No. 12-35110

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MONTANA CAREGIVERS ASSOCIATION, LLC, et al.,

Plaintiffs-Appellants,

v.

UNITED STATES OF AMERICA, et al.,

Defendants-Appellees.

On Appeal from the United States District Court
for the District of Montana,
Case No. 9:11-cv-00074

BRIEF FOR APPELLEES

STUART DELERY
Acting Assistant Attorney General

MICHAEL W. COTTER
United States Attorney

MARK B. STERN
(202) 514-5089
MELISSA N. PATTERSON
(202) 514-1201
Attorneys, Appellate Staff
Civil Division, Room 7230
Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001

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STATEMENT OF JURISDICTION

Plaintiffs invoked the jurisdiction of the district court pursuant to 28 U.S.C. § 1331. Amended Complaint, ER 19. The court dismissed plaintiffs' suit on January 20, 2012. D. Ct. Order, ER 4-14. Plaintiffs filed a timely notice of appeal on February 10, 2012. ER 1-2. This Court has jurisdiction pursuant to 28 U.S.C. § 1291.

STATEMENT OF THE ISSUE

Whether the district court correctly held that the federal government's enforcement of the Controlled Substances Act in Montana was constitutional, notwithstanding Montana's law permitting medical marijuana use.

STATEMENT OF THE CASE

Plaintiffs describe themselves as "caregivers" who grow and distribute medical marijuana in Montana. ER 4. In March 2011, federal law enforcement officials executed criminal search and civil seizure warrants against plaintiffs in connection with alleged violations of the Controlled Substances Act. Docket #8, Exhibit F, at 1-2. Plaintiffs filed suit against the United States, claiming that their Tenth, Ninth, Fifth, and Fourth Amendment rights were violated by the search and seizures. ER 25-29. They also filed a Bivens action against various federal officials for the same

alleged constitutional violations. ER 29-30. The government moved to dismiss plaintiffs' suit for insufficient service of process and failure to state a claim. Docket #17.

The district court dismissed the suit for failure to state a claim. ER 4-14. It held that the Controlled Substances Act was a valid exercise of Congress' authority under the Commerce Clause, and that even if plaintiffs' conduct was legal under Montana law, plaintiffs were still subject to federal enforcement of the Controlled Substances Act. See id. This appeal followed.

STATEMENT OF FACTS

A. Statutory Background

Congress enacted the Controlled Substances Act (CSA), 21 U.S.C. § 801 et seq., to provide a "comprehensive regime to combat the international and interstate traffic in illicit drugs." Gonzales v. Raich, 545 U.S. 1, 12 (2005) (Raich I). Its main objectives were to "conquer drug abuse and to control the legitimate and illegitimate traffic in controlled substances." Id. "Congress was particularly concerned with the need to prevent the diversion of drugs from legitimate to illicit channels." Id. at 12-13. It therefore established a "closed regulatory system" prohibiting the

import, manufacture, distribution, dispensing, or possession of any controlled substance except as authorized by the CSA. Id. at 13.

The CSA divides all controlled substances into five schedules. Id. Schedule I substances are subject to the most stringent controls because they have "no currently accepted medical use in treatment in the United States," "a lack of accepted safety for use . . . under medical supervision," and "a high potential for abuse." 21 U.S.C. § 812(b)(1). The only exception to the controls on Schedule I substances applies to government-approved research projects. 21 U.S.C. § 823(f).

Marijuana is a Schedule I controlled substance. The CSA expressly acknowledges that many drugs have a "useful and legitimate medical purpose and are necessary to maintain the health and general welfare of the American people," 21 U.S.C. § 801(1), but it does not provide an exception for any medical use of marijuana. United States v. Oakland Cannabis Buyers' Co-operative, 532 U.S. 483, 493 (2001). The text and structure of the Act reflect the legislative determination that, for purposes of the CSA, marijuana has "'no currently accepted medical use' at all." Id. at 491 (quoting 21 U.S.C. § 812).

