



# Americans for Safe Access

Activist Newsletter

Defending Patients' Access to Medical Marijuana

November 2012

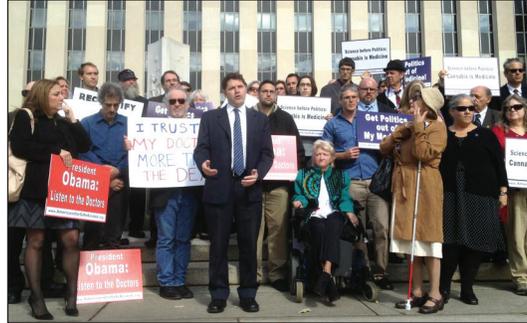
Volume 7, Issue 11

## DC Court Hears Rescheduling Appeal, Requests More Info ASA Submits Brief on Patients' Right to Sue in Landmark Federal Case

On October 16, the federal appeals court for the D.C. Circuit heard oral arguments in *Americans for Safe Access v. Drug Enforcement Administration*, a legal challenge to the government's contention that cannabis has no medical use.

The panel of three federal judges focused on the question of legal standing, whether the named plaintiffs in the lawsuit have a right to sue the government because they were directly injured by the current classification. Following the oral arguments, the court requested additional briefing on the harm sustained by plaintiff and disabled U.S. Air Force veteran Michael Krawitz as a result of the federal government's policy on medical marijuana.

Krawitz, a disabled veteran, was denied treatment by the US Department of Veterans Affairs because he was using cannabis on the advice of a physician to treat pain, trauma and an eye disease. That forced him to pay out of his own pocket for medical care to which he would otherwise be entitled through the VA. The VA has a policy of denying pain management care to anyone who uses cannabis.



Joe Elford speaks at the press conference

"The court's request for clarification is a sign that this case is being taken very seriously," said Joe Elford, ASA's Chief Counsel who argued the case. "The experience of plaintiff Michael Krawitz being denied treatment by the Department of Veterans Affairs is real and emblematic of many other patients caught up in the federal government's harmful policy on medical marijuana."

ASA argues that the DEA acted arbitrarily and capriciously in ignoring scientific evidence of the commonly employed therapeutic uses of cannabis. The suit contends that the federal

government's intransigence is keeping cannabis out of reach for millions of Americans who would otherwise benefit from its therapeutic value.

The previous legal challenge to the classification of cannabis was rejected by the D.C. Circuit in 2002 after the court concluded the plaintiffs lacked legal standing to bring the suit. No medical cannabis patients were part of that case. *Americans for Safe Access v. Drug Enforcement Administration* includes several patient plaintiffs, and ASA also argues that the organization has standing because it incurs significant costs countering the govern-

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## CALIF. APPEALS COURT SAYS DISPENSARY SALES LEGAL

California's medical cannabis dispensaries are entitled to provide cannabis for purchase to qualified patients, according to a landmark appeals court decision.

In reversing the conviction of a San Diego dispensary operator, the Fourth District Court of Appeal for California unanimously held that state law does not require active participation by all collective or cooperative members, and that membership "may be limited to financial support by way of marijuana purchases from the organization."

Jovan Jackson was convicted in September 2010 after the judge ruled that the members of his San Diego collective did not participate in cultivation, so he could not use California's medical cannabis law as a defense.

The appeals panel reversed that finding, preventing state judges from disallowing a medical defense on that basis in future jury trials. The court said "Jackson was only required to produce evidence which would create a reasonable doubt as to whether the defense provided by the [Medical Marijuana Program Act] had been established."

ASA filed the appeal of Jackson's conviction in late 2011, but it took the appeals court only two weeks to release its decision after hearing arguments last month.

## ASA Launches VoteMedicalMarijuana.org Voter Website Rates Candidates, Ballot Issues

Voters can visit a new website to discover local candidates' positions on medical cannabis. ASA launched VoteMedicalMarijuana.org last month to provide patients and supporters with tools to make informed decisions about the candidates in their districts.

The website rates members of Congress and other elected officials on how they have voted on medical cannabis since 1997. For example, the website lists the 72% of House Democrats and 29% of House Republicans who voted this past May in favor of de-funding DEA raids in medical marijuana states.

VoteMedicalMarijuana.org also identifies key champions of medical marijuana with an "honor roll" distinction, reserved for co-sponsors of important legislation that protects state medical marijuana laws or seeks to develop a comprehensive federal policy. The website has information on Congressional races and state

ballot measures, and allows visitors to submit information on state and local elections.

"Our elected officials control medical cannabis policy that affects millions of patients in the U.S.," said Steph Sherer, Executive Director of ASA. "Voters need to have the tools to pick candidates who support safe access on the local, state and federal levels."

