



Americans for Safe Access

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www.SafeAccessNow.org

June 8, 2005

Dear City Attorney and County Counsel,

I am writing today in order to clarify the meaning and intent of the *Gonzales v. Raich* decision issued by the U.S. Supreme Court on June 6, 2005, and how it applies to cities and counties currently considering regulations around medical marijuana dispensing facilities.

The *Raich* decision held, in a very narrow ruling, that the federal government has the authority under the interstate commerce clause to regulate marijuana even for medical use. However, in his majority opinion, Justice Stevens recognized that marijuana may have medicinal value and stated that, although the federal government can prosecute patients, the Court was not deciding whether it is wise to do so.

In addition, the *Raich* decision says nothing about the conduct of medical marijuana dispensaries and in no way restricts local government from condoning and/or regulating such conduct. It remains the purview of states and their local governments to oversee and regulate the provision of medical marijuana. While the federal government does maintain control over many aspects of medicine and treatment in the U.S., the states are still primarily responsible for the health and welfare of their people.

In keeping with Justice O'Connor's reminder that it is necessary for states to serve as laboratories to test the wisdom of legalized medical marijuana, California Attorney General Bill Lockyer issued a statement following the *Raich* decision reaffirming the Compassionate Use Act (Proposition 215), and declaring that "[t]oday's ruling does not overturn California law permitting the use of medical marijuana." More than 130 years of binding precedent from the highest court of this State makes clear that state officers have an obligation to enforce state, rather than, federal law. See *People v. Kelly* (1869) 38 Cal. 145, 150; *People v. Tilekkooh* (2003) 113 Cal.App.4th 1433, 1445.

More than ever, medical marijuana patients need state and local governments to uphold their rights under SB 420. Under this law, localities have an obligation to seek ways to ensure the safe and affordable distribution of marijuana to qualified patients or, at a minimum, not to interfere with this effort. In addition, SB 420 expanded the protections afforded to primary caregivers and to others who dispense medical marijuana to qualified patients.

Medical marijuana patients will continue to reside in California and therefore must have safe and legal means to get their medicine, rather than being forced to rely on the illicit drug market. Given that most patients do not have the ability to grow their own medicine nor have caregivers that can do it for them, they regularly rely on dispensing facilities to assist them.

The time is ripe for local governments to rally behind the patients in their communities and forge ahead with regulation of dispensing facilities. Failure to do so will not only cause needless suffering for thousands of patients but will contravene the clear intent of the voters as expressed in Proposition 215. Where cities and counties pass ordinances that permanently ban dispensing of medical marijuana, state courts will be called upon to adjudicate the issue. See *Americans for Safe Access v. City of Fresno*, No. 05CECG01245MWS (Sup. Ct. 2005).



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Americans for Safe Access is here to assist you in this process and would be more than willing to consult on any matter being debated. Do not hesitate to contact our office regarding the regulation of medical marijuana dispensing facilities.

Sincerely,

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Director of Legal Affairs
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