Recognizing that the use of marijuana for medical purposes under strictly circumscribed circumstances is permissible under some states' laws,

Deputy Attorney General David Ogden issued a memorandum to certain United States Attorneys setting out federal prosecutorial priorities. Docket #6, Exhibit A, at 1. The "Ogden memo" instructed prosecutors to focus federal resources away from "individuals whose actions are in clear and unambiguous compliance with existing state laws providing for the medical use of marijuana," such as "individuals with cancer or other serious illnesses who use marijuana as part of a recommended treatment regime consistent with applicable state law." Id. at 4 (noting that "prosecution of commercial enterprises that unlawfully market and sell marijuana for profit continues to be an enforcement priority of the Department"). But noting that "no State can authorize violations of federal law," the Ogden memo declared:

> [I]n prosecutions under the Controlled Substances Act, federal prosecutors are not expected to charge, prove, or otherwise establish any state law violations. Indeed, this memorandum does not alter in any way the Department's authority to enforce federal law, including laws prohibiting the manufacture, production, distribution, possession, or use of marijuana on federal property. This guidance regarding resource allocation does not "legalize" marijuana or provide a legal defense to a violation of federal law, nor is it intended to create any privileges, benefits, or rights, substantive or procedural, enforceable by any individual, party or witness in any administrative, civil, or criminal matter. Nor does clear and unambiguous compliance with state law . . . create a legal defense to a violation of the [CSA]. . . . [T]his memorandum is intended solely as a guide to the exercise of investigative and prosecutorial discretion.

Id.

B. Factual Background

Plaintiffs are self-described "caregivers" who grow and distribute medical marijuana in Montana. ER 19. In March 2011, federal law enforcement authorities executed criminal search and civil seizure warrants against them for violations of the CSA. ER 24. These warrants authorized the search and seizure of thirteen categories of items that constituted "evidence of the commission of drug trafficking offenses in violation of 21 U.S.C. § 841 and/or 21 U.S.C. § 846." Docket #9, Exhibit E, at 1-2. Federal agents recovered thousands of live plants and hundreds of pounds of dried marijuana. ER 19.

Plaintiffs filed suit against the United States on May 10, 2011, Docket #1, and amended their complaint on August 4, 2011, ER 18. They alleged that in enforcing the CSA, the United States violated their Fourth, Fifth, Ninth, and Tenth Amendment rights. ER 25-29, ¶¶ 34-59. They also filed a Bivens action against federal agents and officials for the same alleged constitutional violations. ER 29-30, ¶ 60-68. Their complaint sought compensatory and punitive damages and declaratory and injunctive relief. ER 30-32.

The government moved to dismiss plaintiffs' suit for failure to state a claim. Docket #17. It also moved to dismiss the complaint in part for insufficient service of process. Id.

C. The District Court Decision

The district court dismissed the plaintiffs' claims on all counts. ER 4-14. The court observed that "[e]ven if the plaintiffs' alleged conduct was legal under Montana law, it was still illegal under the federal Controlled Substances Act." ER 5 ("'The Supremacy Clause unambiguously provides that if there is any conflict between federal and state law, federal law shall prevail.'") (quoting Gonzales v. Raich, 545 U.S. 1, 28 (2005)). The court rejected plaintiffs' suggestion that the Department of Justice had, by virtue of the Ogden memo, issued a "free pass to produce and consume marijuana, even for medical purposes." Id. It concluded that a "reasonable person, having read the entirety of the Ogden Memo, could not conclude that the federal government was somehow authorizing the production and consumption of marijuana for medical purposes. Any suggestion to the contrary defies the plain language of the Memo." ER 6-7.

Addressing plaintiffs' Tenth Amendment challenge, the court invoked the Supreme Court's conclusion that the CSA is a valid exercise of federal power under the Commerce Clause, even though it prohibits the possession

or use of marijuana "produced and consumed locally" under the aegis of state law. ER 9 (quoting Raich I, 545 U.S. at 9). Because Congress acted under one of its enumerated powers, the court concluded, under Ninth Circuit precedent, the CSA and the enforcement thereof do not violate the Tenth Amendment. ER 9-10.

With respect to the Ninth Amendment, the court reiterated that that provision does not "independently secur[e] any constitutional rights for purposes of making out a constitutional violation." ER 10-11 (quoting San Diego Co. Gun Rights Comm. v. Reno, 98 F.3d 1121, 1125 (9th Cir. 1996)). It concluded that plaintiffs had not shown that the "production and consumption of marijuana for medical purposes is an unenumerated right" of the sort the Ninth Amendment protects, or that there exists "a valid 'specific limitation' that would prevent the federal government from enforcing the Act." ER 11.

With respect to the Fourth Amendment, the court rejected plaintiffs' assertion that the federal searches and seizures were unreasonable because plaintiffs were allegedly acting legally under Montana law. ER 12. It pointed out that "whether the plaintiffs' conduct was legal under Montana law is of little significance" in light of the federal CSA. Id. The court thus concluded that the searches and seizures were not unreasonable. Id.

