral Argument - A party who feels that oral argument would not be of assistance to the court may present a written motion asking the court to submit the case for decision without oral argument. Such a motion must be served on all parties. The court may, on its own motion, determine that oral argument would not be of assistance. In such cases, all parties will be advised by separate notice pursuant to Fed. R. App. P. 34(a).