Congress classified cannabis as a drug with no medical value in 1972 and continues to provide funding for federal enforcement campaigns against state-authorized medical cannabis facilities, even though polling over the past decade has shown up to 80% of Americans support legal access for medical use.

"Americans who support medical cannabis have a chance to be heard at the ballot box," said Sherer. "VoteMedicalMarijuana.org will help them vote in support of this issue."

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# Oakland Fights Federal Property Seizure Suit

Federal prosecutors want to seize property housing one of California's leading medical cannabis dispensaries, but Oakland city officials are fighting back.

The federal government's civil asset forfeiture suit targeting Harborside Health Center was countered last month by Oakland City Attorney Barbara Parker, who filed a federal suit to stop it. Morrison & Foerster, one of the San Francisco Bay Area's leading law firms, assisted with filing the counter suit.

"The federal government has been systematically closing medical cannabis dispensaries in California and elsewhere with asset forfeiture threats and suits," said ASA Executive Director Steph Sherer. "The City of Oakland has been a leader in protecting its citizens, and this suit is another great example of elected officials putting compassion and sound policy ahead of politics."

California's four US Attorneys announced a year ago that they would be aggressively targeting medical cannabis distribution throughout the state, despite promises from President Obama and Attorney General Eric Holder that federal resources would not be used to interfere with state-sanctioned medical cannabis programs. The escalation has included numerous DEA raids on medical cannabis dispensaries, as well as statewide threats of civil asset forfeiture lawsuits against property owners who rent to dispensaries and cultivators.

"The City of Oakland's actions show that local officials can take action to uphold state law

and protect patients from the misguided interference of the federal government," said Joe Elford, ASA's Chief Counsel. "The conflict between the Obama administration's statements and the actions of federal prosecutors affects elected officials as well as patients. The City of Oakland says it believed the federal government would not disturb dispensaries that operate in compliance with state law."

The city is asking the federal court to stop the federal government's attempt to close down Harborside and seize the property it rents. The city's lawsuit notes that Oakland officials "carefully created a regulatory scheme for medical marijuana dispensaries in order to maintain public health and safety."

## RESCHEDULING, continued from page 1

ment's false claims with valid scientific information.

The landmark case is an appeal of the DEA's decision last year to deny the 2002 rescheduling petition by the Coalition for Rescheduling Cannabis, of which ASA is a member. It marks the first time in nearly 20 years that a federal court has heard arguments on the classification of cannabis as a Schedule I substance, a category reserved for drugs with a high potential for abuse and no current accepted medical use that cannot be used safely even under medical supervision.

A decision from the court on whether the case can proceed is expected within the next several months.

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## VOTER WEBSITE, continued from page 1

Arkansas, Massachusetts and Montana each have medical cannabis initiatives on their ballots this November. Seventeen other states plus the District of Columbia have passed laws allowing medical use.

In Montana, Initiative Referendum No. 124 would approve extremely restrictive amendments created by the legislature to that state's medical cannabis law, which was passed by 62 percent of the voters in 2004.

In Massachusetts, Question 3 would allow qualifying patients to obtain medicine from state-regulated centers or, in specific hardship cases, to grow cannabis for their own use.

In Arkansas, Issue 5 would establish nonprofit medical cannabis dispensaries and protect qualifying patients, their designated caregivers and nonprofit dispensary agents from criminal or civil penalties or other forms of discrimination. Issue 5 authorizes limited cultivation under certain circumstances.

## DISPENSARIES, continued from page 1

"This decision not only recognizes the right of California dispensaries to provide medical cannabis for purchase by their members, it ensures a defense for those providers in state court," said ASA's Chief Counsel Joe Elford, who argued Jackson's appeal.

The case against Jackson was part of an effort by San Diego District Attorney Bonnie Dumanis and other prosecutors across the state to criminalize storefront medical cannabis collectives. Dumanis can choose to retry Jackson under the rules established by the appeals court. The Attorney General also has the option of appealing the ruling to the California Supreme Court.

Jackson operated his storefront collective without incident until he was raided in 2008. Jackson was acquitted of marijuana possession and sales charges in 2009. Dumanis tried Jackson again based on another raid in September 2009. At his second trial, Jackson was denied a defense, convicted and sentenced to 180 days in jail.

## ACTION ALERT: Vote Medical Marijuana Nov. 6!

Your vote is one of your most powerful tools to effect change. Before you go to the polls or mail in your ballot, visit [VoteMedicalMarijuana.org](http://VoteMedicalMarijuana.org) to see how the candidates and measures in your area rate on safe access.

If you have information not listed there on how local candidates or ballot measures affecting safe access, email [jonathan@AmericansForSafeAccess.org](mailto:jonathan@AmericansForSafeAccess.org) today. Help us spread the word on who supports safe access!

## Become a Member

**YES! Please accept my donation**

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