Highest Court On Weed

August 1, 2001 By Denny Lee

Did the Supreme Court blow smoke about medical marijuana? In the three months since the top court ruled that it is illegal to push pot for patient use, the nine states with med-MJ ordinances have recorded a few tremors but no major aftershocks. Yet the long-term consequences for advocacy remain hazy.

“There’s more spin than substance in the decision,” said Dale Gieringer, the California coordinator for the National Organization for the Reform of Marijuana Laws (NORML). “Nothing has changed.”

To recap: In May, the Supreme Court ruled 8-0 that federal law recognizes no medical benefits from marijuana, so an Oakland buyers club could not invoke a “medical necessity” exception to avoid prosecution by the feds. Panicking pot promoters (and reporters) initially read “Busted!” in the unanimous decision, anticipating a reversal of statewide ballot initiatives that have allowed HIVers and others to use weed for side effects and wasting. On closer look, however, a narrower interpretation emerged.

For one, the verdict leaves open the question whether individuals—as opposed to buyers clubs—can invoke a necessity defense. But more important, the decision applies only to federal prosecutions. State courts can still uphold their own pot laws, as California, Florida and others have already done. “Nothing in this decision affects the validity of state medical-marijuana laws,” said Graham Boyd, head of the American Civil Liberties Union’s drug policy project. State officials—more likely to be involved than the feds—will still be barred from prosecuting under those laws.

Buyers clubs in legal med-pot states report business as usual. At the San Francisco Patients’ Resource Center, a pharmacy-like co-op, dozens of HIVers and people with cancer still walked in each day to purchase and smoke marijuana. “After the earth stopped shaking and our patients were properly informed, things returned to normal,” said director Wayne Justmann, who uses weed to alleviate side effects from HIV meds. “Most of us do it in a responsible manner that allows us to be functional.”

Still, the Supremes’ hit may have a chilling effect on med-pot advocacy nationwide. Nevada and Maine officials have already iced efforts to distribute pot themselves. And buyers clubs are sitting ducks to federal prosecutors looking to score a political point. “The unfortunate part is that clubs will go underground,” said NORML’s Paul Armentano. “Those patients will be left out in the cold.”

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