



Written by [Jack Kenny](#) on July 27, 2013

## Feds Raid Seattle Area Marijuana Clinics Despite State Law

Seven government vehicles arrived outside the Bayside Collective in Olympia, Washington, where federal agents with guns drawn seized business records and about \$2,500 worth of marijuana in a raid Wednesday morning, according to a report on [King TV](#), Channel 5, the NBC affiliate in Seattle. King 5.com, citing an unnamed source in the U.S. attorney's office, said Bayside was one of four dispensaries raided in the Seattle area in the culmination of two-year investigation, with the evidence to go before a grand jury in September. The action was taken pursuant to federal law banning the sales or dispensing of marijuana, despite its legalization for recreational as well as medicinal use by referenda measures adopted by voters in Washington and Colorado last November.



"It's humiliating," said Casey Lee, who works at the Bayside clinic. "They don't get to see the cancer patients" who were to receive the confiscated marijuana.

Medical marijuana patient Leif O'Leary arrived at Seattle Cross to find the dispensary closed by order of the federal Drug Enforcement Administration. "You can't tell me there [aren't] bigger fish to fry, especially now that recreational marijuana is legal," he said. Washington now allows private possession of up to one ounce of marijuana. "It is just to me inconceivable that this is still happening," he added.

The federal raids appear to contradict a policy statement issued by the Department of Justice during President Obama's first year in office. In an October 2009 memorandum to federal prosecutors in the 14 states that then allowed medical use of marijuana, the department said prosecuting patients or distributors who are in "clear and unambiguous compliance" with state laws would not be an "efficient and rational use" of the department's resources. In a [statement](#) accompanying the memo, Attorney General Eric Holder seemed to be in agreement with O'Leary's contention that federal law enforcement officials had "bigger fish to fry."

"It will not be a priority to use federal resources to prosecute patients with serious illnesses or their caregivers who are complying with state laws on medical marijuana," Holder said, "but we will not tolerate drug traffickers who hide behind claims of compliance with state law to mask activities that are clearly illegal."

The use of marijuana is widely believed to offer a number of [benefits to patients](#), including a reduction of nausea and vomiting, the stimulation of appetite in AIDS patients and those receiving chemotherapy, and relief from the vision impairment known as glaucoma. Some physicians point to harmful effects,



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however. The American Society of Addiction Medicine issued a [report](#) last year warning that marijuana use can lead to addiction, citing a finding that marijuana is the drug used by 61 percent of all Americans suffering from substance abuse disorders related to drugs other than alcohol.

The medicinal use of marijuana is allowed by the laws of a growing number of states, with New Hampshire becoming the 20th, along with the District of Columbia, when Gov. Maggie Hassan [signed](#) a legalization bill into law this week. The federal ban remains in effect, however, and it is unclear whether this week's action in Seattle was simply an enforcement of the prohibition or is based on evidence that drug traffickers were, in Holder's words, using the medical dispensaries to "mask activities that are clearly illegal." "Marijuana is illegal 24 hours a day, 7 days a week under federal law," criminal defense lawyer Douglas Hiatt told King TV. "There is no defense, there is no justification."

The supremacy clause in Article VI of the U.S. Constitution holds that the nation's Constitution and the laws of the United States "made in pursuance thereof" shall be the supreme law of the land, anything in "the Constitution or the Laws of any state to the Contrary notwithstanding." The argument has been made, however, that the federal law banning marijuana use, like many other federal laws, was not made "in pursuance of" powers delegated to the federal government by the Constitution. In establishing the nation's ill-fated prohibition of the manufacture, sale, or transportation of alcohol in 1919, Congress found it necessary to first get ratification by the states of an amendment giving the Congress that authority. Marijuana, on the other hand, has been outlawed since 1937 by mere federal statutes, with no grant of such power in the federal Constitution.

In [Gonzalez v. Raich](#), the U.S. Supreme Court ruled in 2005 that federal law enforcement was justified in seizing and destroying marijuana plants grown by California residents for medical use, despite the fact that California had legalized that activity by its Compassionate Use law. The Court, in an opinion written by Justice John Paul Stevens (with a concurring opinion by Antonin Scalia), relied on the clause (in Article I Section 8) of the Constitution authorizing the regulation by Congress of interstate commerce. Allowing the cultivation of the plant would have an effect on the interstate market of the commodity, the Court held, though by an act of Congress there was not supposed to be any market for that commodity. The Court relied in part on the 1942 precedent of [Wickard v. Filburn](#), in which a unanimous Supreme Court upheld the federal regulation of the amount of wheat a farmer could grow to feed the livestock on his own farm. That came under interstate commerce regulation, the Court ruled, because if the farmer had not grown excess wheat to feed to his livestock, he would have had to buy that amount, and thus his action affected the interstate market in wheat.

Justice Clarence Thomas, registering his dissent in the Raich case, [wrote](#),

They cultivate their cannabis entirely in the State of California — it never crosses state lines, much less as part of a commercial transaction. Certainly no evidence from the founding suggests that "commerce" included the mere possession of a good or some purely personal activity that did not involve trade or exchange for value. In the early days of the Republic, it would have been unthinkable that Congress could prohibit the local cultivation, possession, and consumption of marijuana.

Justice Scalia followed similar reasoning in the 1995 case of *U.S. v. Lopez*, holding with the 5-4 majority in that decision that Congress had no authority to ban the possession of firearms in a "gun-free" school zone, since the mere carrying of a firearm in or within a specified distance of a school building is neither commerce nor an interstate activity. His opposite approach in Raich has been subject to complex legal analysis, but the disparity might not be that difficult to understand. Scalia, who pastimes



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include hunting and smoking cigarettes, likes guns.

He probably doesn't like marijuana.



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