

Medical Marijuana

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Despite decades of admonishment to “just say no,” voters in several states have in recent years said “yes” to letting people with serious medical conditions use marijuana as a means of alleviating the physical pain of their illness. Now as more states enact similar legislation, California is at the forefront of a major showdown between an administration adamantly opposed to medicinal marijuana use and states bent on not seeing their right to self-determination go up in smoke.

Control is the heart of the issue, specifically who has control over marijuana laws - individual states or the federal government. Since 1996 several states, including California, have passed laws that allow certain citizens to legally purchase and use marijuana as recommended by a physician. No such laws, however, have deterred the Drug Enforcement Administration (DEA) from continuing to arrest and prosecute people they say are in violation of the federal statute prohibiting marijuana cultivation, sale and usage. But two recent high-profile arrests in California have subsequently spawned both local and national reactions that could have a dramatic effect on whether or not the DEA will continue to have that same power in the future.

The first case revolves around the arrest and conviction of Ed Rosenthal, an Oakland, California man who federal prosecutors say was warehousing pot for sale. During the trial U.S. District Judge Charles Breyer refused to allow jurors to hear that the 58-year-old Rosenthal, a self-proclaimed “pot guru,” was warehousing the weed for medical use, and was doing so with the expressed legal consent of the city of Oakland under the voter-approved Proposition 215, also known as the Compassionate Use Act of 1996.

Rosenthal’s conviction sparked angry reaction from one juror, who wrote in a San Jose Mercury News editorial that she felt she had “helped send a man to prison who doesn’t belong there.” It also inspired more than two dozen members of Congress last month to introduce HR 1717, dubbed the “Truth in Trials Act,” which would allow individuals accused of violating federal marijuana laws to introduce evidence in federal court that shows they were following state medicinal-use laws.

"This is an issue of states’ rights, plain and simple," said California Rep. Sam Farr-Carmel, lead sponsor of the bill. "The voters of California have passed a medical marijuana initiative, but the federal government has exhibited little respect for our state's laws. Attorney General John Ashcroft has insisted that his opinion is of greater consequence than the citizens of California -- five million of whom voted for Proposition 215 in 1996 to allow doctors to recommend medical marijuana to patients in pain."

Barely two weeks after the introduction of HR 1717, the city and county of Santa Cruz, California filed suit in federal court against Ashcroft and the DEA in response to an Administration raid at a farm near the small coastal town. The farm is the home of Valerie Corral, who co-founded WAMM, the Wo/Men's Alliance for Medical Marijuana and who also served on the state advisory board that drafted Proposition 215. The suit claims seven defendants have had their medication illegally reduced since the raid, causing "insurmountable" pain and even death among some WAMM members.

"We cannot just stand by and watch the harassment of people who are sick and dying," said Judy Appel of the Drug Policy Alliance, an attorney on behalf of the plaintiffs. "We hope the court will see the injustice and inhumanity of the federal government's actions, and restore these patients' rights to treat their severe pain with the medicine that works best for them."

The Alliance is a New York-based drug policy advocacy group with offices in California, Washington, D.C., New Mexico and New Jersey. A motion to dismiss the suit will be heard in a San Jose federal court on July 7.

The raid also prompted state Attorney General Bill Lockyer to get into the act. Lockyer fired off an angry letter to Ashcroft in which he, while acknowledging the need to bring state and federal law together, complained that "surely an administration with a proper sense of balance, proportion and respect for states' rights could and should reconsider the DEA's policy and redirect its resources." Lockyer also insinuated that the hard line Bush administration was to blame, noting that the raids began in earnest only in 2001, five years after the state approved "authorized California cooperatives."

Outgoing DEA director Asa Hutchinson fired back, telling Lockyer that the benefits of medicinal marijuana were not scientifically proven and that pot was still a federally banned drug. He also noted that Proposition 215 did not change federal law, saying that the government had never in the past "approved medicine by popular referendum," and that it "would be ill-advised to start now."

It is that process of law by popular vote that irks federal drug officials. The DEA says unclear referendums leave a cities and counties to establish their own standards, which usually leads to a large variance in guidelines and laws in each city and county jurisdiction. In a formal position paper on California's medical marijuana situation, the agency cites the great difficulty in telling the difference between medical and illegal marijuana operations, and the large number of pot traffickers that try to invoke Prop 215, even when there is no evidence of medical use.