Finally, the court rejected plaintiffs' Fifth Amendment procedural and substantive due process claims, concluding that they are "squarely foreclosed by Ninth Circuit law." ER 13. The court pointed to the Ninth Circuit's holding that "[t]here is 'no [procedural due process] requirement of a prior hearing before the seizure of possession under a search warrant.'" Id. at 12 (quoting Perkins v. City of West Covina, 113 F.3d 1004, 1010 (9th Cir. 1997), rev'd on other grounds, 525 U.S. 234 (1999) (second alteration in original)). The court likewise rejected plaintiffs' substantive due process claim, citing the Ninth Circuit's conclusion on remand in Raich v. Gonzales (Raich II), 500 F.3d 850, 861-66 (9th Cir. 2007), that there is no constitutionally protected right to produce and consume marijuana for medical purposes. ER 12-13.

Because no government agent behaved unconstitutionally, the court rejected plaintiffs' demand for damages under Bivens. ER 13.

Thus, the court dismissed plaintiffs' suit for failure to state a claim and entered judgment for defendants. ER 13-14.

SUMMARY OF ARGUMENT

Federal enforcement of the Controlled Substances Act against plaintiffs was constitutional. The Supreme Court has unambiguously held that Congress did not exceed the scope of its Commerce Clause powers

when it prohibited the local cultivation and use of marijuana in compliance with state law. Because Congress acted within the bounds of its Commerce Clause authority, plaintiffs' Tenth Amendment claim fails.

Plaintiffs' substantive due process claims are equally flawed, even if properly raised on appeal. No court has ever recognized the existence of a fundamental right to manufacture and distribute marijuana, and plaintiffs have introduced no evidence to support such a view. Thus, their Fifth and Ninth Amendment claims were properly dismissed.

Plaintiffs have waived the remainder of their arguments on appeal. But even in the absence of waiver, their claims are without merit. Their Fourth Amendment claim fails because the existence of a Montana law permitting medical marijuana activities does not render searches and seizures in connection with enforcement of the federal Controlled Substances Act unreasonable. Their procedural due process claim fails because law enforcement authorities were not required to provide plaintiffs with notice or a hearing before executing a lawfully obtained warrant against them. Their Bivens claims fail because they have not proven any unconstitutional conduct on the part on any federal official or agent.

STANDARD OF REVIEW

This Court reviews de novo a district court's grant of a motion to dismiss for failure to state a claim. Lee v. City of Los Angeles, 250 F.3d 668, 679 (9th Cir. 2001).

ARGUMENT

I. FEDERAL ENFORCEMENT OF THE CONTROLLED SUBSTANCES ACT AGAINST PLAINTIFFS IS CONSTITUTIONAL.

A. Plaintiffs' Commerce Clause And Tenth Amendment Arguments Are Foreclosed By Controlling Supreme Court And Ninth Circuit Precedents.

The Supreme Court has already decided the crux of this case. In Raich I, federal officers seized and destroyed marijuana plants owned by California residents who suffered from a variety of serious medical conditions. 545 U.S. at 6-7. These residents were concluded to be in compliance with California law, which authorizes the use of marijuana for medicinal purposes. Id. at 7. Nonetheless, the Supreme Court held that the Controlled Substances Act's prohibition on the local cultivation and use of marijuana in compliance with state law does not exceed Congress' authority under the Commerce Clause.

The Raich I Court rejected the California residents' assertion that "the CSA's categorical prohibition of the manufacture and possession of

marijuana as applied to the intrastate manufacture and possession of marijuana for medical purposes pursuant to California law exceeds Congress' authority under the Commerce Clause." Raich I, 545 U.S. at 15. The Court concluded its precedent "firmly establishes" Congress' power to regulate "purely local activities" that are part of an "economic 'class of activities' that have a substantial effect on interstate commerce." Id. at 17 (citing Perez v. United States, 402 U.S. 146, 151 (1971); Wickard v. Filburn, 317 U.S. 111, 128-29 (1942)). The regulation of marijuana is "squarely within Congress' commerce power because production of the commodity . . . has a substantial effect on supply and demand in the national market for that commodity." Id. at 19. "Given the enforcement difficulties that attend distinguishing between marijuana cultivated locally and marijuana grown elsewhere . . . and concerns about diversion into illicit channels, we have no difficulty concluding that Congress had a rational basis for believing that failure to regulate the intrastate manufacture and possession of marijuana would leave a gaping hole in the CSA." Id. at 22. The CSA is therefore a legitimate exercise of Congress' Commerce Clause authority.

