



Americans for Safe Access

Activist Newsletter

Defending Patients' Access to Medical Marijuana

November 2008

Volume 3, Issue 11

ASA Court Win on San Diego ID Cards Affirmed

State Supreme Court Refuses Review, Patients Pressure Counties to Uphold Law

California counties will have to implement the state's medical marijuana identification program now that the California Supreme Court has refused to review a landmark case argued by Americans for Safe Access. The case stems from resistance from three counties to provisions of California's medical marijuana law.

County officials in San Diego, San Bernardino and Merced counties filed suit against the State of California in February 2006, arguing that state law was preempted by federal law. That argument was rejected by the San Diego Superior Court in December of 2006, causing San Bernardino and Merced officials to drop their challenge. San Diego County appealed the ruling, only to be denied by the Fourth District Court of Appeals in July of this year and now by the state Supreme Court's refusal to hear their appeal.

County officials have said they intend to attempt a challenge before the U.S. Supreme Court, though it has already ruled that state medical marijuana laws do not conflict with federal prohibition.

The San Diego lawsuit challenged the validity of the state identification card program, which was established by Senate Bill 420 in 2003, as well as the foundation of California's medical marijuana laws. But California courts at all levels have concluded that the ID card program and state law are valid and do not violate the state constitution.



Joe Elford

"The San Diego case is now final under California law," said Joe Elford, Chief Counsel of Americans for Safe Access, who argued before the appellate court on behalf of patients. "The courts have made clear that federal law does not preempt state law relating to medical marijuana and that local officials must comply with California's medical marijuana laws."

In a unanimous opinion earlier this year, the Court of Appeals ruled that the federal Controlled Substances Act "signifies Congress's intent to maintain the power of

states to elect 'to serve as a laboratory in the trial of novel social and economic experiments without risk to the rest of the country' by preserving all state laws that do not positively conflict with the CSA."

ASA was joined by the ACLU Drug Law Reform Project in defending the interests of patients before both the state Supreme Court and the Superior Court in San Diego. The City of San Diego registered its opposition to the County's lawsuit by filing an amicus or 'friend of the court' brief in December 2007, siding with the Attorney General and

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ASA Joins Legal Fight Over Dispensary Bans Files Amicus Brief in Calif. Appeal

Americans for Safe Access has thrown its support behind a California dispensary that has challenged a city ban on medical marijuana patient collectives.

ASA Chief Counsel Joe Elford, fresh off victory in the San Diego case, is filing an amicus or friend of the court brief on behalf of patients in the appeal of *Qualified Patients Association v. City of Anaheim*. This marks the first appeal of a dispensary ban challenge.

The suit contends that the city of Anaheim cannot legally ban all patient collectives. ASA's brief argues that such bans on medical marijuana collectives are wrong on two counts.

The first reason is that conflict with California state law, and, as a result of that conflict, local bans are preempted because the state has clearly expressed an intent that dispensaries be considered legal entities.

The second reason is that interpreting state law as requiring cities and counties to tolerate dispensaries does not create a conflict with federal law. The ruling in the case of San Diego's challenge to California's medical marijuana law makes it clear that state and federal law are separate.

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Activists Protest Dispensary Owner's Conviction, Ask Congress to Intervene

A major protest by medical marijuana activists in LA this month demanded that Congress to do something about the case of a California man convicted of operating a dispensary.

Over 350 people attended a protest to support former Morro Bay dispensary collective operator Charles Lynch, whose case drew national attention when he was raided by the Drug Enforcement Administration (DEA) and prosecuted, even though he complied with state law, had a business license from the city, and was even a member of the local Chamber of Commerce.

Organized by the Los Angeles chapter of ASA and a team of dedicated activists, the protest was attended by numerous criminal justice and patient rights organizations, and took place in front of the LA Federal Courthouse on the day Lynch was to have a hearing on a motion for a new trial. That hearing has been delayed to November 4.

Even though Lynch operated his collective within the mandates of state law and local regulation, the San Luis Obispo County Sheriff took issue with his facility and called in the DEA to close him down. Central Coast Compassionate Caregivers had been open for 11 months when federal agents raided it on March 29, 2007.



Lynch at his opening

As a result of that raid, San Luis Obispo Sheriff Pat Hedges is being sued by a former patient of Lynch's for seizing her medical records and violating her privacy.

During a widely watched trial, that included segments on Reason.TV by the television host Drew Carey, the Morro Bay mayor and city

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"Federal authorities will do what they will do," said Elford. "But they can't conscript the state to do their work for them."

The case will be heard by the 4th Appellate District, the same court that made the landmark finding in the Garden Grove case, which established that law enforcement must return cannabis seized from qualified patients.

So far, 35 cities and counties have filed amicus briefs against Qualified Patients Association, as has the California Peace Officers Association and the California Sheriff's Association. But ASA's Elford remains confident. He believes that the decisions in Garden Grove and San Diego mean that federal pre-emption only exists when there is a positive conflict, as would

be the case if state law required someone to violate the federal prohibition.

"This is yet again an example of local officials wishing to enforce federal instead of state law," said Elford. "You don't have to regulate dispensaries. You just can't ban them."

A study conducted by ASA found that not only do dispensaries pose negligible problems for the communities in which they operate, they serve a critical function for the most seriously ill medical marijuana patients. That report can be downloaded at AmericansForSafeAccess.org/downloads/dispensaries.pdf.

A decision in the case of Qualified Patients Association vs. City of Anaheim is expected within the next few months.

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medical marijuana patient advocates in favor of implementing the law.

After the appellate court ruling, ASA put all California counties that had not yet established a voluntary patient identification program on notice of their obligation to implement state law, in particular the state ID card program, which both assists law enforcement and affords greater protection to patients. As a result, Fresno and Kings counties voted to issue the patient ID's almost immediately. Now, ASA is again following up with a warning for remaining California counties that refuse to obey the law.

"We expect the remaining holdout counties to implement the medical marijuana card program immediately," said Elford. "And if they continue to refuse to comply with state law, we will ask the courts to require them to do so."

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attorney testified on behalf of Lynch, and he took the stand himself to describe attempts he made to operate within even federal law.

Lynch was found guilty of five federal felonies. Defense attorneys will file a motion for a new trial on November 17. Sentencing is currently scheduled for November 24 in Los Angeles.

NATIONAL ACTION ALERT

**Kickstart Your Seasons Greetings...
Give Thanks to Your New President!**

President-elect Barack Obama says he's bringing big change to Washington, DC, and since November is the month for giving thanks, ASA thought it would be the perfect time to tell your future President what you're thankful for.

Now's your chance to congratulate Barack Obama for his big win, and thank him for understanding the need for change. We have to show President-elect Obama that he'll be hearing from us now and for the rest of his term, that we won't let up until we see the change he's promised. So tell your next President what he can do to make patients thankful.

Call President-elect Barack Obama at (866) 675-2008 and say:

"Hi, my name is _____ and I live in [city, state]. I just wanted to say how thankful I am that President-elect Obama was elected. His message of change is so important to this country. I'm also thankful that President-elect Obama has promised to end DEA interference in medical cannabis states, and I hope he remembers that the DEA continues to conduct enforcement raids on individuals who use or possess medical cannabis in accordance with their state law. I'll be even MORE thankful when President-elect Obama changes actual-ly DEA priorities to stop this. Those of us who use medical cannabis to treat a serious illness are counting on him."

Let our next President know we will be thankful for real change!

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