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By Hand Delivery

Ms. Cathy Catterson
Office of the Clerk
United States Court of Appeals
for the Ninth Circuit
95 Seventh Street
San Francisco, CA 94103

Re: *United States v. Oakland Cannabis Buyers' Cooperative et al.*, Ninth
Circuit Case No. 02-16534

Dear Ms. Catterson:

Pursuant to Federal Rule of Appellate Procedure 28(j), Appellant Oakland Cannabis Buyers' Cooperative submits the following citation to a pertinent and significant authority that has become available after briefing and the reason for its submission: *Lawrence v. Texas*, 539 U.S. ____, 123 S. Ct. 2472, 2003 U.S. LEXIS 5013 (June 26, 2003).

In *Lawrence*, the United States Supreme Court found a Texas statute criminalizing sexual relations between persons of the same sex to be an unconstitutional restriction on liberty under the Due Process Clause of the Fourteenth Amendment. *See id.* at **36-37. The Court struck down the statute on rational basis grounds, holding that the "Texas statute furthers no legitimate state interest which can justify its intrusion into the personal and private life of the individual." *Id.* at *36. The Court characterized this as a restriction on the exercise of a *liberty*, rather than a restriction on the exercise of a fundamental right.

The reasoning of *Lawrence* is significant because the Court did not find the liberty in question to be a "fundamental right." Nevertheless, *Lawrence* held that the government could not prohibit the exercise of this liberty solely on the ground that the government found the conduct immoral, because this rationale would give unlimited powers to the government.

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Lawrence provides an additional justification for holding that the Controlled Substances Act constitutes an unconstitutional infringement on the rights of Appellants' patient-members under the Due Process Clause. As in *Lawrence*, Appellants' patient-members are exercising a liberty interest. This interest implicates some of the most personal aspects of human existence: bodily integrity, the avoidance of pain and suffering, and the continuation of life itself. As in *Lawrence*, the exercise of this liberty interest does not harm others, and the government has failed to demonstrate any legitimate basis for restricting the exercise of this liberty interest.

For the reasons stated above, the Court's analysis is relevant to and consistent with the analysis presented in Appellants' Opening Brief at 43-59 and Reply Brief at 25-40 concerning the fundamental rights of Appellants' patient-members.

We have enclosed a copy of this decision.

Very truly yours,

Heather A. Moser

Enclosure

cc: All Counsel