

ROBERT A. RAICH, P.C.

A PROFESSIONAL LAW CORPORATION

1970 BROADWAY, SUITE 1200
OAKLAND, CALIFORNIA 94612

(510) 338-0700
FAX (510) 338-0600

RECEIVED
OFFICE OF THE CLERK
U.S. COURT OF APPEALS
PUBLIC INFORMATION UNIT

05 SEP -2 PM 12:30

FILED _____
DOCKETED _____
DATE INITIAL



September 2, 2005

Ms. Cathy Catterson
Clerk, Ninth Circuit Court of Appeals
95 Seventh Street
San Francisco, California 94103

Re: Angel McClary Raich, et al. v. Alberto Gonzales, et al., No. 04-16296

Dear Ms. Catterson:

Pursuant to Ninth Circuit Rule 31-2.3, Appellees notify the Court by this letter that they are electing not file an answering brief by the September 2, 2005, deadline specified in the briefing schedule set forth in the Court's July 6, 2005, Order. The reason the Appellees will not file an answering brief is that they have no brief to respond to, because the Appellants did not file an opening brief as required by the Court's briefing schedule.

In its July 6 Order, the Court set August 2, 2005, as the due date for Appellants to file the opening brief and September 2, 2005, as the due date for Appellees to file an answering brief. The Court further specified, "**If appellants fail to file timely the opening brief, this appeal will be dismissed** automatically by the Clerk for failure to prosecute without further warning. *See* 9th Cir. R. 42-1." (Emphasis added.)

Ninth Circuit Rule 42-1 states, "When an appellant fails to . . . file a timely brief, . . . an order may be entered by the clerk dismissing the appeal." Moreover, Ninth Circuit Rule 31-2.3 provides, "If the appellant fails to file a brief within the time allowed by FRAP 31(a) or an extension thereof, the court may dismiss the appeal . . ." In relevant part, FRAP 31(a) states that a court of appeals may specify the time to serve and file briefs "by order in a particular case." Although Appellants moved to modify the briefing schedule, the Court has not ruled on the

Ms. Cathy Catterson
September 2, 2005
Page 2

motion, and, to Appellees' knowledge, Appellants neither requested nor received an extension of time to file their opening brief due on August 2.

In consideration of the foregoing, the Rules, and the explicit mandatory statement in this Court's own Order, Appellees request that the Court dismiss this appeal. (Obviously, if the Court dismisses this appeal, there will be no reason for the Court to rule on Appellees' earlier motion to consolidate the proceedings in this appeal with those of another matter.)

In addition to the portion of the Rule cited above, under Ninth Circuit Rule 31-2.3, "If appellee does not elect to file a brief, appellee shall notify the court by letter on or before the due date for the answering brief. Failure to file the brief timely or advise the court that no brief will be filed will subject counsel to sanctions." Accordingly, by this letter, Appellees are notifying the Court that in lieu of filing an answering brief they are filing this request that the Court dismiss the appeal.

The undersigned has notified counsel for Appellants by phone that Appellees are filing this letter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert A. Raich", with a long horizontal stroke extending to the right.

Robert A. Raich

cc: See Service List

CERTIFICATE OF SERVICE

I am not a party to the within action and am over eighteen years of age. My business address is 1970 Broadway, Suite 1200, Oakland, California 94612. I hereby certify that on the date this certificate is signed, I served the attached letter by Federal Express, for next business day delivery, to the following counsel:

Alberto Gonzales, et al.

Mark T. Quinlivan
Assistant U.S. Attorney
1 Courthouse Way, Suite 9200
Boston, Massachusetts 02210

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

Angel McClary Raich, et al.

David M. Michael
The DeMartini Historical Landmark Building
294 Page Street
San Francisco, California 94102

Prof. Randy E. Barnett
Boston University School of Law
765 Commonwealth Avenue
Boston, Massachusetts 02215

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 County of Butte

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

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

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.

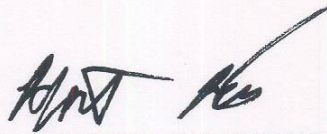
Frederick L. Goss
Law Offices of Frederick L. Goss
1 Kaiser Plaza, Suite 1750
Oakland, California 94612

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

Steph Vogel
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 59823

Dated: September 2, 2005



Robert A. Raich