Plaintiffs' Commerce Clause challenge is thus foreclosed by Raich I. They suggest that the federal government may not enforce the CSA against

them because their activities are permissible under Montana state law.[1] See Appellants' Br. at 8 (quoting portions of the complaint asserting that application of the CSA to plaintiffs "and other Montana caregivers exceeds the federal government's constitutional authority under the Commerce Clause"). But the Supreme Court has already rejected this line of argument. Faced with a California statute similar to the one plaintiffs rely upon here, the Raich I Court held that the application of the CSA to intrastate activities permissible under state law was a valid exercise of Congress' Commerce Clause powers, since a rational basis existed to conclude that regulation of even intrastate manufacture and possession of marijuana was necessary for regulation of marijuana in interstate commerce. See Raich I, 545 U.S. at 21-22. The Court made clear that the extent of Congress' interstate commerce authority does not depend on whether the regulated conduct is also illegal under state law. "[L]imiting the activity to marijuana possession and cultivation 'in accordance with state law' cannot serve to place respondents' activities beyond congressional reach. The Supremacy Clause unambiguously provides that if there is any conflict between federal and

[1] As below, the government takes no position as to whether the plaintiffs' conduct, as alleged in the complaint, would be legal under state law. See Docket # 18 at 7 n.1. For the reasons discussed in this brief, that question is irrelevant here.

state law, federal law shall prevail." Id. at 29. The fact that plaintiffs may disagree with the Supreme Court's decision in Raich I does not strip that controlling precedent of its binding force. See Appellants' Br. at 7 (suggesting that the district court's invocation of Raich I was "an erroneous view of the law").[2]

Plaintiffs also suggest that the limitations the Supreme Court delineated in United States v. Lopez, 514 U.S. 549 (1995), and United States v. Morrison, 529 U.S. 598 (2000), are relevant here. Appellants' Br. at 14-16. The Supreme Court's decision in Raich I, however, made clear that the application of the CSA to marijuana manufacture and use authorized by state law presents different issues than those addressed by Lopez and Morrison. As the Court explained, unlike the activities at issue in those cases, "the activities regulated by the CSA are quintessentially economic." Raich I, 545 U.S. at 25-26. Moreover, those cases involved assertions that "a particular statute or provision fell outside Congress' commerce power in its entirety," as opposed to a request – as exists here – "to excise individual applications" of a larger, valid statutory scheme. Id. at 23-25.

[2] Amicus Montana Cannabis Industry Association explicitly urges this Court to "reexamine" the entirety of the Supreme Court's Commerce Clause jurisprudence for the same reasons as laid out in plaintiffs' brief. See, e.g., Amicus Br. at 19-22. These arguments are also foreclosed by Raich I.

The Raich I Court's conclusion that the CSA is a valid exercise of Congress' Commerce Clause authority also disposes of plaintiffs' Tenth Amendment claim. This Court has held that if Congress acts under one of its enumerated powers, "there can be no violation of the Tenth Amendment." United States v. Jones, 231 F.3d 508, 515 (9th Cir. 2000). Contrary to plaintiffs' argument that anything that can be characterized as an exercise of states' police powers is immune from federal control under the Tenth Amendment, see Appellants' Br. at 15-16, the Supreme Court has repeatedly rebuffed the suggestion that the Tenth Amendment prevents Congress from exercising its delegated authority in a manner that in some way impinges on states' "police" powers. See United States v. Comstock, 130 S. Ct. 1949, 1962 (2010) (rejecting argument that a statute ran afoul of the Tenth Amendment because it "invade[d]" an "area typically left to state control," noting that "[v]irtually by definition," powers delegated to Congress "are not powers that the Constitution 'reserved to the States'"); see also Hodel v. Virginia Surface Mining and Reclamation Ass'n, 452 U.S. 264, 291-92 (1981) (listing Supreme Court precedents rejecting idea that "Congress invades areas reserved to the States by the Tenth Amendment simply because it exercises its [commerce power] in a manner that displaces the States' exercise of their police powers"). Indeed, in Raich II, this Court

concluded that because the Supreme Court in Raich I had concluded that the CSA was within the bounds of Congress' Commerce Clause authority, the CSA did not "infringe[] upon the sovereign powers [of the states], most notably the police powers, as conferred by the Tenth Amendment."[3] Raich II, 500 F.3d at 866-67.[4]

B. Plaintiffs' Fifth And Ninth Amendment Challenges Fail.

To the extent that plaintiffs raise on appeal their claims under the Fifth Amendment's substantive due process component and the Ninth

[3] Plaintiffs attempt to distinguish Raich I because it "never directly addressed or decided a Tenth Amendment claim" and because they "*are* contesting the constitutionality of the Controlled Substances Act, especially the section(s) of that Act relating to marijuana and its status as a 'Schedule I drug.'" Appellants' Br. at 9, 11 (emphasis in original). As discussed above, however, under controlling Ninth Circuit precedent, the Court's Commerce Clause holding in Raich I squarely forecloses plaintiffs' Tenth Amendment challenge.

