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9

Health Care Decisions: The Legal and Medical Environments

§9.76 b. Constitutional Rights and Controlled Substances Act

In response to continued raids against state medical marijuana growers, a group of patients and their medical marijuana organization sued Attorney General Ashcroft and the DEA Administrator on April 23, 2003. Santa Cruz County and the City of Santa Cruz, which had adopted ordinances supporting the availability of medicinal marijuana, joined as plaintiffs. The plaintiffs asserted the deprivation of their constitutional rights under the Fifth, Ninth, and Tenth Amendments of the U.S. Constitution, asserted compliance with California and local law allowing the use of medicinal marijuana, and asserted that the DEA and Attorney General had unlawfully exercised congressional powers under the commerce clause (US Const art I, §8, cl 3). The defendants declared that they had acted within their rights under the Controlled Substances Act (CSA) (21 USC §§801–904) and filed a motion to dismiss. The plaintiffs moved for a preliminary injunction to stop the DEA from conducting additional raids and seizures. *County of Santa Cruz v Ashcroft* (ND Cal 2003) 279 F Supp 2d 1192.

The district court ultimately found that the CSA as applied to the plaintiffs was unconstitutional under the commerce clause and that the CSA did not apply to the plaintiffs' activities. *County of Santa Cruz v Ashcroft* (ND Cal 2004) 314 F Supp 2d 1000. The court therefore granted the plaintiffs' motion for a preliminary injunction. The court also dismissed a number of the plaintiffs' causes of action with leave to amend.

The court based its decision on *Raich v Ashcroft* (9th Cir 2003) 352 F3d 1222, a Ninth Circuit decision that the United States Supreme Court vacated in *Gonzales v Raich* (2005) 545 US 1, 125 S Ct 2195. In *Gonzales*, the Supreme Court held that Congress's Commerce Clause authority squarely included the power to prohibit the local cultivation and use of marijuana in compliance with California law. The case focused on whether the federal government had the authority to regulate home-grown marijuana plants. The Court concluded that the constitutional authority of Congress to regulate the interstate drug market includes small home-grown quantities of doctor-recommended marijuana. The case was remanded to the district court to address the respondents' substantive due process claim and their medical-necessity defense. On remand, the district court denied the plaintiff's motion for injunctive relief. The Ninth Circuit affirmed in *Raich v Gonzales* (9th Cir 2007) 500 F3d 850, 869:

We conclude that Raich has not demonstrated a likelihood of success on the merits of her action for injunctive relief. First, we hold that Raich’s common law necessity defense is not foreclosed by *Oakland Cannabis* or the Controlled Substances Act, but that the necessity defense does not provide a proper basis for injunctive relief. Second, although changes in state law reveal a clear trend towards the protection of medical marijuana use, we hold that the asserted right has not yet gained the traction on a national scale to be deemed fundamental. Third, we hold that the Controlled Substances Act, a valid exercise of Congress’s commerce power, does not violate the Tenth Amendment. Finally, we decline to reach Raich’s argument that the Controlled Substances Act, by its terms, does not prohibit her possession and use of marijuana because this argument was not raised below.



For further discussion, see [California Powers of Attorney and Health Care Directives: Health Care Decisions: The Legal and Medical Environments, chapter 9 \(Cal CEB\)](#). Available in print and through [OnLAW](#).

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