

FILED

NOT FOR PUBLICATION

APR 20 2011

UNITED STATES COURT OF APPEALS

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARLA JAMES; WAYNE  
WASHINGTON; JAMES  
ARMANTROUT; CHARLES DANIEL  
DEJONG,

Plaintiffs - Appellants,

v.

CITY OF COSTA MESA, a city  
incorporated under the laws of the State of  
California; CITY OF LAKE FOREST, a  
city incorporated under the laws of the  
State of California,

Defendants - Appellees.

No. 10-55769

D.C. No. 8:10-cv-00402-AG-MLG  
Central District of California,  
Santa Ana

ORDER

The court invites the views of the United States on the following question:

Whether the term “illegal use of drugs,” as defined in 42 U.S.C. § 12210(d), includes use of marijuana taken under doctor supervision.

The plaintiffs, who brought this action under Title II of the Americans with Disabilities Act (ADA), argue that their use of marijuana for medical purposes is excluded from the ADA’s definition of “illegal use of drugs” because they take marijuana “under supervision by a licensed health care professional.” 42 U.S.C. § 12210(d)(1). The defendants argue that medical marijuana use falls within the

definition of “illegal use of drugs” because it is not “authorized by the Controlled Substances Act” (CSA). 42 U.S.C. § 12210(d)(1). They also point out that, as a Schedule I substance, marijuana has “no currently accepted medical use in treatment” under the CSA, 21 U.S.C. § 812(b)(1)(B), and that the CSA does not expressly authorize dispensation of Schedule I substances by prescription, *see* 21 U.S.C. § 829.

The court invites the views of the United States because its interests in enforcing both Title II of the ADA and the CSA are implicated by the legal issue presented in this appeal. *See* 42 U.S.C. § 12134; 28 C.F.R. § 35.190; Memorandum from Deputy Att’y Gen. David W. Ogden to Selected United States Attorneys (Oct. 19, 2009). Our phrasing of the question presented does not prevent the United States from reformulating the question, or from considering any other issues presented in the parties’ briefs.

If the United States wishes to file a brief as amicus curiae responding to this order, it is granted leave to do so pursuant to Federal Rule of Appellate Procedure 29(a). The brief should be filed within 45 days from the filed date of this order and comply with the page or type-volume limitations set forth in Federal Rules of Appellate Procedure 29(d) and 32(a)(7). Parties who are registered for ECF must file the amicus brief electronically without submission of paper copies. Parties

who are not registered ECF filers must file the original amicus brief plus four paper copies.

The parties' briefs are available to the United States in electronic form on the court's ECF system.

FOR THE COURT:

MOLLY C. DWYER  
Clerk of Court

By: Beverly Brown  
Deputy Clerk