

Should Marijuana Continue to be Prohibited to Citizens?

Thesis Statement:

Marijuana has been around for many centuries. Since then, it was prescribed for the treatment of gout, rheumatism, malaria and, oddly enough, poor memory. In 1996 California was the first state to establish a medical marijuana program. It was legislated by Proposition 215 and Senate Bill 420 and signed by Governor Gray Davis in 2003.¹ Even though medical marijuana has shown to help patients with terminal illnesses, the subject was brought up again in 2012 by the State of California when the city council voted in favor of banning a vast number of marijuana dispensaries in the city of Los Angeles, but should marijuana continue to be prohibited to citizens based on its health effects, medicinal values, and costs to the country?

Scope of the Paper

This paper will discuss the recent legal aspect of medical marijuana. Some of the major topics discussed will cover the history of marijuana use, the history and current laws in federal marijuana regulation, and California's medical marijuana legislation.

Argument

Although the federal government formally opposes the use of marijuana for medicinal purposes, eighteen states had laws enabling the use of marijuana for medicinal purposes.

In 1996, California voters passed Proposition 215, also known as the Compassionate Use Act of 1996. This statute specifies that a physician may "recommend" the use of marijuana for the treatment of "cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine,

or any other illness for which marijuana provides relief." 1 Marijuana use remains illegal under federal law.

The California act allowed for the compassionate use of marijuana. The intentions were noble. If you have ever seen a person waste away from the effects of cancer and its potent cures, you would understand the reason for this need.

History of Medical Marijuana Used

Marijuana has been used medicinally for over five thousand years, with the earliest accounts dating back to China in the third millennium, B.C., where it was used to treat malaria and rheumatic pain. "In India, marijuana was used in Ayurvedic medicine," as early as the Tenth Century, to treat various ailments, including "diarrhea, diabetes, tuberculosis, asthma, elephantiasis, anemia, and rabies." 2 In the Middle East, marijuana's medicinal value was recognized as early as the Seventh Century, B.C., and "during . . . the Roman Empire, marijuana was used as an analgesic and anesthetic." 3 In Europe, marijuana was recommended as medicine around 65 A.D. and was used well into the Nineteenth Century.4 In the United States, physicians recognized marijuana's medicinal value as early as 1850 by listing it in the United States Pharmacopoeia "as a treatment for . . . neuralgia, tetanus, typhus, . . . leprosy, . . . gout, . . . insanity, . . . among others" 5

Originating from the leaves of the hemp plant, *Cannabis sativa*, or marijuana, contains over 460 known compounds of which sixty are unique to marijuana, and are commonly referred to as cannabinoids.6 "Delta-9-tetrahydrocannabinol ("THC"), one of the most psychoactive ingredients in marijuana," eliminates loss of appetite, nausea, and vomiting" in cancer patients undergoing chemotherapy.7 Moreover, while THC may increase feelings of depression, these

symptoms depend largely on the dose, as well as the psychological and physiological makeup of the patient.⁸ Most importantly, THC serves as an analgesic that decreases sensitivity to pain.⁹

Then there was a gap between marijuana’s prohibition in 1937 and California passing Proposition 215 in 1996. “Today 60% of Americans support legalizing it for medical use, according to an April 2010 AP-CNBC poll. As a result, states are increasingly having to grapple with whether to take this course, and if they do, how to go about prescribing and dispensing the goods”.¹⁰

HISTORY OF U.S. MEDICAL MARIJUANA REGULATION

According to the Academy of Health Care Management Journal; America has had a federal medical marijuana program for several decades. By 1991, the federal compassionate use of marijuana program had 13 patients, and stopped admitting new patients.¹¹

Eighteen states and Washington D.C. have enacted laws for the use of Medical Marijuana (see exhibit “1” a summary chart of Laws, Fees, and Possession Limits)

Exhibit 1:

| State | Year Passed | How Passed (Yes Vote) | Fee | Possession Limit | Accepts other states' registry ID cards? |
|----------------------------|-------------|--------------------------|------------|--|--|
| 1. Alaska | 1998 | Ballot Measure 8 (58%) | \$25/\$20 | 1 oz usable; 6 plants (3 mature, 3 immature) | unknown ¹ |
| 2. Arizona | 2010 | Proposition 203 (50.13%) | \$150/\$75 | 2.5 oz usable; 0-12 plants ² | Yes ³ |

