



Americans for Safe Access

Activist Newsletter

Defending Patients' Access to Medical Marijuana

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Victory for Patients' Right to Return of Seized Marijuana **California Appeals Court Says Police Must Give Back Property Despite Federal Law**

ASA's legal team won another huge victory when a California appeals court said police must return marijuana seized from qualified patients. The November 28th ruling in favor of Felix Kha, a medical marijuana patient from Garden Grove, means police must return the eight grams of medical marijuana they took from him in a June 2005 traffic stop.

Attorneys for the police claimed that they should not have to since federal law prohibits possession of marijuana, even for medical use. But a three-justice panel from the state's Fourth Appellate District unanimously rejected that claim, saying "it is not the job of the local police to enforce the federal drug laws."

"California law enforcement is now on notice that they cannot seize and keep the medicine of seriously ill patients," said ASA Chief Counsel Joe Elford, who represented Kha.

"The court has ensured that patients have a way to get their cannabis back."

The ruling was more than two years in the making. After a marijuana possession charge against Kha was dismissed in August 2005 because he had a valid doctor's recommendation, an Orange County Superior Court judge ordered the return of his medicine. But the City of Garden Grove refused and appealed the order.

The issue was ripe for review, as state courts have split on the issue previously. The question found the California Attorney General and the California Police Chiefs Association on opposite sides. Each filed "friend of the court" briefs in the case, with the state Attorney General in support of Kha.

In analyzing reports from nearly 800 patient

encounters with local or state police in 53 of California's 58 counties, ASA found that more than 90% resulted in medicine seizure by police, regardless of probable cause.

The court's ruling also affirms a 2005 policy change by the California Highway Patrol (CHP). CHP abandoned its policy of mandatory seizure of medical marijuana after a court challenge from ASA.

"Both today's court ruling and the new CHP policy go a long way toward restoring patients' rights in California," said Elford.

ASA Argues for Employment Rights **Calif. Supreme Court Case to Decide if Qualified Patients Can Be Fired**

A 45-year-old disabled veteran is at the center of a California Supreme Court case that will decide whether California medical marijuana patients can be fired for using the medicine state law allows.

On November 6, ASA Chief Counsel Joe Elford appeared before the court on behalf of Gary Ross, a software engineer who was fired in September 2001 for failing an employer-mandated drug test - even though Ross had a valid doctor's recommendation for cannabis and only used the drug away from work.

Elford, along with co-counsel Stewart Katz, argued that state law should protect Ross and other medical marijuana patients.

"Neither the People of California nor the state legislature intended to exclude medical marijuana patients from a productive workforce," said Elford. "California must continue its leadership role in protecting disabled workers."

Ross's physician had recommended he use cannabis for chronic back pain that resulted

Double Win For Cannabis Caregivers in Colorado **Attorney Brian Vicente Champions Patient Rights**

Colorado courts have been the scene of two momentous victories for patients in that state, thanks to the tireless work of attorney Brian Vicente. Both cases help clarify Colorado's medical marijuana law as it applies to caregivers.

In the first case, a caregiver couple in Fort Collins was awarded the return of medical cannabis and cultivation equipment seized from their home in August 2006.

In June, a Larimer County judge dismissed all charges against James and Lisa Masters, citing an illegal search by police. Then on November 29, he ordered a full Return of Property, including the 39 cannabis plants the Masters were growing and about 8 ounces of dried medicine.

Colorado state law specifically requires that police return seized cannabis to qualified patients and spells out how to handle growing plants.

"The state medicinal marijuana law requires authorities to maintain the plants and not destroy them or damage them in any way,"

Vicente told the media after the ruling. "I'm fascinated to see if the police have been following the law."



Brian Vicente

cial compensation for the Masters, since the refusal of police to return the plants in a timely manner has destroyed the plants' medicinal value.

"We believe the plants were probably worth at least \$100,000," he said.

The ruling in the Masters case comes little more than a week after another big win by Vicente.

Vicente—who is director of the Colorado Campaign for Safe Access, a joint project of Sensible Colorado and Americans for Safe Access—said he intends to pursue financial

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Drew Carey Takes on Medical Marijuana

Episode Features Interview with ASA's Steph Sherer

In this second episode of The Drew Carey Project, released on Reason.tv, Carey interviews ASA Executive Director Steph Sherer and takes a look at federal interference with medical cannabis dispensing in California.

In the video, Steph shares her story with Carey, who is currently the host of the TV game show The Price is Right, and talks about how her own experiences led to her founding of Americans for Safe Access. Carey also visits an LA dispensary and interviews a spokesperson for the County Sheriff, as well as Bill Leahy, Vietnam vet and medical marijuana patient.

The piece has garnered a significant amount of media attention. Many articles have compared Carey's activism to that of Carey's predecessor as host of The Price is Right, Bob Barker, who signed off every show with a public service announcement asking the audience to spay and neuter their pets.

The video is the second episode of The Drew Carey Project, a joint venture of Carey and Reason magazine. The project will "take a hard look at the variety of threats to our liberties." You can view Carey's video online at www.AmericansForSafeAccess.org/DrewCarey.

(Colorado, continued from p1)

On November 20, a state court overturned a Colorado Health Department policy that limited the number of patients for which a caregiver could provide cannabis. The department had capped the number at five, though the law approved by voters stated no limit.

The ruling came thanks to Damien LaGoy, who has AIDS and hepatitis C. He sued the state after his caregiver request was denied based on the five-patient restriction.

"I was in a very dangerous situation," LaGoy told the media at a news conference after the

decision. "I was trying to get medical marijuana from some of the darkest spots in town, risking my life at times."

The court overturned the five-patient policy because it had been adopted in a closed meeting, violating the state open meetings act.

Advocates in Colorado hope the ruling will pave the way for the establishment of better community-based solutions to safe access, such as the collective dispensary model adopted throughout much of California. The Masters may be the first to test that. They opened a collective in Ft. Collins in October.

NATIONAL ACTION ALERT: Send Holiday Greetings to Prisoners of the Medical Marijuana War

This holiday, be sure to send a greeting card to the men and women serving time in prison for medical marijuana offenses. These brave individuals have sacrificed their freedom for medical marijuana patients. Please wish them holiday greetings and let them know how much the medical marijuana community appreciates them. If you have not yet written to a medical marijuana prisoner, you can find tips on how to write a letter and information about these prisoners at: AmericansforSafeAccess.org/WritetoPrisoners. If you do not use the computer, please contact ASA for prisoner information and writing tips at (510) 251-1856 or toll free at (888) 929-4367.

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(Workers' Rights, continued from p1)



Gary Ross

from injuries sustained during his military service. But his employer, RagingWire Telecommunications, refused to make an exception to its policy of terminating anyone testing positive for marijuana.

"I was fired not for poor performance but for an antiquated policy on medical marijuana," said Ross. "This practice undermines state law and the protections provided for patients."

Ross filed suit against RagingWire, alleging discrimination, but a Sacramento Superior Court and then the Third Appellate District Court rejected his argument. ASA then joined his case and appealed to the California Supreme Court.

The court received many 'friend of the court' briefs in support of Ross, including briefs from 10 national and state medical organizations and one signed by all of the legislative co-authors of California's Medical Marijuana Program Act.

"Mr. Ross is not only standing up for his own rights, but for the rights of every Californian to comply with Proposition 215 and not face discrimination at work," said Assemblyman Mark Leno (D-San Francisco), one of the co-authors of the MMPA.

A decision in the case is expected by February of next year.

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