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## NATIONAL news

# WEED KILLER

Supreme Court allows feds to prosecute medical marijuana patients

by Bob Roehr

**T**he U.S. Supreme Court reaffirmed the right of the federal government to prosecute patients for the medical use of marijuana even in states that allow such use.

The 6-3 ruling in *Gonzales vs. Raich*, issued June 6, centered on arguments of commerce and federalism and splintered traditional liberal-conservative lines on the bench. It did not address constitutional questions of a medical

protect the health, safety and welfare of their citizens."

"The court's definition of economic activity is breathtaking," O'Connor wrote. "To draw the line wherever private activity affects the demand for market goods is to draw no line at all, and to declare everything economic."

Thomas was even more scathing in taking his colleagues to task for expanding the Commerce Clause to entail all economic activity.

"If the majority is to be taken seriously, the federal government may now regulate quilting bees, clothes drives and potluck suppers throughout the 50 states," he wrote. "This court has carefully avoided stripping Congress of its ability to regulate interstate commerce, but it has casually allowed the federal government to strip states of their ability to regulate intrastate commerce—not to mention a host of local activities, like



Angel Raich uses marijuana to relieve pain from an inoperable brain tumor.

necessity defense, which remain to be litigated.

Justice John Paul Stevens, writing for the majority, made clear early in his decision that the question before the court was not the wisdom of prosecuting sick people but whether Congress, through the Controlled Substances Act, had the authority to do so.

The cornerstone of his argument was 1942's *Wickard* decision, which said Congress could regulate a farmer's growing of wheat for his own use because that "would undercut the regulation of the interstate market in that commodity."

"One need not have a degree in economics to understand why a nationwide exemption for the vast quantities of marijuana (or other drugs) locally cultivated for personal use (which presumably would include use by friends, neighbors and family members) may have a substantial impact on the interstate market for this extraordinarily popular substance," wrote Stevens.

He made clear that the court was not addressing the issue of a "medical necessity defense." The plaintiffs raised that issue in their initial lawsuit, but the Ninth Circuit Court of Appeals chose to make its decision on the basis of law rather than constitutional issues.

Stevens pointed supporters of the medical use of marijuana to "the halls of Congress" to reclassify marijuana from a Schedule I to a less restricted class of substance.

Justice Sandra Day O'Connor—in a dissent joined by Chief Justice William Rehnquist and Justice Clarence Thomas—saw significant differences between the facts of *Wickard*, where several tons of wheat were involved, and "something as modest as the home cook's herb garden" in the *Raich* case. The former state legislator said, "This case exemplifies the role of states as laboratories" in addressing the admittedly complex issues surrounding marijuana. She lambasted the majority for allowing federal authority to ride roughshod over the traditional authority of states "to define criminal law and

mere drug possession, that are not commercial."

Thomas concluded that this makes "a mockery" of the concept of federalism. "The majority is not interpreting the Commerce Clause, but rewriting it."

### REACTIONS

Advocates for the medical use of marijuana were disappointed but not surprised by the decision.

"I'm going to have to be prepared to be arrested," Angel Raich told an Oakland news conference. The lead plaintiff in the case suffers from an inoperable brain tumor and other maladies. She uses marijuana every few hours to provide some degree of relief from their symptoms.

"It is absolutely cruel that the federal government does not allow us the right to use this medicine," Raich told a Capitol Hill rally in May. "If we lose, it means that the road to our work has only begun. As long as I have breath in my little 100-pound body, I will fight, I will stand up. I am not going to give up."

Rob Kampia, executive director of the Marijuana Policy Project, said, "Just because the Supreme Court has said the federal government can continue to arrest medical marijuana patients doesn't mean the federal government must do so."

He noted that federal agents make only 1 percent of the nation's 750,000 marijuana arrests every year. "Patients in states with medical marijuana laws retain a high level of protection. Congress should act today to give those patients complete protection from arrest."

U.S. Rep. Maurice Hinchey, D-N.Y., will offer an amendment to the appropriations bill for the Department of Justice to prevent it "from dispensing funds to arrest, prosecute, sue or otherwise discourage doctors in states from following their state laws with regard to the medicinal use of this product." That vote is likely to come in mid-June. **JM**



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