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MEDICAL USE OF MARIJUANA: 
A LOOK AT FEDERAL & STATE RESPONSES 
TO CALIFORNIA'S COMPASSIONATE 
USE ACT

Allison L. Bergstrom*

INTRODUCTION

A fascinating subject confronting both the medical and criminal law fields is the possible medical use of marijuana. Conflict centers on whether marijuana does, in fact, provide a unique form of pain relief not found from other available drugs. Federal government agencies, including the Food and Drug Administration (FDA) and the Drug Enforcement Administration (DEA), that adamantly oppose the legalization of marijuana for medicinal purposes contend that marijuana does not provide any significant benefit not currently available in legal pain relief alternatives.¹ On the other hand, many prominent physicians and terminally or critically ill patients strongly maintain that smoking limited amounts of marijuana provides relief from nausea and pain that other drugs, including synthetic forms of marijuana, fail to provide.² Additionally, the limited legalization of other "hard drugs" including cocaine, morphine, and methamphetamines, raises the question why the federal government has been reluctant to give marijuana similar regulatory treatment.³

Despite the federal statutory prohibition of marijuana, several states have enacted statutes legalizing marijuana possession and use for limited

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medicinal purposes. In California, the enactment of the Compassionate Use Act (Act) on November 5, 1996, produced a conflict with federal authorities and California physicians, patients, and state law enforcement authorities. Federal authorities threatened to prosecute anyone who violated federal drug laws despite enactment of state statutes legalizing limited marijuana possession and use. A group of physicians and patients who found use of marijuana beneficial for pain control obtained an injunction against the federal government preventing federal agencies from pursuing action against physicians in California who discuss marijuana usage with their patients.

People v. Trippet is the first case in which the Compassionate Use Act was used as an affirmative defense to a marijuana possession charge in California. The Court of Appeals for California, First District, Division 2 held a woman could retroactively apply the Act as a partial defense to a marijuana possession charge. Additionally, the scope of the Act was broadened to include protection against the transportation of marijuana, which was not explicitly addressed in the wording of the Act. The court also recognized two levels of physician participation regarding patient marijuana usage: recommendation or approval. Finally, the court did note that a person was not entitled to an unlimited quantity of marijuana, but rather a quantity sufficient to relieve the patient's pain.

This article provides an overview of the role of marijuana in the medical setting and its implications for the legal environment. The first section outlines the history of marijuana statutes and case decisions which prohibit usage of marijuana for either medicinal or personal reasons. The second section examines the decision in Conant v. McCaffrey, in which a California judge issued an injunction preventing the federal government from prosecuting California residents for violations of the federal drug

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5CAL. HEALTH & SAFETY CODE § 11362.5 (West 1997).
9Id. at 571.
10Id. at 569.
11Id. at 570.
laws in situations which fall under the Act. The third section examines the decision in People v. Trippet, the first case to invoke the Act. The final section discusses the implications of the decision in People v. Trippet and the new boundaries that have been created regarding the legality of marijuana in California.

HISTORY OF MARIJUANA LAW

What is Marijuana and What Does It Do?
Marijuana is derived from the hemp plant that contains the active ingredient delta-9-tetrahydrocannabinol (THC).12 Most marijuana found in the United States has a THC content of less than one percent.13 Higher THC content cannabis derivatives such as hashish are also available, but less common in the United States.14 Users of marijuana, who usually consume it by inhaling THC into the lungs, experience short-term physiological effects such as a slight increase in pulse, decreased salivation, a slight reddening of the eyes, and some impairment of psychomotor control.15 These effects normally subside within two to three hours of inhalation.16 Experts have been split as to the long term effects of marijuana usage. Although some researchers have linked marijuana to negative effects on the body's immune system, chromosomal structure, and testosterone level, the National Commission on Marihuana [sic] and Drug Abuse reported that "no significant physical, biochemical, or mental abnormalities could be attributed solely to [a person’s] marijuana smoking."17 While marijuana use and resulting intoxication could create a dangerous condition, such as during the operation of a motorized vehicle, there has not been a confirmed case of a fatal marijuana overdose.18 Scientific experiments on animals have concluded the lethal dose for marijuana is approximately 40,000 times the amount needed for

14Id.
15Id. at 506.
16Id.
17Id. (citing MARIHUANA: A SIGNAL OF MISUNDERSTANDING, FIRST REPORT OF THE NATIONAL COMMISSION ON MARIHUANA AND DRUG ABUSE 61 (Mar. 1972).
18Ravin, 537 P.2d at 508.
intoxication. In addition to the active ingredient THC, marijuana contains over 400 other substances including over sixty cannabinoids.

