



Americans for Safe Access

Activist Newsletter

Defending Patients' Access to Medical Marijuana

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ASA Forces Government's Hand on Medical Marijuana Misinformation ***Patients group files motion for summary judgment in Landmark Federal Lawsuit***

For more than three years, the federal government has been stalling on correcting its misinformation about medical cannabis. But new legal action by ASA should force the government to act soon.



Joe Elford

In October 2004, ASA filed a legal petition with the U.S. Department of Health and Human Services (HHS), asking that the department stop saying that marijuana "has no currently accepted medical use in treatment in the United States." This

petition was a landmark use of a little-known law called the Data Quality Act (DQA), which requires that federal agencies use sound science in the information they disseminate and the policies they make. After more than two years of delays, HHS finally rejected the petition, and in February, ASA filed a lawsuit to force the federal government to acknowledge its own reports and recommendations on medical cannabis. The latest move is a motion

for summary judgment that should compel the government to answer immediately.

By filing the motion for summary judgment, ASA will force the case to be heard in roughly 90 days. This rare legal move, where judgment is requested from the court before the government has a chance to answer the lawsuit complaint, indicates ASA's confidence in the volume of scientific evidence demonstrating marijuana's medical efficacy.

"We are taking an aggressive legal approach for two reasons," said ASA Chief Counsel Joe Elford. "Not only do we believe we have science on our side, but by quickening the pace with which the federal government recognizes that science, seriously ill persons who might benefit from medical marijuana will no longer be discouraged from using it."

The exhibits filed in support of the motion for summary judgment include more than a dozen domestic and international peer-reviewed scientific studies that show the

effectiveness of marijuana in treating pain, nausea, muscle spasticity, and many other conditions. The evidence provided by ASA is meant to refute claims by the federal government that "there have been no studies that have scientifically assessed the efficacy of marijuana for any medical condition."

ASA's case against HHS and the FDA was given a boost last month an editorial in *Science*, the publication of the American Association for the Advancement of Science. The editorial, which was written by Donald Kennedy, a former FDA head and president of Stanford University, said flatly that HHS had "violated its own DQA guidelines."

If successful, ASA's case will be the first in which a court has recognized the necessity of reviewing disputes filed under the DQA. Two other courts have already denied review in lawsuits filed under the DQA by large corporations.

More info on the DQA and ASA's lawsuit is at www.AmericansForSafeAccess.org/DQA.

Victory for Voters in Election Recount Suit ***Election Procedures Thwarted Tally Check on Medical Marijuana Measure***

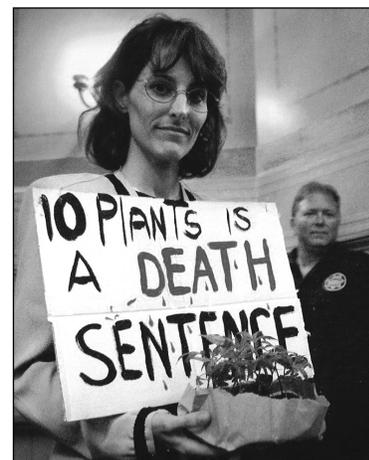
ASA's litigation over a narrowly lost local medical marijuana initiative may result in fairer and more accountable election results around the country. The ability to re-count ballots cast on electronic voting machines is at issue, and a judge is now siding with ASA, saying election officials must be able to verify vote counts and show the machines were working properly.

"This is already a big victory for voters, but we're looking to the long term," said Don Duncan, an ASA board member who has been involved in the lawsuit. "We're trying to be good stewards of democracy."

In November 2004, voters in Berkeley, California were presented with an initiative, known as Measure R, which would have replaced a 10-plant cultivation limit established by the City Council with an open-ended amount based on the patient's "personal needs," defined by a doctor and the patient. It also would have relaxed zoning laws for dispensaries and set up a peer review committee to oversee operations at the city's three dispensaries. The initiative was in response to the council's failure to adopt a proposal to increase the number of medical cannabis plants from 10 to 72.

The measure lost by 191 votes, according to official results from the Alameda County registrar. The recount showed the measure lost by a narrower margin of 166 votes. ASA and the Alliance for Berkeley Patients then asked the county to provide proof that the count was accurate by providing full access to voter records.

The origins of the case and the discarding of evidence are rooted in the conviction by two successive county elections chiefs that they could conduct an election recount as they wished and be the sole determiners of what was relevant for a recount. Both



Angel Raich at Berkeley City Hall

argued that a single version of the electronic ballot stored on removable and rewritable PC cards were the only official ballots needed for a recount. ASA

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ASA Working to Protect States' Medical Marijuana Laws from Congressional Meddling

Along with ASA's normal lobbying and education efforts in Washington, D.C., staffers in the national office have been working overtime this past month to stave off Congressional action that could threaten state medical marijuana laws. At issue is an amendment to a Food and Drug Administration (FDA) bill. By talking to key lawmakers and legislative staff and organizing allied patient groups, ASA is working to remove the amendment.