[4] Plaintiffs mention commandeering at several points in their opening brief, but do not raise an argument that the CSA somehow unconstitutionally commandeers state resources. In any event, this Court also made clear that the CSA does not implicate the federalism concerns raised by the Supreme Court's "commandeering" cases, which relate to "attempts by Congress to direct states to perform certain functions, command state officers to administer federal regulatory programs, or to compel states to adopt specific legislation." Raich II, 500 F.3d at 867 n.17. By contrast, the CSA "'does not require the [state legislature] to enact any laws or regulations, and it does not require state officials to assist in the enforcement of federal statutes regulating private individuals.'" Id. (quoting Reno v. Condon, 528 U.S. 141, 151 (2000)) (alteration in original).

Amendment, these claims fail.[5] Substantive due process protects an asserted right only if it is "'deeply rooted in this Nation's history and tradition'" and "'implicit in the concept of ordered liberty,'" such that "'neither liberty nor justice would exist if [it] were sacrificed.'" Raich II, 500 F.3d at 864 (quoting Washington v. Glucksberg, 521 U.S. 702, 720-21 (1997)). Applying this "narrow definition of the interest at stake," this Court rejected the notion that the Due Process Clause embraces a right to use marijuana as prescribed by a physician for medical purposes. Id. at 863. After surveying the history of medical marijuana, it held that "legal recognition has not yet reached the point where a conclusion can be drawn that the right to use medical marijuana is 'fundamental' and 'implicit in the concept of ordered liberty.'" Id. at 866.

On appeal, plaintiffs do not clearly contest this holding from Raich II. Plaintiffs merely assert without elaboration that "medical marijuana businesses boomed, especially after the DOJ's promulgation of the Ogden [m]emo, and are now part of the national landscape," Appellants' Br. at 13,

[5] Although plaintiffs reference the district court's dismissal of the claims they made below under these provisions, see Appellants' Br. at 6-7, and make statements regarding the current importance of the medical marijuana industry and "new" awareness of resistance to federal power, see id. at 13,16, they do not clearly advance any argument that the district court erred in its analysis with respect to these provisions. Plaintiffs have therefore arguably waived these claims. See Greenwood v. FAA, 28 F.3d 971, 977 (9th Cir. 1994).

and "there is a new awareness of the possibilities of freedom and the ability of the people and the states to resist the coercive use of federal power in matters that are important to the people," id. at 16.[6] However, they offer no argument that any of the factors this Court considered relevant in concluding that the federal constitution does not include a fundamental right to use marijuana for medical purposes have changed. See Raich II, 500 F.3d at 865-66 (noting that most states still have not legalized medical marijuana and still enforce laws proscribing its use). Moreover, unlike the plaintiffs in Raich II, who asserted the right to *use* marijuana with a physician's prescription in the face of a medical emergency, plaintiffs here appear to assert a constitutional right to *manufacture and distribute* marijuana. This latter right would sweep far beyond the one discussed and rejected in Raich II. Plaintiffs make no attempt to show from what "deeply rooted" concept of

[6] The district court correctly concluded that the Ogden memo simply set out federal law enforcement priorities, and that no reasonable person reading it could have concluded that it somehow authorized the production and consumption of marijuana for medical purposes. See ER 6-7. Every court to consider claims that the federal government is estopped from enforcing the CSA due to the Ogden memo has rejected them. See Sacramento Nonprofit Collective v. Holder, No. 2:11-cv-02939, 2012 WL 662460 (E.D. Cal. Feb. 28, 2012) (appeal pending, No. 12-15991); Marin Alliance for Medical Marijuana v. Holder, No. 11-cv-05349, 2011 WL 5914031 (N.D. Cal. Nov. 28, 2011) (appeal pending, No. 12-16710); Alternative Community Health Care Cooperative, Inc. v. Holder, No. 11-cv-2585, 2011 WL 5827200 (S.D. Cal. Nov. 18, 2011) (appeal pending, No. 12-55775).

