

Why should Marijuana be a Medical option?

1. Thesis Statement

Medical Marijuana should be available for individuals who can prove they have a medical need to self medicate themselves without being arrested, charged and in some cases prosecuted. Federal criminalization of medical marijuana violates fundamental rights of citizens that are protected by the 9th Amendment.

2. Scope

This paper will discuss how and why Marijuana should be used for medicinal purposes and what advocates and lawmakers have done so far to improve the access and availability for ailing communities and people with multiply health problems. Marijuana remains to be a schedule 1 controlled substance with a high potential for abuse, although proponents and supporters in line with the legalization movement are strongly advocating for reclassification to a Scheduled 11 controlled substance that has both a risk of abuse and accepted medical use. This paper will focus on the past, present and future cases and developments that evolve around the legalization of Cannabis and show how the medical benefits are of therapeutic value.

3. Argument

The US legal landscape surrounding “medical marijuana” is complex and rapidly changing. Twenty states currently have passed laws eliminating criminal penalties for using marijuana for medical purpose and several more are considering such legislation. Medical experts have also taken a fresh look at the evidence regarding the therapeutic use of marijuana and the AMA recently adopted a resolution urging

review of marijuana as a Schedule 1 Controlled Substance, noting it would support rescheduling if doing so would facilitate research and development of cannabinoid-based medicine. Proponents of medical marijuana argue that it can be a safe and effective treatment for symptoms of cancer, AIDS, multiple sclerosis, pain, glaucoma, epilepsy and other related conditions as long as it is cultivated in controlled environments. Dozens of prominent cites and studies have all suggested marijuana to be used as an herbal medicine.¹

The court in Gonzales v Raich, said “that the commerce clause does not apply to purely intrastate, non-commercial activities, such as medication through cannabis that is permitted by state law.” Courts rely heavily on *US v Lopez* and *US v Morrison* because this separate class of purely local activity is beyond reach of Federal power. In this matter enforcing the CSA would violate the Commerce Clause and other Constitutional Provisions. The court emphasized that the laws at issue in this case had nothing to do with “commerce” or any sort of economic enterprise. Thus therefore, it clearly shows that Congress exceeded its congressional power to legislate under commerce clause. The Federal Controlled Substance Act (CSA) prohibits the manufacture, distribution, prescribing and possession with intent to deliver marijuana. Congress is permitted to enact such a law only under the mantle of its power to regulate interstate commerce. This case will help support the claim that a locally cultivated product that is used domestically rather than sold on the open market is not subject to Federal regulations.²

In 1996 California voters passed prop 215, **The Compassionate Use Act** 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. SB 420, a legislative statute, went into effect in 2004 which allows patients to form medical cultivation “collectives” or “cooperatives”; and establishes a

¹ <http://www.nejm.org/doi/full/10.1056/NeJMp1000695>

² *Gonzales v Raich* (03-1454) 545 U.S. 1 (2005) 352 F.3d 1222

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 medicinal patients who stay within the programs strict guidelines are supposed to be protected from Health and Safety Codes 11357, 11358 and 11362.5.³

In *People v Kelly* the 2nd District of California Court of Appeals ruled that limits on medical marijuana possession and cultivation established under state law SB 420 are unconstitutional. The court ruled that the prosecutor's argument was improper because the Compassionate Use Act (CUA) can only be amended with voter approval and California Constitution prohibits legislative tampering with ballot initiatives approved by voters. The bill made it clear that qualified patients could legally possess whatever amount of marijuana consistent with their needs. In this same matter the State Supreme Court ruling held that patients can not be prosecuted simply for exceeding the SB 420 limits; however, they can be arrested and forced to defend themselves as having had an amount consistent with their personal medicinal needs.⁴

