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Muddle at the Supreme Court over Medical Marijuana **by Sheldon Richman**

When the U.S. Supreme Court ruled against medical-marijuana users, many critics of the decision thought the six-justice majority failed to show compassion for severely ill people. But the Supreme Court doesn't sit to dispense compassion. It's supposed to ensure that Congress respects the Constitution and, by extension, individual liberty. How did it do on that count?

Before we get to that question, a foreword is in order. Under California's Compassionate Use Act, doctors may prescribe marijuana to patients with severe medical problems. Those patients are then permitted to grow marijuana for their own use. The state closely regulates the prescription, cultivation, and use of the product to prevent others from obtaining it. (At least nine other states have similar laws.)

The issue in *Gonzalez v. Raich et al.* was whether such patients should be exempt from the federal prohibition against production and possession of marijuana.

Many well-intentioned people say yes: of course, severely ill people should be able to grow and use marijuana by prescription without fear that federal agents will barge into their homes (as they did to Diane Monson, a party in the case), destroy their plants, and charge them with unlawful possession.

But the case raises questions that cry out for answers. What about equality under the law? Why should only sick people be exempted from the prohibition? If sick people have a right to obtain marijuana, it must be because they have a right to their own lives and therefore a right to take all peaceful actions to maintain their lives. But don't the rest of us have the same rights?

These questions show that medical-marijuana laws are inappropriate in a free society, which should respect the right of all adults to use whatever substances they wish. Laws such as the Compassionate Use Act are examples of misplaced compassion. Sick people need freedom, not permission, however compassionate the motive. So do we all.

Now what about the Court's ruling?

If you wish to see how far America has drifted from its libertarian roots, just study the Supreme Court's Commerce Clause cases. The U.S. Constitution delegates to Congress the power

to “regulate commerce ... among the several states.” This provision was intended to prohibit state governments from enacting protectionist trade restrictions against commercial interests in other states. The clause thus declared the United States a free-trade zone.

Unfortunately, it didn’t take long for Congress and the Supreme Court to warp the Commerce Clause into something unrecognizable. It went from a way to maintain the flow of products to a way to restrict and even prohibit the flow of products. Then, during the New Deal it became a means of prohibiting even *noncommercial intrastate* activity if seen as necessary to regulate interstate commerce. That brought us to our present lamentable circumstances.

The unfortunate upshot is that while the *Raich* ruling faithfully follows (bad) Court precedent, it woefully violates the original purpose of the Commerce Clause. More fundamentally, the war on drug producers and consumers itself violates the Constitution. Alas, even the dissenting opinions, such as Justice Clarence Thomas’s, is flawed. Thomas writes, “The Commerce Clause empowers Congress to regulate the buying and selling of goods and services trafficked across state lines.” Wrong, but the majority, including Justice Antonin Scalia, agreed, adding that, because Congress has a rational basis for fearing that homegrown marijuana could end up in the banned interstate market and because Congress may enact all laws “necessary and proper” for carrying out its objectives, no exemption for sick people from the Controlled Substances Act is justified.

What a muddle. Yes, there should be no exemption. But that’s because there should be no war on drugs.

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