

States Rights

California is one of 11 states that have legalized the medical use of marijuana. The others are Alaska, Arizona, Colorado, Hawaii, Maine, Montana, Nevada, Oregon, Vermont and Washington.

Well, one thing 215 has done is help us to better understand civics. The United States is a Republic. There is such a thing as state's rights. The Constitution prohibits the federal government from ordering states to enforce federal laws. In addition, the powers of the federal government are limited by the Constitution of the United States. The 10th Amendment to the Constitution to the federal government couldn't be clearer than all powers not enumerated in the Constitution to the federal government revert to the states.

The practice of medicine is not regulated by the federal government. It is regulated by each of the several states. The federal courts have made it clear that doctors and patients have a right to discuss the medical efficacy of cannabis and doctors have the right to recommend it without interference from the federal government.

Attorney White cites Article 3 Section 3.5 of the California State Constitution as his basis for arguing that local police cannot enforce federal law.

An administrative agency, including an administrative agency created by the Constitution or an initiative statute, has no power.

(a) To declare a statute unenforceable, or refuse to enforce a statute, on the basis of it being unconstitutional unless an appellate court has made a determination that such statute is unconstitutional;

(b) To declare a statute unconstitutional;

(c) To declare a statute unenforceable, or to refuse to enforce a statute on the basis that federal law or federal regulations prohibit the enforcement of such statute unless an appellate court has made a determination that the enforcement of such statute is prohibited by federal law or federal regulations.

If the Supreme Court decides against Raich, local police could still not legally arrest medicinal marijuana patients, as they would be violating the constitution of the state of California if they did.

The federal government asserts the right to regulate medicinal cannabis on the basis of the Constitution's interstate commerce clause. This clause exists to facilitate national commerce across state lines without interference from the states. But the states permitting marijuana to be used medicinally specify that the marijuana must be grown locally, not transported over state lines. Next to no money is involved in its sale.

You'll remember from high school civics class that any power that isn't specifically reserved for the federal government resides with the states. There isn't any mention of marijuana in the Constitution (you didn't really think there was, did you?), but it does talk about commerce. Article I, Section 8, Clause 3 of the Constitution says, "Congress shall have power to ... regulate commerce with foreign nations, and among the several states."

The interstate commerce clause has been used to justify a vast number of extensions of federal power even when there has been no connection to commerce or a tortured connection at best.

A broad interpretation of this clause started in 1942, with *Wickard v. Filburn*. Filburn was an Ohio farmer. Under the agricultural allotments that were imposed to protect prices in the face of a wheat surplus, Filburn was allotted 11.1 acres of wheat. He sowed 23, just like he always had.

Sure, he'd sell 11.1 acres of it, but the extra was for his own use: He'd feed some to his cattle and chickens, grind enough into flour for his wife to bake into bread and cakes, and save a bit as seed for next year's planting. He was fined \$117.1 for the excess wheat and, by gum and by golly, Farmer Filburn took his case right on up the Supreme Court of the United States.

The opinion in *Filburn* was written by Justice Robert Jackson, best known for the year he took off from the court to serve as the American chief of counsel prosecuting the principal Nazi leaders before the International Military Tribunal at Nuremberg.

Jackson wrote that even though Filburn wasn't directly engaged in interstate commerce, his 230 bushels of wheat for home use had an indirect effect on commerce - if he didn't grow it he would have had to buy it, maybe from Illinois - so the federal government had the right to regulate it.

This tortured reasoning has been used for a host of good liberal causes, from workers' occupational health and safety to the protection of endangered species. But now it's being used by a Republican administration to suppress dope. Weed.

Reefer. Mary Jane. This conservative administration, whose ideological inclination would be to say yes to states' rights and no to marijuana, is being forced to choose between the two positions.

When President Bush says that his Supreme Court nominees would be strict constructionists, *Wickard v. Filburn* and its offspring are exactly the kinds of decisions he wants expunged from the case law. Now, Ashcroft is trampling over states' rights to take a stand for drug enforcement.

It's understandable that the Justice Department would be worried that legalization of marijuana for medical use would make it harder to regulate its street use. But there is another way to handle this in lieu of sending DEA agents into a sick woman's backyard to stomp all over her six puny cannabis seedlings.

We can look across the border to Canada. In 2001 Canada implemented the Marihuana Medical Access Regulations. This law defines the conditions under which a patient can be prescribed marijuana, issues government licenses to grow it, distributes it through authorized outlets and conducts research to evaluate its medical efficacy.

The contention that marijuana is not legal in the State of California is wrong. But don't take my word for it. Here's what Ronald M. George, Chief Justice of the California Supreme Court said in the Mower decision in 2002:

"Under the state law, the possession and cultivation of marijuana is no more criminal – so long as its conditions are satisfied – than the possession and acquisition of any prescription drug with a physician's prescription."