| | | | | | |
|--|------|---|------------------|--|------------------|
| 3. California | 1996 | Proposition 215 (56%) | \$66/\$33 | 8 oz usable; 6 mature or 12 immature plants ⁴ | No |
| 4. Colorado | 2000 | Ballot Amendment 20 (54%) | \$35 | 2 oz usable; 6 plants (3 mature, 3 immature) | No |
| 5. Connecticut | 2012 | House Bill 5389 (96-51 House, 21-13 Senate) | * | One-month supply (exact amount to be determined) | No |
| 6. DC | 2010 | Amendment Act B18-622 (13-0 vote) | ** | 2 oz dried; limits on other forms to be determined | unknown |
| 7. Delaware | 2011 | Senate Bill 17 (27-14 House, 17-4 Senate) | \$125 | 6 oz usable | Yes ⁵ |
| 8. Hawaii | 2000 | Senate Bill 862 (32-18 House; 13-12 Senate) | \$25 | 3 oz usable; 7 plants (3 mature, 4 immature) | No |
| 9. Maine | 1999 | Ballot Question 2 (61%) | \$100/\$75 | 2.5 oz usable; 6 plants | Yes ⁶ |
| 10. Massachusetts | 2012 | Ballot Question 3 (63%) | TBD ⁷ | Sixty day supply for personal medical use | unknown |
| 11. Michigan | 2008 | Proposal 1 (63%) | \$100/\$25 | 2.5 oz usable; 12 plants | Yes |
| 12. Montana | 2004 | Initiative 148 (62%) | \$25/\$10 | 1 oz usable; 4 plants (mature); 12 seedlings | No |
| 13. Nevada | 2000 | Ballot Question 9 (65%) | \$200 +fees | 1 oz usable; 7 plants (3 mature, 4 immature) | No |
| 14. New Jersey | 2010 | Senate Bill 119 (48-14 House; 25-13 Senate) | \$200/\$20 | 2 oz usable | No |
| 15. New Mexico | 2007 | Senate Bill 523 (36-31 House; 32-3 | \$0 | 6 oz usable; 16 plants (4 mature, 12 immature) | No |

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|---|------|---|--------------------------|---|-----|
| | | Senate) | | | |
| 16. Oregon | 1998 | Ballot Measure 67 (55%) | \$200/\$100 ⁸ | 24 oz usable; 24 plants (6 mature, 18 immature) | No |
| 17. Rhode Island | 2006 | Senate Bill 0710 (52-10 House; 33-1 Senate) | \$75/\$10 | 2.5 oz usable; 12 plants | Yes |
| 18. Vermont | 2004 | Senate Bill 76 (22-7) HB 645 (82-59) | \$50 | 2 oz usable; 9 plants (2 mature, 7 immature) | No |
| 19. Washington | 1998 | Initiative 692 (59%) | *** | 24 oz usable; 15 plants | No |

Current Federal Marijuana Regulation

The Bush Administration followed the pattern of the previous three decades which was to continue the War on Drugs. According to the administration, medical marijuana was just a pretense to allow drug legalization. As a result, Bush encouraged numerous raids on California's dispensaries. These raids were successful in catching a great number of sellers of marijuana. However, within hours the sellers were replaced by others. 11

Obama, promised to stop raiding dispensaries, claiming it was not a good use of resources. In 2009, DEA officers shut down 14 dispensaries and arrested 30 people in California.¹¹ However, Obama's administration promised to relax prosecution of medical marijuana cases in states that allow its use. Obama advocated using the states as our fifty laboratories in democracy. This problem is not going away any time soon.

California's Medical Marijuana

As previously mentioned, California was the first state to authorize medical marijuana and it allows personal cultivation.

The California Compassionate Use Act was enacted by the voters and took effect on Nov. 6, 1996 as *California Health & Safety Code 11362.5*. The law makes it legal for patients and their designated primary caregivers to possess and cultivate marijuana for their personal medical use given the recommendation or approval of a California-licensed physician. 1

SB420, a legislative statute, went into effect on January 1, 2004 as California H&SC 11362.7-.83. This law broadens Prop. 215 to transportation and other offenses in certain circumstances, allows patients to form medical cultivation “collectives” or “cooperatives”; and establishes a voluntary state ID card system run through county health departments. SB 420 also establishes guidelines or limits as to how much patients can possess and cultivate. Legal patients who stay within the guidelines are supposed to be protected from arrest.

When California passed its medical marijuana regulations in 1996 the US government threatened physicians who recommended marijuana with the loss of their license. Physicians and patients filed this class action lawsuit. The US District Court and the Court of Appeals for the Ninth Circuit found for the physicians and issued a permanent injunction, which permits physicians to discuss marijuana with their patients and to approve the use of marijuana in their medical treatment. (*Conant v. Walters*) 12

Primary caregiver is the individual, designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person. The caregiver must be 18 years of age or older (unless the

primary caregiver is the parent of a minor child who is a qualified patient or a person with an identification card). Cal. Health & Saf. Code, §11362.7 (2003). 1

In *USA v. Oakland Cannabis Buyers' Cooperative (OCBC) and Jeffrey Jones Oakland Cannabis Buyer's Cooperative* and its proprietor, Jeffrey Jones, distributed marijuana based on the theory that they could be each patient's "caregiver," and qualifies as such under federal necessity law. The US government disagreed, and filed a lawsuit to cease OCBC operations. 13

