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FILED

DEC 03 1998

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES,

Plaintiff,

v.

CANNABIS CULTIVATORS CLUB, et al.,

Defendants.

and Related Cases.

No. C 98-00085 CRB
C 98-00086 CRB
C 98-00087 CRB
C 98-00088 CRB
C 98-00245 CRB

ORDER IN CASE NO. 98-00086 (Marin
Alliance for Medical Marijuana)

Now before the Court is defendants' motion for reconsideration of the Court's October 13, 1998 Order denying defendants' motion to dismiss. In particular, defendants ask the Court to reconsider its decision denying defendants' "rational basis" challenge to the Controlled Substances Act's prohibition on the manufacture and distribution of marijuana on the ground that the Court does not have jurisdiction to hear such a challenge. After carefully considering the papers submitted by the parties, the motion for reconsideration is DENIED.

To the extent the Court has jurisdiction to hear defendants' rational basis challenge, the Court must nevertheless reject defendants' argument because the Ninth Circuit has previously determined that the Controlled Substances Act's restrictions on the manufacture and distribution of marijuana are rational. See United States v. Miroyan, 577 F.2d 489, 495

For the Northern District of California

1 (9th Cir. 1978). Indeed, the Mirovan court stated that it "need not again engage in the task of
 2 passing judgment on Congress' legislative assessment of marijuana. As we recently
 3 declared, '[t]he constitutionality of the marijuana laws has been settled adversely to [the
 4 defendant] in this circuit.'" Id.

5 Since the Ninth Circuit, and indeed every Circuit that has addressed the issue, has
 6 held that the classification of marijuana as a Schedule I Controlled Substance is rational and
 7 therefore constitutional, defendants' proffered evidence on the medical benefits of marijuana
 8 is an argument that in light of the scientific evidence available today, the continuing
 9 classification of marijuana as a Schedule I drug is irrational; that is, that the government does
 10 not presently have a legitimate interest in prohibiting the medical use of marijuana.

11 No matter how defendants frame their argument, however, it is in essence an
 12 argument that this Court should reclassify marijuana because there is no substantial evidence
 13 to support its current classification. As the Court stated in its October 13, 1998 Order, when
 14 Congress enacted the Controlled Substances Act it

15 established a statutory framework under which controlled substances may be
 16 rescheduled or removed from the schedules all together. See 21 U.S.C. §
 17 811(a). Under this statutory framework, the Attorney General may by rule
 18 transfer a substance between schedules or remove a substance from the
 19 schedules all together. See id. § 811(a). In addition, any interested party can
 20 file a petition with the Attorney General to have substance, including
 21 marijuana, rescheduled or removed from the schedules. See id. The petitioner
 22 may appeal a decision not to reschedule a substance to the courts of appeal.
 23 See 21 U.S.C. § 877; see also Alliance for Cannabis Therapeutics v. Drug
 24 Enforcement Admin., 15 F.3d 1131, 1137 (D.C. Cir. 1994) (upholding
 25 decision not to reschedule marijuana). Review of the Attorney General's
 26 decision as to the classification of a controlled substance is limited to the
 27 District of Columbia Court of Appeals or the circuit in which petitioner's place
 28 of business is located. See 21 U.S.C. § 877.


23 October 13 Order at 8-9. Thus, Congress gave the Attorney General the exclusive authority
 24 to determine the reclassification of marijuana in the first instance, with appeal to the Court of
 25 Appeals. As the Seventh Circuit has held, "[t]he Act authorizes the Attorney General to
 26 reclassify a drug if presented with new scientific evidence. . . . We agree that this
 27 mechanism, and not the judiciary, is the appropriate means by which defendant should
 28 challenge Congress' classification of marijuana as a Schedule I drug." United States v.
Greene, 892 F.2d 455, 455 (7th Cir. 1989); see also United States v. Burton, 894 F.2d 188,

For the People of California

1 191 (6th Cir. 1990) ("it has been repeatedly determined, and correctly so, that
 2 reclassification is clearly a task for the legislature and the attorney general and not a judicial
 3 one"); United States v. Wables, 731 F.2d 440, 450 ("we hold that the proper statutory
 4 classification of marijuana is an issue that is reserved to the judgment of Congress and to the
 5 discretion of the Attorney General"). Accordingly, defendants' motion for reconsideration is
 6 DENIED.

7 IT IS SO ORDERED.

8 Dated: December 3, 1998


 CHARLES R. BREYER
 UNITED STATES DISTRICT JUDGE

For the Honorable District Judge
 of California

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