The battle to control marijuana laws has been going on for a while. In 1970, spurred by rampant recreational pot use among large segments of society, Congress passed the Controlled Substances Act, which placed marijuana and its primary active ingredient, tetrahydrocannabinol (THC), into a grouping with LSD and heroin as drugs that had no accepted medical use. That changed in 1975 when a successful suit brought on by a glaucoma sufferer gave birth to the federal Investigational New Drug (IND) program,

which allowed for certain people to receive marijuana from the government when deemed “medically necessary.” President George Bush in 1992, an act Bill Clinton upheld in 1999.

But since 1996, swayed by medical studies that show pot’s apparent ability to ease physical pain, voters in seven states – Alaska, Arizona, California, Colorado, Maine, Nevada, Oregon and Washington - have taken the law into their own hands by approving ballot propositions that allow for medicinal marijuana use. Most current advocates point to the 1999 report issued by the National Academy of Sciences, Institute of Medicine, which stated that “scientific data indicate the potential therapeutic value of cannabinoid drugs, primarily THC, for pain relief, control of nausea and vomiting, and appetite stimulation.”

In 2000 Hawaii’s legislature approved such use on its own, which then Gov. Ben Cayetano signed into law. This made the Hawaii the only one with medicinal marijuana use laws originated and accepted by politicians and not a voter referendum. Or at least it did until recently, when lawmakers in New York, Connecticut and Maryland got into the act by passing similar legislation. So far, results have been mixed.

Despite heavy lobbying from the Bush administration, Maryland’s Republican Gov. Bob Ehrlich signed legislation in May allowing medical marijuana use in his state. White House Drug Czar John Walters had been particularly aggressive during visits to the state, calling the legislation “cruel” and a “hoax.” In Connecticut, however, similar legislation that had made it out of a committee died on a narrow vote in the full House.

Concerns over the potential for drug dealers to hide behind the veil of medicine - and a desire to avoid situations like those in California - have prompted some lawmakers to take action in streamlining current state statutes. The Oregon House, for example, just approved HB 2939, which tightens restrictions for the state’s 4500 registered medical marijuana users. HB 2939 requires patients to inform the state about their growing sites, limits the number of allowable plants and sets standards by which the state can revoke the grower’s registration.

California isn’t standing pat either. SB 420, sponsored by Senator John Vasconcellos D-Silicon Valley, was approved June 2 by the Senate and sent on its way to the Assembly. That is good news even to marijuana advocates, many of whom believe that Prop 215 is too ambiguous.

“Virtually all of the DEA raids on medical marijuana providers have come in California,” says Bruce Mirken, Director of Communications for the Marijuana Policy Project (MPP), the Washington D.C.-based medical marijuana advocacy group that worked with Farr to craft the Truth in Trials Act. MPP also lobbied Maryland officials extensively for four years prior to Ehrlich’s signing. “We believe that those federal raids are a result of Prop 215 being more broadly worded than referendums in other states.”

Vasconcellos' bill would certainly ease that burden. SB 420 establishes a voluntary and confidential registry identification card system for patients with recommendation from their physicians to use marijuana and their primary caregivers. The card immunizes the cardholder from arrest and prosecution for possession, transportation and cultivation of marijuana. Vasconcellos makes no secret that the DEA's actions in both the Rosenthal and WAMM cases inspired the bill.

“This recent federal action is reason for California to step up its effort to enforce our laws,” said Vasconcellos. “We are duty-bound to honor the will of Californians who passed Proposition 215 in 1996, which allows seriously ill patients to use marijuana to treat illnesses. Due to the vague guidelines, patients and physicians have been subject to needless arrest and prosecution. A statewide registry system will afford patients standardized and instant proof that they are legal users by state law.”

Lockyer has not given up his fight either. The Attorney General recently sent another letter, this time to Judge Breyer. Lockyer asked Breyer to take Prop. 215 into account in deciding Rosenthal's sentence, asking Breyer specifically to “impose the minimum sentence allowed under federal guidelines.”

LOCKYER QUOTE

JUDGE'S ACTUAL SENTENCE

Despite concerns from the DEA and others, polls in several states show that public opinion appears to be highly slanted toward allowing the medical use of marijuana. A March 2002 poll by the Lucas organization showed 73% of Connecticut voters approve of this, while a TIME Magazine poll from November showed 80% of the respondents in support.

What is less clear is how states are going to convince the Bush administration that they should make their own rules beyond federal control. Stanford law professor Robert Weisberg summed up the debate during a recent television appearance on the PBS news show “California Connected” by saying that he doubted the federal government was really that concerned by medical marijuana, “but what they are bothered by is the ‘in your face’ attitude of California saying, ‘we defy federal law.’”

-- by Rich Ehsen