
In the UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SACRAMENTO NONPROFIT
COLLECTIVE, DBA EL CAMINO
WELLNESS CENTER, a mutual benefit
nonprofit collective; RYAN LANDERS, an
individual; ALTERNATIVE COMMUNITY
HEALTH CARE COOPERATIVE, INC. et al;
MARIN ALLIANCE FOR MEDICAL
MARIJUANA et al,

Plaintiffs – Appellants,

v.

ERIC HOLDER, Attorney General et al,

Defendants – Appellees.

No. 12-15991

No. 12-55775

No. 12-16710

D.C. No. 2:11-cv-02939-GEB-
EFB Eastern District of
California, Sacramento

D.C. No. 3:11-cv-02585-DMS-
BGS Southern District of
California, San Diego

D.C. No. 4:11-cv-05349-SBA
Northern District of California,
Oakland

APPELLANTS' MOTION TO EXCEED TYPE VOLUME LIMITATION

DAVID M. MICHAEL
EDWARD M. BURCH
Law Offices of David M. Michael
1 Sansome Street, Suite 3500
San Francisco, CA 94104
Telephone: (415) 946-8996
Facsimile: (877) 538-6220
E-mail: david@davidmichaellaw.com

MATTHEW W. KUMIN
The Law Office of Matthew Kumin
38 Mason Street
San Francisco, CA 94102

Telephone: (415) 364-0000
Facsimile: (415) 504-1606
E-mail: matt@mattkuminlaw.com

ALAN SILBER
Walder, Hayden, & Brogan, P.A.
5 Becker Farm Road
Roseland, NJ 07068
Telephone: (973) 436-4122
Facsimile: (973) 436-4232
E-mail: ASilber@whbesqs.com

Attorneys for Appellants

Pursuant to Ninth Circuit Rule 31-2, Appellants respectfully move for permission to file an oversize brief.

Good cause exists for the motion for the reasons which follow.

Appellants are California medical marijuana patients and providers, and seek injunctive/declaratory relief to prevent the federal government (Appellees) from effectively denying them access to medicine which is the only method of alleviating their daily suffering.

Initially, this brief at issue is a consolidated brief. There are multiple Appellants (Plaintiffs below) and multiple attorneys, and Appellants' opening brief was within the word count limitations. The reply brief for which enlargement is sought is only over the 7,000 word limit of FRAP 32 (a)(7)(B)(i) by approximately 1,800 words.

Moreover, the stakes in this appeal are profound. As mentioned, Appellants are being effectively denied what this court has acknowledged is the "right to make a life-shaping decision on a physician's advice to use medical marijuana to preserve bodily integrity, avoid intolerable pain, and preserve life, when all other prescribed medications and remedies have failed." *Raich v. Gonzales*, 500 F. 3d 850, 864 (9th Cir. 2007). The reply brief may be the last word to this Court before it renders its ruling, so Appellants wish to put their best foot forward for something which is of profound importance and necessity for them, and are unable to do so

without exceeding the word limitation of the rules of appellate procedure.

Moreover, after Appellants' counsel filed the opening brief, a series of relevant events occurred in the past few months regarding medical marijuana law, including the November 2012 elections, which strengthen Appellants' arguments; requiring counsel to discuss and analyze the new material and warranting a Supplemental Excerpts of Record.

In the government's answer brief, the government argued that the medical use of marijuana was not deeply rooted in this country's history, that the Appellants have not narrowly defined the right at issue and there was no basis provided for this Court to conclude that the fundamental right that it declined to recognize in 2007 exists today. To properly respond to the government's allegations, counsel for Appellants had to expand on the legal recognition of marijuana since 1996, including detailing the relevant results of the recent November elections and other events that occurred during the past 3 months.

Finally, as alluded to, counsel for appellants have been diligently working to comply with the type volume limitation of 7,000. Counsel have regularly checked the word count on the brief using the built-in features of the Microsoft Word software. Counsel have made many edits/deletions in order to comply with the type volume limitation, and have even opted to omit substantive response to one line of argument in order to stay within the word limit. Yet, despite this diligence, counsel

have been ultimately unable to provide complete and meaningful arguments without exceeding the word count limitation of the rules.

Therefore,

1. For the foregoing reasons, Appellants request leave to exceed the type volume for their Reply Brief by approximately 1,831 words.
2. A copy of the proposed Reply Brief is submitted electronically concurrently hereto.

I declare under penalty of perjury that the foregoing is true and correct, to the best of my knowledge. Executed on February 1, 2013 in San Francisco, CA.

s/David M. Michael

DAVID M. MICHAEL
Declarant and Attorney for Appellants

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that, on 1 February 2013, I caused to be electronically filed the foregoing with the clerk of the court by using the CM/ECF system, which will send a notice of electronic filing on all ECF-registered counsel by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

s/Edward M. Burch
EDWARD M. BURCH