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California's Oaksterdamn Raided: What does this means for Medical Marijuana?

Last week, the Drug Enforcement Agency and Internal Revenue Service raided Oaksterdam, a medical marijuana trade school in Oakland, California.[1] The DEA said the raid was part of an ongoing criminal investigation.[2] According to San Francisco DEA spokeswoman Jocelyn Barnes, the reason for the raid was "[m]arijuana continues to be a federally controlled substance, despite the fact that California voted to make medical marijuana legal…[3]"

The raid on Oaksterdam is part of the federal government's larger effort to shutter California's budding medical marijuana industry, which experts estimate is worth $1.7 billion annually.4 As part of this multi-agency crackdown, the DEA is raiding medical marijuana providers who are compliant with state and local law.[5] In addition, the IRS is taxing providers to death by auditing them at an unprecedented rate,[6] as well as enforcing an arcane tax policy that prohibits providers from claiming standard business deductions available to all other businesses.[7] Even the Bureau of Alcohol, Tobacco, Firearms, and Explosives has weighed in on the issue, prohibiting gun dealers from selling firearms to medical marijuana patients registered their qualified patient status with the state.[8]

The mere specter of federal enforcement has had a tremendous impact on stifling the industry. Landlords[9] and banks[10] have abandoned their relationships with medical marijuana providers. Local governments, including Mendocino County, have ended their long-standing permit programs. [11] Even the City of Oakland, one of the municipalities which pioneered the idea of regulating medical marijuana, has slowed down its plan to issue permits for industrial sized marijuana grows due to threats of prosecution from United States Attorney Melinda Haag.[12]

Yet, amidst this unprecedented crackdown, the federal government has remained surprisingly agnostic to the medical marijuana cultivation going on in its own backyard. Two weeks ago, the District of Columbia, issued the first six permits for large-scale marijuana cultivation projects in the nation's capital.[13] The Washington D.C. permit program, which was enacted two years ago, provides for up to 10 medical marijuana cultivation centers that will supply medical marijuana to five distribution centers where patients can buy their medicine.[14] Though it is not receiving the same level of attention from the Department of Justice, the Washington D.C. program is very similar to the Oakland ordinance that Ms. Haag decried unlawfully "authorizes conduct contrary to federal law.[15]"

It is unclear what is driving this disparate enforcement. The critical difference between Oakland and Washington could be the role of Congress played in passing the law. Under the District of Columbia Home Rule Act, Congress is required to review all legislation passed by the Council of the District of Columbia before it can become law.[16] In passing and implementing the Washington D.C. permit program, the federal government has implicitly approved the authorization and regulation of medical marijuana, demonstrating a notable shift in the Legislature's attitude. While the Washington D.C. permits are certainly a reason for providers and supporters to cheer, at the same time, they also make the current crackdown in California all the more confusing.

It is hard to rectify the federal government's manic position on medical marijuana. On one hand, the federal government is in the middle of a multi-agency crackdown against the entire industry. On the other, Congress has outright approved the issuance of permits to cultivate medical marijuana in violation of federal law, and the District of Columbia has implemented the law without resistance from the Department of Justice. The federal government's disparate enforcement has supporters vocally arguing that "as D.C. goes, so should the nation," meaning the federal government should scale back its enforcement efforts in California due to Congressional approval on the issuance of permits in Washington D.C.

Going forward, raids on places like Oaksterdam will likely continue, but it is unclear for how much longer they will be tolerated by the public. The raid on Oaksterdam was met with a great deal of public resistance,[17] and it is not just providers and patients who are upset; public support for marijuana legalization has never been higher, especially for medical marijuana.[18] According to a recent Gallup poll, 50% of Americans now say that marijuana should be legal, and 70% support the use of marijuana for medical reasons.[19]

With voter initiatives for legalizing marijuana on the ballot in Colorado[20] and Washington[21], it appears that an even greater clash between public opinion and federal policy is inevitable. It begs the question of for how much longer is the public going to tolerate these raids that are contrary to the will of the voters and the public's opinion on cannabis. Until the federal government rectifies its enforcement policy with public opinion, their continued enforcement efforts in California will

come off as misguided, hypocritical, and out of touch with public opinion. The message sent to the American public will be: "do as I say, not as I do." Stated another way, it will be business as usual for the federal government.

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