



Medical Marijuana and the Courts

Major Cases and Rulings

DEA's Administrative Law Judge Ruling (1988). Congressional passage of the Controlled Substances Act in 1970 and its placement of marijuana in Schedule I provoked controversy at the time because it strengthened the federal policy of marijuana prohibition and forced medical marijuana users to buy marijuana of uncertain quality on the black market at inflated prices, subjecting them to fines, arrest, court costs, property forfeiture, incarceration, probation, and criminal records.

These concerns prompted a citizens' petition to the Bureau of Narcotics and Dangerous Drugs (BNDD) in 1972 to reschedule marijuana and make it available by prescription. The petition was summarily rejected.

This led to a long succession of appeals, hearing requests, and various court proceedings. Finally, in 1988, after extensive public hearings on marijuana's medicinal value, the chief administrative law judge of the Drug Enforcement Administration (the BNDD's successor agency) found that "the provisions of the [Controlled Substances] Act permit and require the transfer of marijuana from schedule I to schedule II," which would recognize its medicinal value and permit doctors to prescribe it.

The judge further stated, "Marijuana in its natural form, is one of the safest therapeutically active substances known to man...It would be unreasonable, capricious and arbitrary for DEA to continue to stand between those sufferers and the benefits of this substance."

The Judge's findings and recommendation were soon rejected by the DEA Administrator because "marijuana has not been demonstrated as suitable for use as a medicine."

U.S. v. Oakland Cannabis Buyers' Cooperative (2001). The U.S. Department of Justice filed a civil suit in January 1998 to close six medical marijuana distribution centers in northern California. A U.S. district court judge issued a temporary injunction to close the centers, pending the outcome of the case.

The Oakland Cannabis Buyers' Cooperative fought the injunction but was eventually forced to cease operations and appealed to the Ninth Circuit Court of Appeals. At issue was whether a medical marijuana distributor can use a medical necessity defense against federal marijuana distribution charges.

The Ninth Circuit's decision found in September 1999 that "medical necessity" is a valid defense against federal marijuana trafficking charges if a trial court finds that the patients to whom the marijuana was distributed are seriously ill, face imminent harm without marijuana, and have no effective legal alternatives.

The Justice Department appealed to the Supreme Court. The Supreme Court held, 8-0, that “a medical necessity exception for marijuana is at odds with the terms of the Controlled Substances Act” because “its provisions leave no doubt that the defense is unavailable.”

This decision had no effect on state medical marijuana laws, which continued to protect patients and primary caregivers from arrest by state and local law enforcement agents in the states with medical marijuana programs.

Conant v. Walters (2002). After the 1996 passage of California’s medical marijuana initiative, the Clinton Administration threatened to investigate doctors and revoke their licenses to prescribe controlled substances and participate in Medicaid and Medicare if they recommended medical marijuana to patients under the new state law.

A group of California physicians and patients filed suit in federal court, early in 1997, claiming a constitutional free-speech right, in the context of the doctor-patient relationship, to discuss the potential risks and benefits of the medical use of cannabis.

A preliminary injunction, issued in April 1997, prohibited federal officials from threatening or punishing physicians for recommending marijuana to patients suffering from HIV/AIDS, cancer, glaucoma, or seizures or muscle spasms associated with a chronic, debilitating condition.

The court subsequently made the injunction permanent in an unpublished opinion. On appeal, the Ninth Circuit affirmed the district court’s order entering a permanent injunction.

The federal government, the opinion states, “may not initiate an investigation of a physician solely on the basis of a recommendation of marijuana within a bona fide doctor-patient relationship, unless the government in good faith believes that it has substantial evidence of criminal conduct.”

The first Bush Administration appealed, but the Supreme Court refused to take the case.

Gonzalez v. Raich (2005). In response to DEA agents’ destruction of their medical marijuana plants, two patients and two caregivers in California brought suit. They argued that applying the Controlled Substances Act to a situation in which medical marijuana was being grown locally for no remuneration in accordance with state law exceeded Congress’s authority under the Commerce Clause.

In December 2003, the Ninth Circuit Court of Appeals in San Francisco agreed, ruling that states are free to adopt medical marijuana laws so long as the marijuana is not sold, transported across state lines, or used for non-medical purposes.

Federal appeal sent the case to the Supreme Court. The issue before the Supreme Court was whether the Controlled Substances Act, when applied to the *intrastate* cultivation and possession of marijuana for personal use under state law, exceeds Congress’s power under the Commerce Clause.

The Supreme Court, in June 2005, reversed the Ninth Circuit’s decision and held, in a 6-3 decision, that Congress’s power to regulate commerce extends to purely local activities that are “part of an economic class of

activities that have a substantial effect on interstate commerce." *Raich* does not invalidate state medical marijuana laws.

Although *Raich* was not about the efficacy of medical marijuana or its listing in Schedule I, the majority opinion stated in a footnote: "We acknowledge evidence proffered by respondents in this case regarding the effective medical uses for marijuana, if found credible after trial, would cast serious doubt on the accuracy of the findings that require marijuana to be listed in Schedule I."

The majority opinion, in closing, notes that in the absence of judicial relief for medical marijuana users there remains "the democratic process, in which the voices of voters allied with these respondents may one day be heard in the halls of Congress."

Thus, the Supreme Court reminds that Congress has the power to reschedule marijuana, thereby making it available to patients. Congress, however, does not appear likely to do so. In the meantime, actions taken by state and local governments continue to raise the issue.