PERSPECTIVES

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HIGH court delivers LOW blow

Last Monday, the U.S. Supreme Court ruled 8-0 that manufacturers and distributors of medical marijuana cannot claim a "medical necessity" exception to the Controlled Substances Act, passed by Congress, which makes those actions crimes. This ruling has little direct effect on patients using marijuana for medical purposes; it just makes it illegal for groups such as the Oakland Cannabis Buyers Cooperative, the defendant in this case, to grow and sell marijuana to suffering people who need the remedy.

The Court's ruling does, however, heighten other confusing questions about medical marijuana, and the Emerald editorial board believes Congress should provide a more consistent and humane approach regarding marijuana and medical care. On April 3, Rep. Barney Frank, D-Mass., along with nine co-sponsors introduced a bill in the U.S. House of Representatives that would do just that. HR 1344 states that federal laws cannot stop states from allowing legal distribution and possession of marijuana for medical purposes. The bill is currently sitting in the House Energy and Commerce Committee's Subcommittee on Health. We encourage concerned parties to contact their representatives in support of this bill. Medical marijuana should be allowed.

The first thorny area is that of impact and enforcement. Nine states, including Oregon, currently allow for the use of medical marijuana. None of those states' laws are overturned by this ruling, and patients have little to fear, according to federal attorneys in recent news reports. The resources simply do not exist to enforce every violation. And an Oregon federal official told The Oregonian for a story printed Tuesday that the question is academic, because medical marijuana cases rarely meet the criteria for prosecution of drug crimes.

If these aren't "drug crimes," and people using medical marijuana will, under this ruling, be growing their own medicine and using it in their own homes, then why doesn't Congress make this whole process legal and help people who are suffering and dying? Using medical marijuana is a personal, private act, and the anecdotal evidence, while only anecdotal, is overwhelming. Some people with untreatable spasms from muscular dystrophy can get relief from marijuana. Some people with cancer and AIDS can again find it pleasant to eat when they smoke marijuana. The list could go on and on. How long will we remain blind and callous in the face of such suffering?

The second prickly area in this debate is the Constitution itself. Representatives of cannabis cooperatives say this is only the first battle. Other constitutional issues will be raised and fought over, in particular, the looming shadow of states' rights, often inconsistently applied by conservatives.

Here is yet another case. Marijuana is not a hard drug, similar to heroin or methamphetamine. It is more akin to alcohol or tobacco, yet the Court, which proved its conservative clout in the 2000 election, seems to believe states' rights should be trampled on in order to control this drug. We believe in states' rights and local rights, unless a clear and compelling need (such as the need to prevent murder) demands that the federal government take action. There is no such need with medical marijuana, and states' rights are addressed with Rep. Frank's bill.

Finally, the arguments about marijuana's medical benefits quickly become a sticky quagmire. The Court found that Congress had decided marijuana had no medical benefit, so medical necessity was not applicable. Where does Congress get the knowledge to determine medical benefit? Thousands of people have received medical benefit from smoking marijuana. But not every person receives such benefit, the argument goes. It's hard to tell for whom it will work. Well then, what about the plethora of dangerous drugs that are allowed to be used medicinally and don't work for everyone? Prozac turns some people into zombies. Many people get hooked on opiate derivatives that are supposed to help their lives, not make them worse. Why single out marijuana, when it has the potential to alleviate intense suffering? One possible answer: Marijuana might not be able to be made into a pharmaceutical drug, and drug companies can't make enormous profits if patients treat themselves with a plant they grow at home.

Marijuana contains 66 known cannabinoids, which are the chemically active compound in the drug. It is difficult to know how these cannabinoids work together, and it is even more difficult to find out how they might work together with the amino acids and proteins found in marijuana. This is probably why Marinol, the trademarked synthetic form of tetrahydrocannabinol (THC), isn't as effective as smoking marijuana for many patients. Singling out one chemical compound, THC, and then synthetically manufacturing it can't possibly provide the same effects as 66 (or more) interconnected natural chemical compounds.