"ordered liberty" this novel right derives. Their substantive due process claim was properly dismissed.

For the same reason, plaintiffs' Ninth Amendment claim was properly dismissed as well. The Ninth Amendment does not "independently secur[e] any constitutional rights for purposes of making out a constitutional violation." Schowengerdt v. United States, 944 F.2d 483, 490 (9th Cir. 1991). As long as Congress does not exceed a "specific limitation" on a grant of power, it does not violate the Ninth Amendment. Barton v. Commissioner of Internal Revenue, 737 F.2d 822, 823 (9th Cir. 1984).

II. PLAINTIFFS HAVE WAIVED THE REMAINDER OF THEIR CLAIMS, WHICH ARE IN ANY EVENT MERITLESS.

In their opening brief, plaintiffs do not appeal the district court's dismissal of their Fourth Amendment claim, their procedural due process claim, or their Bivens claim for damages. This Court only reviews those issues "which are argued specifically and distinctly in a party's opening brief," since "[j]udges are not like pigs, hunting for truffles buried in briefs." Greenwood, 28 F.3d at 977 (internal citations omitted). Though the Montana Cannabis Industry Association, participating as amicus, does invoke the Fourth and Fifth Amendment arguments and Bivens claims plaintiffs raised below, this Court does not review issues raised only by an

amicus curiae. See Swan v. Peterson, 6 F.3d 1373, 1383 (9th Cir. 1993). Plaintiffs have therefore waived these claims.

Even if these claims had not been waived on appeal, they are meritless. Any suggestion that the federal searches and seizures violated the Fourth Amendment claim because of plaintiffs' asserted compliance with Montana law is foreclosed by Raich I. See Raich I, 545 U.S. at 29 (holding that "[t]he Supremacy Clause unambiguously provides that if there is any conflict between federal and state law, federal law shall prevail"). Nor did plaintiffs have a Fifth Amendment procedural due process right to notice or a hearing before the federal warrants were executed. See Fuentes v. Shevin, 407 U.S. 67, 93 n.30 (1972). Finally, because no federal agent or officer behaved unconstitutionally, let alone violated a "clearly established" rule of constitutional law, see Reichle v. Howards, 132 S. Ct. 2088, 2093 (2012), the district court correctly dismissed plaintiffs' Bivens actions against individual federal agents and officials.[7]

[7] Plaintiffs also assume that their Ninth and Tenth Amendment theories can support Bivens liability. However, the Supreme Court has only permitted such claims to proceed for violations of clearly established rights under the Fourth, Fifth, and Eighth Amendments, where plaintiff lacks other adequate remedies. Correctional Services Corp. v. Malesko, 534 U.S. 61, 67 (2001). It has "consistently refused to extend Bivens liability to any new context or new category of defendants." Id. at 68.

CONCLUSION

For the foregoing reasons, the district court's judgment should be affirmed.

Respectfully submitted,

STUART DELERY
Acting Assistant Attorney General

MICHAEL W. COTTER
United States Attorney

MARK B. STERN
(202) 514-5089
MELISSA N. PATTERSON
(202) 514-1201
Attorneys, Appellate Staff
Civil Division, Room 7230
Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001

CERTIFICATE OF COMPLIANCE

Counsel hereby certifies that the foregoing Brief for Appellees satisfies the requirements of Federal Rules of Appellate Procedure 32(a)(7) and Ninth Circuit Rule 32-1. The brief was prepared in Times New Roman 14-point, proportionally spaced font, and contains 4,213 words.

/s/ Melissa N. Patterson
Melissa N. Patterson
Counsel for the United States
Melissa.Patterson@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of August, 2012, I electronically filed the foregoing with the Clerk of the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. The following participants in the case who are registered CM/ECF users will be served by the CM/ECF system:

Timothy Neal Baldwin
Baldwin Law Offices, PA
1001 S. Main Street
PO Box 1520
Kalispell, MT 59901
Email: tim@libertydefenseleague.com

Carl B. Jensen Jr.
Law Office of Carl B. Jensen
410 Central Avenue
Great Falls, MT 59401
Email: Carl.Jensen.lawoffice@gmail.com

Paul Steven Livingston
Paul Livingston, attorney
P.O. Box 250
Placitas, NM 87043
Email: living@rt66.com

/s/ Melissa N. Patterson
Melissa N. Patterson
Civil Division, Appellate Staff
U.S. Department of Justice
950 Pennsylvania Ave., NW, Room 7230
Washington, DC 20530
(202) 514-1201
Melissa.Patterson@usdoj.gov