In October 2003, the United States Supreme Court let stand a ruling by the Ninth Circuit Court of Appeals permitting physicians to recommend marijuana to patients whom they believe might medically benefit from its use. *Conant v Walters*, 309 F.3d 629 (2002) thus ended a protracted dispute from the federal government and physicians and patients that began when federal officials, in 1996, threatened to sanction California doctors who recommend marijuana to seriously ill patients under California's medical marijuana law. In early 1997, a group of physicians and patients successfully sued the federal government claiming that the federal threats unconstitutionally infringed on their First Amendment rights of free speech. The doctors and patients quickly won a federal court injunction against the government. Since 1997 the courts have upheld the right of physicians (and patients) to speak openly and candidly about marijuana's potential risks and its therapeutic benefits, and

³ The Compassionate Use Act

⁴ *People v Kelly*, 222 P. 3d 186, 47 Cal. 4th 1008, 103 Cal. Rptr. 3d 733 (2010)

have made clear that physicians may, based on their medical judgment, recommend medical marijuana to patients *free from federal government threats or interference*.⁵

In a landmark State Supreme Court decision, ***People v Mower***, the court ruled that prop 215 is more than just a criminal defense but also provide qualified immunity from prosecution and the defendants must be found guilty “beyond reasonable doubt.” The *Mower* decision is expected to result in fewer prosecutions and convictions of medical marijuana patients as well as some reversal of outstanding convictions. However, this does not stop/prevent police officers from arresting and charging patients with improper medical documentation or excessive quantities of marijuana. What this mean is that patients have the same right to marijuana as to any legally prescribed drug according to prop 215. Patients who have been arrested can request dismissal of charges at a pre-trial hearing. If the defendant convinces the court that the prosecution hasn’t established probable cause that it wasn’t for medical purposes, criminal charges are dismissed. If not the patient goes on trial, where the prosecution must prove “beyond a reasonable doubt” that the defendant is guilty. Those who have their charges dropped may file to have their property returned and claim damages.⁶

The ***Drug Policy Alliance*** (DPA) is committed to increasing the number of states with medical marijuana laws supporting and improving existing laws and ending the federal ban on medical marijuana. According to the latest Gallup Poll 58% of Americans favor ending marijuana prohibition and 39% opposes legalization.⁷ The fact is people have a human and Constitutional right to control their bodies: self-medication is a Ninth Amendment right “retained by the people.” And since there is no enumerated power of federal government to regulate drugs and medicine the federal government certainly has no right overthrowing local medical marijuana laws and imposing its centralized authoritarianism in their place.⁸

⁵ Conant v Walters, 309 F3.d 629 (2002)

⁶ People v Mower (2002) 28 Cal. 4th 457,474 (Mower)

⁷ Drug Policy Alliance (DPA), <http://www.drugpolicy.org/marijuana-legalization-and-regulation>

⁸ <http://cannabisnews.com/news/22/thread22245.shtml>

On the other end of the spectrum opponents argue that marijuana is both physically and mentally dangerous for our teens. Marijuana is psychologically addictive, according to the world's top medical researchers. Marijuana use is the No. 1 reason why adolescents are admitted to substance-use treatment in the United States and the No. 2 reason (behind alcohol) adults are admitted for substance-use treatment in the U.S. Today's marijuana is also more addictive than ever. Marijuana sold today is exponentially more potent than marijuana consumed in the 1960s.

Furthermore...

This is not the same marijuana as a generation ago. THC levels are substantially and dangerously higher: Data from the University of Mississippi Potency Monitoring Project shows dramatic increase in percentage of THC in marijuana between 1983 and 2009.⁹

At least 10 very large studies involving thousands of children and adolescents were conducted in several countries have shown that kids who use marijuana are 2-3 times more likely to go on to use other substances. While not everyone who uses marijuana will move on to other addictive substances, nearly all users of cocaine, meth and heroin used marijuana first. Marijuana does, indeed, hurt users- particularly adolescents, who are in stages of brain growth and development that make them especially susceptible to addiction. Marijuana use also harms users' family and friends. Consider babies born to women who used during pregnancy and children who are neglected and/or physically abused by drug-using parents. Marijuana use also contributes to crime that harms innocent people. Marijuana use hurts employers, whose companies lose productivity and may be held responsible for problems caused by marijuana-using workers. Marijuana use harms taxpayers, whose resources are diverted to cover costly problems associated with marijuana use. Our country spends about \$185 billion on alcohol-related problems. Taxes on alcohol sales generate approximately \$14.5 billion. That's only 10% of our costs. Each year, our country