Much like cannabinoids, all of these arguments are complicated and closely connected to each other. Congress should allow suffering people to use marijuana while it undertakes more involved clinical trials of marijuana and develops a sane, consistent policy that recognizes the benefits some patients receive from smoking marijuana. Rep. Frank's bill is a step in that direction, and we encourage readers to support it.

This editorial represents the opinion of the Emerald editorial board. Responses can be sent to ode@oregon.uoregon.edu.

Title VII protections not broad enough

GUEST COMMENTARY

***Ahsan A.* Awan**

With regard to the spirit of Take Back the Night, the dedication to ending violence by honoring survivors and celebrating activism need not be limited to women alone. While gender may be the leading cause of harassment, both in the community and the workplace, harassment based on sexual orientation is increasingly problematic.

In our own region, governed by the law of the 9th U.S. Circuit Court of Appeals, gay employees cannot sue under Title VII for sexual harassment in the workplace. In a 2-1 decision — Rene v. MGM Grand Hotel, Inc., March 29, 2001 — the 9th Circuit held that where a gay employee was harassed and assaulted by his co-workers, Title VII did not provide a cause of action because the harassment was not "based on sex."

The plaintiff, a hotel butler, was continually harassed by male coworkers over a two-year period. On a daily basis, the plaintiff's anus and genitals were grabbed and poked, and he was taunted regarding his sexual orientation. As a result, he sued, relying on a decision by the U.S. Supreme Court — Oncale v. Sundowner Offshore Services, Inc., 523 U.S. 75 (1998) — holding same-sex harassment actionable under Title VII.

However, the 9th Circuit, interpreting Oncale, said that the Supreme Court opinion "did not indicate that one of the ways a plaintiff can prove same-sex discrimination is discrimination based on sexual orientation." Rather, the 9th Circuit majority held that "in determining the motivation for harassment, courts must be mindful of the fact that Title VII protects against discrimination only on the basis of race, color, religion, sex or national origin." Therefore, "[d]iscrimination based on other characteristics, no matter how distasteful that discrimination may be, simply does not fall within the purview of Title VII."

The sole dissenting judge argued that "while gay-baiting insults and teasing are not actionable under Title VII, a line is crossed when the abuse is physical and sexual." Where that line is drawn, when it is crossed and what available remedies exist on the other side are questions that remain unanswered.

If Title VII is not the appropriate statutory provision under which an action exists, then where does one exist? If Title VII provides no appropriate remedy for same-sex harassment, then where does an appropriate remedy exist? Whether the legislature needs to amend the law or the court needs to delve into prior legislative intent, one thing is certain: In the spirit of anti-discriminatory activism, something must be done to stop the violence.

Ahsan A. Awan was a senior justice on the ASUO Constitution Court until he graduated from the University's School of Law May 13.

Poll Results:

Every week, the Emerald prints the results of our online poll and the poll question for next week. The poll can be accessed from the main page of our Web site, www.dailyemerald.com. We encourage you to send us feedback about the poll questions and results.

Last week's poll question:

Why was the evidence about Timothy McVeigh withheld?

Results: 83 total votes
International conspiracy — 8 votes, or 9.6 percent
Government incompetence — 44 votes, or 53 percent
Bureaucratic red tape — 11 votes, or 13.3 percent
FBI overconfidence — 20 votes, or 24.1 percent

Well, government incompetence was the big winner this week. It is not so often that one can say that and mean it. FBI overconfidence was a distant second, so maybe it was some combination. McVeigh is guilty, they figured, so why do our job right? This serious poll's meager showing inspired a new, frivolous springtime question for this week. Read on.

This week's poll question:

Which is the best gum for blowing bubbles?

The choices:
Hubba Bubba
Bubblicious
Bubble Yum
Big League Chew