

Commentary

August 3, 2010

Immigration and Drug Policy: A Double Standard in Federal Law Enforcement

The Obama Administration sued the state of Arizona over its new immigration law because it is in conflict with federal law.ⁱ As *The Washington Post* says, “the Justice Department argued that the Arizona law is unconstitutional because the power to set immigration policy and enforce it resides with the federal government and not the states.”ⁱⁱ “Allowing states to set their own immigration policies fails to solve the overall problem of illegal immigration and violates the supremacy clause of the Constitution. The federal government can permit states and localities to act on its behalf in immigration matters, but it must expressly delegate that authority.”ⁱⁱⁱ

With this standard in mind, the Institute for Behavior and Health, Inc. (IBH) asks why the federal government has not taken similar action against California and the other states which have legalized medical marijuana. Medical marijuana blatantly violates federal law and international treaties to which the United States is a signatory. Passing and implementing medical marijuana laws not only exacerbates the problem of marijuana abuse but it also undermines federal law governing the approval of medicines.

California was the first state to legalize medical marijuana in 1996 with Proposition 215.^{iv} There are now fourteen states and the District of Columbia which have passed legislation to legalize the use of marijuana use for medicinal purposes. The federal government, through the U.S. Food and Drug Administration (FDA), is responsible for approving medicines, ensuring that they are safe and effective for public use. Under the Food, Drug, and Cosmetics Act, states can set more restrictions on medicines than the federal government but they cannot establish more lenient standards.^v Why has no action been taken against these states?

In 2005, the U.S. Supreme Court decided 6 to 3 in the *Gonzales v. Raich* medical marijuana case that the Controlled Substances Act does not exceed Congress' power under the commerce clause as applied to the intrastate cultivation and possession of marijuana for medical use.^{vi} It was striking that the liberal Supreme Court justices rejected the state of California's insistence that marijuana was medically necessary in order to preserve the commerce clause under which much federal regulation is justified. The conservatives, in contrast, voted in favor of *Gonzalez*. The only precedent for approving a medicine by ballot initiative in the U.S. was the drug *Laetrile*^{vii} which was approved by more than 20 states in the mid 1970's to treat cancer and proved to be disastrous. Medicines should not be approved by ballot initiatives or by state legislatures, but through the federal government after meeting rigorous standards. The approval of a “medicine” in these unscientific and irresponsible ways sets a dangerous precedent that threatens the public health. Medical marijuana should be subjected to the standard tests for approving a medicine. This has not happened for a good reason: marijuana could not meet the most elemental standards of safety or efficacy.

While medical marijuana efforts have enjoyed political success in many states, marijuana remains a Schedule I drug under federal law. Though the Attorney General has said that enforcing federal drug laws against medical marijuana users is not a priority,^{viii} it must become a federal priority to prevent California, and other states, from overriding federal drug scheduling laws. States are undermining and violating the federal law and endangering the public health and the century-old protections built into the system of approving medicines.

The Obama Administration is not alone in overlooking these ongoing drug policy issues. The Bush Administration did not sue California over its legalization of medical marijuana, setting the stage for the spreading of this practice to an additional 13 states and the District of Columbia.

From the start, medical marijuana has been the Trojan Horse of drug legalization. This is clearly revealed by California's Proposition 19 which if passed would legalize the possession, cultivation, and transport of marijuana for personal use by any person age 21 and older.^{ix} This law and the spread of the medical marijuana hoax make the necessary, long overdue federal action even more vital today.

Both medical marijuana and the proposed legalization of marijuana are violations of the U.S. treaty obligations under the Single Convention on Narcotic Drugs,^x as the U.S. Controlled Substances Act of 1970 fulfilled U.S. treaty obligations and provided protections for all Americans, ensuring them that their medicines would be safe and effective.

IBH urges the federal government, including the Drug Enforcement Administration (DEA) and the FDA to take prompt and decisive action to enforce the Controlled Substances Act. This action is essential to the nation's public health and to protect the restrictive and balanced supply reduction and demand reduction drug policies that have guided this nation for the past 40 years with strong bipartisan support. IBH asks that the federal government address this clear double standard for immigration and drug policy and asks that the federal government take action to roll back the wave of medical marijuana laws and oppose California's dangerous Proposition 19 to legalize marijuana.

Robert L. DuPont, M.D.
President, Institute for Behavior and Health, Inc.

ⁱ Markson, J., & Shear, M.D. (2010, July 7). Justice Department sues Arizona over immigration law. *The Washington Post*. Retrieved July 12, 2010 from <http://www.washingtonpost.com/wp-dyn/content/article/2010/07/06/AR2010070601928.html>

ⁱⁱ Layton, L. (2010, July 11). Holder: U.S. may take further legal action against Ariz. Immigration law. *The Washington Post*. Retrieved July 12, 2010 from <http://www.washingtonpost.com/wp-dyn/content/article/2010/07/11/AR2010071101246.html>

ⁱⁱⁱ Meissner, D. & Ziglar, J.W. (2010, July 22). Why the U.S. had to challenge Arizona on immigration. *The Washington Post*. Retrieved July 22, 2010 from <http://www.washingtonpost.com/wp-dyn/content/article/2010/07/21/AR2010072104559.html>

^{iv} 215 medical use of marijuana: Initiative statute. (1996). Office of Secretary of State of California. Retrieved July 12, 2010 from <http://vote96.sos.ca.gov/BP/215.htm>

^v U.S. Food and Drug Administration. (2010). Federal Food, Drug, and Cosmetic Act.. Retrieved July 12, 2010 from <http://www.fda.gov/regulatoryinformation/legislation/federalfooddrugandcosmeticactfdact/default.htm>

^{vi} The Oyez Project. (n.d.). *Gonzales v. Raich*, 545 U.S. 1 (2005). Retrieved July 12, 2010 from http://oyez.org/cases/2000-2009/2004/2004_03_1454

-
- ^{vii} American Cancer Society. (n.d.). Laetrile. Retrieved July 13, 2010 from <http://www.cancer.org/Treatment/TreatmentsandSideEffects/ComplementaryandAlternativeMedicine/PharmacologyandBiologicalTreatment/laetrile>
- ^{viii} Johnson, C. (2009, October 20). U.S. eases stance on medical marijuana. *The Washington Post*. Retrieved July 12, 2010 from <http://www.washingtonpost.com/wp-dyn/content/article/2009/10/19/AR2009101903638.html>
- ^{ix} California Secretary of State. (2010). Qualified statewide ballot measures. Retrieved July 12, 2010 from <http://www.sos.ca.gov/elections/ballot-measures/qualified-ballot-measures.htm>
- ^x United Nations. (1961). Single Convention on Narcotic Drugs, 1961. Retrieved July 12, 2010 from http://www.incb.org/pdf/e/conv/convention_1961_en.pdf