On April 19, 2007, staunch medical marijuana opponent Senator Tom Coburn (R-OK) introduced a committee amendment to S.1082, the Food and Drug Administration Revitalization Act, which reauthorizes and amends the Federal Food, Drug & Cosmetic Act (FFDCA). The amendment narrowly passed out of committee with an 11-9 vote and was included in S.1082, which the full Senate passed in early May.

While the amendment's stated purpose is "To evaluate the safety and efficacy of medical marijuana," it is clearly aimed at obstructing the effective implementation of state medical marijuana laws.

Specifically, the Coburn amendment would "require that State-legalized medical marijuana be subject to the full regulatory requirements of the Food and Drug Administration." Since the FDA continues to insist that there is no currently accepted medical use for marijuana in the United States, such a requirement could have the potential to bring federal oversight to state medical marijuana programs, which to date courts have said are free to operate regardless of federal prohibition or prosecutions.

But the Coburn Amendment would also require the FDA to do "a risk evaluation and mitigation strategy and all other requirements of the Federal Food, Drug, and Cosmetic Act regarding safe and effective reviews, approval, sale, marketing, and use of pharmaceuticals." And a responsible and scientifically sound risk evaluation of cannabis would show that it is one of the safest therapeutic substances known, potentially clearing the way for the rescheduling that would make marijuana legally available by doctor's prescription everywhere in the U.S.

Whatever the possible outcome for the amendment, it is questionable whether or not the FDA has or could be granted the legal authority to interfere with state programs. The FFDCA, the law in question, is expressly limited to the regulation of items transported across state lines as part of interstate commerce. Because state medical mari-

juana laws do not entail the transportation of marijuana across state lines, the FDA should not have authority to implement the amendment, even if it were signed in to law.

Additionally, "new" drugs are regulated under 21 U.S.C. § 355, which provides an application procedure for introducing drugs into interstate commerce. This provision will challenge the FDA to define marijuana—which has centuries of documented history of Western medical use—as a "new drug," subject to "the full regulatory requirements."

If Senator Coburn's intention is to document the medical efficacy of marijuana, he should lead a Congressional effort to remove the monopoly imposed by the Drug Enforcement Administration (DEA) on licenses for the cultivation of medical-grade cannabis for research purposes. Currently, the DEA exclusively licenses the cultivation of medical-grade cannabis to the National Institute for Drug Abuse (NIDA), which investigates only the negative impacts of cannabis. This monopoly obstructs any investigation and research in the U.S. into the medical properties of cannabis.

ASA is working with its allies on Capitol Hill and around the country to make sure that federal legislation moves toward helping patients, not hurting them. In the event that Senator Coburn's amendment is adopted and the FDA attempts to obstruct any of the 13 state medical marijuana programs currently in place, such action would be subject to judicial review. ASA would be one of the first to defend patients' rights with a legal challenge.

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(VOTER VICTORY, continued)

argued that more data was needed to verify the result.

Specifically, ASA said the county must download results directly from the 420 touch-screen voting machines - which accounted for fifty-three percent of the Berkeley vote -- and divulge internal access logs to show no one had manipulated the software during or after the election. ASA also asked to see chain-of-custody records for the electronic data as it moved from the voting machines to memory cards to a central tabulating machine and result printouts.

Instead, the county refused for two years to provide those records. After a state appeals court sided with ASA, county election officials returned the voting machines to the manufacturer, Diebold, rather than allow ASA access.

This led to a sharp rebuke from the judge hearing the case and created the possibility of punitive fines against the county, as well as a replay of the initiative in the 2008 election.

NATIONAL ACTION ALERT

Educate Your Community About Medical Cannabis by Participating in a Condition-Based Walk

This month, we are challenging our members to support medical cannabis and potential ally organizations by participating in a condition-based walk, such as a cancer walk, HIV/AIDS walk, or multiple sclerosis walk.

Sign up you, your family members and/or your friends as participants in your local condition-based walk.

Be a visible medical marijuana group by wearing ASA t-shirts, carrying homemade pro-medical cannabis signs, etc.

While you are doing the walk, hand out this medical cannabis flyer: www.americansforsafeaccess.org/download/ASA_Outreach_Flyer.pdf

You can also hand out condition-based booklets, which ASA is giving away for a limited time. For a bundle of 10 complimentary booklets (postage not included), please contact Sonnet at sonnet@safeaccessnow.org or 510-251-1856 ext. 321. Or mail a request with \$2.13 for postage to 1322 Webster St. Suite 402, Oakland, CA 94612. Take the time out of your busy life to show your community that medical cannabis improves the lives of patients!