⁹ <http://mavotenoquestion3.com/myths-facts/>

spends \$200 billion on tobacco-related problems. Taxes on the sale of tobacco products generate \$25 billion. That's only 12% of our costs.¹⁰

According to the Tri-Town Council Youth Substance Abuse Prevention Coalition it is well known that marijuana is the most widely abused illegal drug among teens and that more teens now smoke marijuana than tobacco. Recent decriminalization laws have only contributed to the increase perception of marijuana being safe and normal among our youth. Marijuana has many adverse health and safety risks- more than people are aware of.

- More kids are admitted to treatment for marijuana use than illegal drugs combined.
- Marijuana is the most prevalent illegal drug detected in impairment driving, fatally injured drivers, and motor vehicle crashes.
- Marijuana smoke contains 50-70 percent more carcinogens than tobacco smoke, contributing to the risk of cancer of the lungs, mouth and tongue.
- In the last 15 years the potency of marijuana (THC) content has more than tripled from 3% to more than 11%.
- Approximately 9% (1 in 11) marijuana users become dependant. The earlier young people start using marijuana the more likely they are to be dependant later in life.
- Teens that smoke marijuana regularly demonstrate up to and 8 point IQ drop in early adulthood, compared to teens that do not smoke.
- A recent study by the University of Colorado demonstrated that nearly three-quarters of teens in treatment programs that were part of a study said, they used medical marijuana bought or grown from someone else. Meaning "Medical" marijuana is indeed being diverted to the youth.¹¹

¹⁰ See supra note 9

¹¹ <http://www.wickedlocal.com/topsfield/news/x1826352683/Letter-Marijuana-Bad-news-for-our-kids>

A recent report on Good Morning America by Susan Donaldson James talked about new research underway at the University of New Haven in Connecticut discovered that when you take up a joint it likely contains mold, pesticides, even dead insects. While studying the genetics of marijuana the researchers found a nasty by- products in the plant such as fungi, mildew and even such bacterial contaminants as e-coli and salmonella. The concern about the way marijuana is grown is a major issue because it's grown in a non-certified fashion, especially in California. Pesticides are usually dumped on them to prevent damage but at the same time it may cause more harm to a medicinal patient with a compromised immune system. The problem is some plants are grown between crops of different species and chickens are running around and fertilizers are being used. Colorado is the first state to legalize marijuana as a recreational drug. Their new law requires growers to test for residual solvents and perform microbe testing for molds, mildew, salmonella and e-coli. An additional law as of 2014 will require Colorado to test for pesticides on their plants. So far this law only applies to marijuana sold in Colorado stores. However, those who use it for medicinal purposes are of great concern because most of it is not being grown in controlled greenhouse environments with state regulations and safety visits. A lot of medicinal marijuana is grown in open fields or illegally on Federal park lands.¹²

As of today there's only one prescription drug that is made from marijuana, it is called Marinol. It's a synthetic form of THC one of the principle psychoactive components of botanical marijuana. It was approved in 1985 for nausea and vomiting associated with cancer chemotherapy patients who failed to respond to conventional treatments. In 1992 it was approved by Federal Drug Administration (FDA) for the treatment of anorexia associated with weight loss in patients with AIDS.¹³ Marinol was originally placed in schedule 11. As of July 1999 Marinol was moved administratively by Drug Enforcement Administration (DEA) to

¹² <http://gma.yahoo.com/marijuana-toke-mold-insects-manure-112248829--abc-news-health.html>

