

Los Angeles Times - January 22, 2010

California Supreme Court invalidates state limits on medical marijuana possession

The justices unanimously declare unconstitutional a 2003 provision that capped possession at eight ounces and cultivation at six mature or 12 immature plants.

By John Hoeffel

In a unanimous decision filed Thursday, the California Supreme Court struck down the state's specific limits on how much medical marijuana a patient can possess, concluding that restrictions imposed by the Legislature were an unconstitutional amendment of a voter-approved initiative.

The decision, which affirmed an appellate decision, means people who have a doctor's recommendation to use marijuana can possess and cultivate as much as is "reasonably necessary."

The court invalidated a provision of a 2003 state law passed to clarify the initiative. Under that law, patients or their primary caregivers could have no more than eight ounces of dried marijuana and grow no more than six mature or 12 immature plants. The law, however, allowed patients to have more than that if they had a statement from a doctor that the amount was insufficient.

"I'm very pleased. They gave us exactly what we wanted," said Gerald F. Uelmen, a law professor at Santa Clara University who argued the case for Patrick K. Kelly, a medical marijuana patient from Lakewood.

Medical marijuana advocates and defense attorneys said the court's decision could make it harder for prosecutors to win convictions because they would no longer be able to tell juries that a defendant had more medical marijuana than the law allows.

The big impact is going to be the change in perception by the district attorney. It's going to be difficult for a narcotics expert to testify that an amount is unreasonable.

The state's 1996 medical marijuana initiative put no limit on the amount of cannabis a patient could possess or cultivate other than to require that it be for "personal medical purposes."

Seven years later, the Legislature passed a law to create medical marijuana identification cards to help protect patients from arrest and included the limits on possession and cultivation.

The justices concluded that the state Constitution bars the Legislature from changing an initiative approved by voters, but also appeared to rue that restraint. Almost a third of the 54-page decision written by Chief Justice Ronald M. George discusses how California's initiative process places unparalleled limits on the Legislature. The decision notes that it "may well be prudent and advisable" for lawmakers to have the power to set limits.

George recently gave a speech to the American Academy of Arts and Sciences in which he

questioned whether initiatives had become "an impediment to the effective functioning of a true democratic process."

In an odd twist, Uelmen and state prosecutors argued before the court that the limits were unconstitutional.

Both sides also argued that the appellate court erred when it ruled that the entire section of the law that included the limits was unconstitutional. They maintained that the limits were valid as part of the state's medical marijuana identification card program.

"It effectively would have gutted the ID card program," said Deputy Atty. Gen. Michael Johnsen.

The court agreed, concluding that the limits could still be applied to the identification card program.

Medical marijuana advocates and the state attorney general's office said that means patients with ID cards are shielded from arrest for possession or cultivation if they have less than the limits in state law or the more liberal limits adopted by some cities and counties. But Chris Conrad, a court-qualified expert medical marijuana witness, said he believed the limits would also protect patients without cards.

"In one sense this is a call to patients to enroll in the ID card program if they want to be immune from arrest and prosecution," said Kris Hermes with Americans for Safe Access, a medical marijuana advocacy organization.

The card program, however, has been largely shunned by patients who have been afraid to have their names listed in government records. Statewide, about 38,000 cards, which must be renewed annually, have been issued since the program started. In Los Angeles County, the total is 1,574.