

Iowans for Medical Marijuana
Post Office Box 4091, Des Moines, Iowa 50333

December 19, 2008

The Honorable John Conyers, Jr.
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

I received a copy of a letter from Keith B. Nelson, which was sent to you on July 25, 2008. That letter contained misleading information.

Marijuana no longer meets the findings required by Congress in 21 U.S.C. § 812(b)(1)(B) (“no accepted medical use in treatment in the United States”). To date, thirteen states in the United States have accepted the medical use of marijuana by state statute. The only reason marijuana remains in Schedule I of the Controlled Substances Act (CSA), is because the United States Drug Enforcement Administration (DEA) refuses to obey federal law and remove it.

The fact that marijuana has not been approved by the Food and Drug Administration (FDA) for marketing simply proves the CSA was written for pharmaceutical drugs and not for vegetables. It should be obvious that the FDA will never approve marijuana for medical use for the simple reason that marijuana is not a drug.

The letter from Mr. Nelson pointed out the damage the DEA has caused by interfering with state laws authorizing the medical use of marijuana, particularly federal prosecution of state-authorized users.

The letter from Mr. Nelson further pointed out that marijuana is a Schedule I controlled substance under California law. However, the voter initiative passed in California in 1996 supersedes any prior existing state law on the medical use of marijuana. The Attorney General of California should have informed the California Legislature that marijuana no longer meets the requirements for inclusion in California Schedule I and should have further notified the DEA of its obligation to remove marijuana from Schedule I of the federal CSA. State law enforcement officials have failed to protect the public health and safety of their citizens by informing DEA that marijuana must be removed from Schedule I of the federal CSA.

Mr. Nelson referred to a couple of recent Supreme Court decisions which rejected the idea of exempting certain classes of people from the CSA, *United States v. Oakland Cannabis Buyers' Cooperative*, 532 U.S. 483 (2001), and

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Gonzales v. Raich, 545 U.S. 1 (2005). Mr. Nelson failed to mention the more recent Supreme Court decision in ***Gonzales v. Oregon***, 546 U.S. 243 (2006), that affirms Congress never intended to replace accepted state medical standards with national standards.

The [CSA] and our case law amply support the conclusion that Congress regulates medical practice insofar as it bars doctors from using their prescription-writing powers as a means to engage in illicit drug dealing and trafficking as conventionally understood. Beyond this, however, the statute manifests no intent to regulate the practice of medicine generally. The silence is understandable given the structure and limitations of federalism, which allow the States “great latitude under their police powers to legislate as to the protection of the lives, limbs, health, comfort, and quiet of all persons.” *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 475, 116 S. Ct. 2240, 135 L. Ed. 2d 700 (1996) (quoting *Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. 724, 756, 105 S. Ct. 2380, 85 L. Ed. 2d 728 (1985)).

Gonzales v. Oregon, at pages 269-70.

Mr. Nelson referred to the decision in ***Gettman v. DEA***, 290 F.3d 430, 432 (D.C. Cir. 2002), for an explanation of the CSA rescheduling procedures, but failed to mention the final ruling of the DEA Administrator:

You do not assert in your petition that marijuana has a currently accepted medical use in treatment in the United States or that marijuana has an accepted safety for use under medical supervision.

66 Fed. Reg. 20038 (April 18, 2001).

Mr. Gettman filed his petition with DEA in 1995. In 1995, there actually were no states in the United States that had currently accepted medical use of marijuana. Obviously, Mr. Gettman could not assert a fact that had not yet come into existence. DEA and the Secretary of Health and Human Services (HHS) have the statutory authority to determine whether a substance has accepted medical use in the United States in the absence of any state law accepting the medical use of that substance. New drugs would never see the light of day if DEA and HHS were not allowed to approve them. Mr. Nelson is setting up a straw man and then knocking that straw man down.

Mr. Nelson refers to ***United States v. Rutherford***, 442 U.S. 544 (1979), in which seventeen States had “legalized the prescription and use of Laetrile for cancer treatment within their borders”, but that case was not about DEA’s failure to remove Laetrile from Schedule I of the CSA (quoting ***Rutherford***, at page 554).

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The *Rutherford* case, like the *Raich* case, was about exempting certain classes of people from the CSA. In *Rutherford*, it was suggested that “terminally ill” persons be exempted. In *Raich*, it was suggested that persons “not engaged in interstate commerce” be exempted. In neither case, *Rutherford* or *Raich*, was it suggested that a controlled substance (Laetrile or marijuana) did not meet the required findings established by Congress for inclusion in Schedule I. To date, the only exemptions from the CSA are for religious use of controlled substances. See *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418 (2006).

The CSA’s plain statutory language, definitively interpreted by the Supreme Court of the United States in *Gonzales v. Oregon*, 546 U.S. 243 (2006), shows that Congress did not give DEA and HHS the power to maintain a substance that has “accepted medical use in treatment in the United States” in Schedule I of the CSA. State laws accepting the medical use of marijuana are evidence that marijuana now has “accepted medical use” in the United States within the meaning of that term as it was intended when Congress enacted the CSA. The federal preemption clause of the CSA, 21 U.S.C. § 903, clearly says so:

21 - FOOD AND DRUGS
CHAPTER 13 - DRUG ABUSE PREVENTION AND CONTROL
SUBCHAPTER I - CONTROL AND ENFORCEMENT |
Part F - General Provisions

903. Application of State law

No provision of this subchapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which that provision operates, including criminal penalties, to the exclusion of any State law on the same subject matter which would otherwise be within the authority of the State, unless there is a positive conflict between that provision of this subchapter and that State law so that the two cannot consistently stand together.

(Pub. L. 91-513, title II, Sec. 708, Oct. 27, 1970, 84 Stat. 1284.)

On Monday, December 1, 2008, the Supreme Court of the United States denied certiorari in *City of Garden Grove v. Superior Court of California*, 157 Cal. App. 4th 355, 380-87, 68 Cal. Rptr. 3d 656, 673-78 (Cal. App. 2007), review denied by the California Supreme Court on March 19, 2008 (Slip Opinion, pages 26-34), affirming there is no positive conflict between state medical marijuana laws and the federal CSA. A similar result was reached in *County of San Diego v. San Diego NORML*, 165 Cal. App. 4th 798, 81 Cal. Rptr. 3d 461 (2008), rev. denied (California Supreme Court, October 16, 2008).

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DEA and HHS cannot simply manufacture an imaginary conflict between state and federal law, where none exists, by refusing to remove a substance from Schedule I when it no longer meets the findings required by Congress for inclusion in that schedule of the CSA. The CSA requires the DEA and HHS to update the list of controlled substances annually. 21 U.S.C. § 812(a).

I have filed a civil complaint against the Attorney General of the United States, the United States Drug Enforcement Administration, and the Secretary of the United States, ***Carl Olsen v. Michael Mukasey***, No. 4:08-cv-370, in the United States District Court for the Southern District of Iowa. Enclosed is a copy of my motion for a Preliminary Injunction.

I hope this information is helpful. Please do not hesitate to contact me if I can be of further assistance in this matter.

Sincerely,



Carl Olsen
Iowans for Medical Marijuana
<http://www.iowamedicalmarijuana.org/>

Enclosures

cc: Keith B. Nelson
Principle Deputy Assistant Attorney General
U.S. Department of Justice
Office of Legislative Affairs
Office of the Assistant Attorney General
Washington, D.C. 20530