¹³ Federal Drug Administration (FDA), [http://en.wikipedia.org/wiki/List_of_Schedule_I_drugs_\(US\)](http://en.wikipedia.org/wiki/List_of_Schedule_I_drugs_(US))

schedule 111 to make it more widely available to patients. It is now subject to fewer regulatory controls and lesser criminal sanctions for illicit use.¹⁴

Without the passage of prop 215 California Compassionate Use Act the *US v Oakland Cannabis Buyers Cooperative*, may not have had the opportunity to appeal the decision of the US District for the Northern District of California. In 1998 the US government sued the OCBC to stop the cultivation and distribution of marijuana in violation of Federal law. The district court concluded the government case would likely prevail on the merits and issued OCBC with an injunction. The Ninth Circuit Court reversed the decision and held that medical necessity was a legally cognizable defense to charges under the CSA accordingly. The District Court could have fashioned an injunction that was more limited in scope than a total ban on distributing marijuana. The 9th Circuit Court ordered the District Court to consider the criteria by which Oakland Cannabis Buyers Cooperative could distribute marijuana under the rubric of medical necessity.¹⁵

Although the current state laws facilitate access to cannabis they do little to advance the development of standards that address the potency, quality, purity, dosing, packing and labeling of marijuana. In Canada, the first country to decriminalize medical marijuana regulations require that physicians discuss the risks with their patients, yet the lack of relevant clinical trials of smoked cannabis makes it difficult for physicians to comply with the law. Continued research could prove the 400 some medicinal properties in marijuana that could provide the basis for regulation by the Food and Drug Administration (FDA).

Health and Safety Code 11362.5 was added to California health and safety code sections as a result of Prop 215. Patients can not be prosecuted as long as you they have a valid medical marijuana card and adhere to the (MMP) programs strict guidelines. The Medical Marijuana Program (MMP) verifies qualified patients

¹⁴ Drug Enforcement Administration (DEA)

http://en.wikipedia.org/wiki/Removal_of_cannabis_from_Schedule_I_of_the_Controlled_Substances_Act

¹⁵ United States v Oakland Cannabis Buyers' Cooperative, 532 U.S. 483 (2001)

with a registry database. It allows law enforcement and the public to verify validity. It authorizes users to possess, grow and transport within California. It protects users from criminal charges related to HS11357 and HS11358 and HS11359.¹⁶

Conclusion

Medical marijuana has plenty of health benefits ranging from anti-inflammatory agents to relieving neuropathic pain. No matter what side of the spectrum you're on, you can't deny the therapeutic value that marijuana has to offer. As we speak Portland, Main just signed a city ordinance decriminalizing possessions of up to 2.5 ounces. It's the first city on the east coast to legalize marijuana for recreational use. States are approaching legalization from two different angles: medicinal use and recreational use. Some states have very lax medicinal enforcement like California, where just having a headache qualify users to get a medical card. Whereas, in Illinois which is the strictest in the country you must be a long time patient with documented illnesses that qualify you as a medical marijuana patient in order to receive a card. The Nations Capital just recently approved medical marijuana after 15 years of unsuccessful attempts. The sense of urgency in the Capital was based on two studies released this year that found large racial disparities which fueled the new law. Blacks were eight time more likely to be arrested than whites in 2010 for possessing the same amount of marijuana at the time of arrest, according to the ACLU. City leaders have been cautious about pot in part because Congress has the final say on what's legal in the district. Now that the Justice Department has taken hands-off approach to legalization and don't think resources should be diverted to criminalizing marijuana users in which state that laws have been approved by the voters and congressional bills that are already in place to become a law. At this point in history with polls showing a

¹⁶ Health and Safety Codes 11362.5, 11357, 11358, 11359

wide acceptance of legalizing marijuana, congress may not be interested in fighting that battle.¹⁷

¹⁷ Nuckols, B. (2013, November 3). Nation's capital on fast track to decriminalizing pot possession. *The Ventura County Star*, 12A