In *Gonzales v Rich*, the issue was whether Congress can regulate homegrown medical marijuana consumed at home pursuant to the interstate commerce clause. As to court rule "Congress may ban the use of marijuana even where states approve its use for medicinal purposes." 14

In 2008, The Second District of California Court of Appeals ruled "that the state limits on medical marijuana possession and cultivation established under state law SB 420 are unconstitutional" .15

In the case *People v. Patrick Kelly*, the court overturned the defendant's conviction for possessing 12 ounces of dried marijuana plants on the grounds that the prosecutor had improperly argued that the defendant was guilty because he possessed more than the 8-ounce limit established in Health & Safety Code Sec. 11362.77 and did not have a doctor's recommendation authorizing more. 15

Conclusion

California's regulations could help other states that wish to establish marijuana as medical substance. Any state that wants to legalize the use of medical marijuana should have the dispensaries be regulated and subject to state qualifications, each state should clearly define the conditions for which a patient can receive medical marijuana and should implement a tax fee for the sale of the substance; these implementations can help get people the relief they need and still provide the restrictions to keep it away from those that would be abused.

Footnotes

[1]California Compassionate Use Act 1996, Cal. Health & Saf. Code, § 11362.5 (1996) (codifying voter initiative Prop. 215). "PROPOSITION 215"

2 *Id.* at 14. "Marijuana is listed as an ingredient in numerous [medicinal] preparations in the *Anandakanda*, a [Tenth] Century Indian Medical treatise, [and] is still used by some Ayurvedic doctors today." *Id.*

3 *Id.* Medical marijuana was mentioned in a Middle Eastern religious text called the *Venidad*, which many believe Zoroaster wrote. *Id.* The Romans later "used [marijuana] to treat migraines, syphilis[,] and other medical problems." BOIRE & FEENEY, *supra* note 66, at 14.

4 *See id.* at 14-15. The medicinal use of marijuana in Europe was recommended in several

texts: in 65 A.D., in Dioscoride's *Materia Medica*, which was considered a fundamental medical text through the Seventeenth Century; in 1538, in William Turner's *New Herbal* which listed marijuana as a therapeutic agent; in 1649, in Nicholas Culpeper's *The Complete Herbal* which "recommended marijuana [to] treat[] . . . coughs, jaundice, joint pain, inflammation[,] and indigestion"; "in the 1840s . . . a French doctor[,] . . . Jacques-Joseph Moreau[,] found that marijuana suppressed headaches, increased appetites, and aided in sleep"; and in the British medical journal, *The Lancet*, which discussed how marijuana was used to treat opiate withdrawal. *Id.*

5 *Id.* at 16. Although a few marijuana distributors existed at this time, such as Parke Davis and E.R. Squibb & Sons, these distributors had problems determining the appropriate dosage and potency from different plants and processing, a major difficulty that still exists today. *Id.*

6 *Pharmacodynamics*, CREIGHTON UNIV.MED. CTR., <http://altmed.creighton.edu/medicalmarijuana/Pharmacology.htm> (last visited March 12, 2010).

7 Therese Andrysiak et al., *Marijuana for the Oncology Patient*, 79 AM. J. NURSING 1396, 1396 (1979).

8 *See id.* (suggesting that the patient's personality influences the effects of marijuana).

9 *Id.* ("Until the 1930s . . . marijuana was listed in the pharmacopoeia as an analgesic.").

[10] Webley, Kayla. "Brief History." *Time* 175.24 (2010): 22. *MAS Ultra - School Edition*. eb. 9 Dec. 2012.

[11] Academy of Health Care Management Journal (AHC MJ), volume 7

[12] 70 U. Colo. L. Rev. 975 (1999) *Conant v. McCaffrey*: Physicians, Marijuana, and the First Amendment; Dixon, J. Wells- Plaintiffs' motion for summary judgment is GRANTED IN PART and DENIED IN PART. Defendants' motion for summary judgment is GRANTED IN PART and DENIED IN PART. The government's interpretation of the registration-revocation provision of the Controlled Substances Act exceeds the statute's authority.

[13] *United States v. OAKLAND CANNABIS BUYERS'COOPERATIVE*, 532 US 483 - Supreme Court 2001, The judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion."

[14] *GONZALES V. RAICH* (03-1454) 545 U.S. 1 (2005) 352 F.3d 1222, vacated and demanded.

[15] *People v. Kelly*, 163 Cal. App. 4th 124 - Cal: Court of Appeal, 2nd Appellate Dist., 3rd Div. 2008- The prosecutor's argument was improper. It was improper because the CUA [Compassionate Use Act] can only be amended with voters' approval. Voters, however, did not approve the eight-ounce limit and other caps in section 11362.77 [of SB420]; hence, section 11362.77 unconstitutionally amends the CUA." The decision is certified for partial publication, pending possible appeal to the Supreme Court.