**Historical Perspective of Marijuana Law**

Marijuana has not always been illegal in the United States. Marijuana and the hemp plant from which it is derived, have been used for purposes such as an analgesic and as a source of paper and textiles. For example, several historical documents, including the Declaration of Independence, were written on hemp. In the nineteenth century, marijuana was listed in the United States Dispensatory and was considered "a drug that has special value in some morbid conditions and the intrinsic merit and safety of which entitles it to a place once held in therapeutics." Until 1937, marijuana was found in drug stores alongside other common medications.

In 1937, however, due to pressures from the cotton, timber, and chemical industries, as well as from new federal drug control agencies, a stamp tax was introduced which made it almost financially impossible to procure, possess, or use marijuana without criminal penalties. The purpose of the tax was to raise revenue from marijuana traffic and to "discourage the current and widespread undesirable use of marihuana [sic] by smokers and drug addicts." There were two main parts to the Act: (1) an occupational tax for those who dealt marijuana, and (2) a tax on transfers of marijuana. Any person who dealt marijuana had to pay an annual tax at a varying rate depending on which role the person played in the process; such roles included: importers, producers, physicians,

19 Id.

20 Seeley v. State, 940 P.2d 604, 607 (Wash. 1997) (Cannabinoids, of which THC is one, are the active ingredients in marijuana.).


22 Bergoffen & Clark, supra at 21, at 120.

23 Grinspoon & Bakalar, supra note 21, at 120 (quoting Dr. J.B. Mattison, Cannabis Indica as an Anodyne and Hypnotic, St. Louis Med. Surg. J. 61, 266 (1891)).

24 Id.


26 Bergoffen & Clark, supra at 21.


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There was also an "other" category which taxed persons not falling into one of the pre-approved categories. At the time the tax was paid, the taxpayer was required to register his name and place of business at the nearest Internal Revenue Service (IRS) office. The transfer tax provisions imposed a tax on all transfers of marijuana at an amount determined by whether the transferee had registered with the IRS. Registered transferees had to pay a one dollar fee per ounce, whereas non-registered transferees had to pay a $100 fee per ounce. Every transfer had to be carried out on a written order form showing the name and address of the transferor and transferee, their registration numbers, and the amount of marijuana transferred.

Simultaneous to the Marijuana Tax Act was the existence of the Narcotic Drugs Import and Export Act. This act covered the illegal importation and smuggling of marijuana, set penalties for such illegal importation and smuggling, and made unexplained possession of marijuana sufficient evidence for a conviction unless the defendant could sufficiently explain the reason for the possession to a jury. Additionally, all states had statutes which made the possession of any quantity of marijuana a crime.


The simultaneous existence of the Marijuana Tax Act and the National Drug Import and Export Act created a "catch 22" for marijuana users. Failure to comply with the Tax Act effectively created a per se violation of both federal and state marijuana laws; while complying with the Tax Act resulted in a condition where the value of the marijuana was less than the total tax costs. The judicial system confronted this problem in Leary

29 See id. §§ 4751(1)-(4), (6).
30 Id.
31 See id. § 4753.
32 See id. §§ 4741-4742.
33 See id. § 4741.
34 See id. § 4742.
36 See id.
In 1965, Dr. Timothy Leary was indicted and later convicted for illegally smuggling marijuana into the United States and for failure to pay the transfer tax.\textsuperscript{38} Dr. Leary argued had he obtained the order form for the transfer tax, he would have identified himself as an unregistered transferee who also had not paid the occupational tax.\textsuperscript{39} These facts "would surely [have] prove[n] a significant 'link in the chain' of evidence tending to establish his guilt' under the state marihuana [sic] laws then in effect."\textsuperscript{40} The court agreed with Leary's contention that had he complied with the provisions of the Tax Act, it would have amounted to self-incrimination under state narcotics laws.\textsuperscript{41} Additionally, the Supreme Court held the presumption under the Narcotic Drugs Import and Export Act, namely that the majority of marijuana possessors knew the marijuana was grown outside the United States, and thus, was illegally imported into the country, was invalid under the Due Process Clause.\textsuperscript{42} Thus, both the Marijuana Tax Act and the Narcotic Drugs Import and Export Act were found to be unconstitutional.

In response to the \textit{Leary v. United States} decision, Congress passed the Controlled Substances Act of 1970, which placed all controlled substances into five schedules of varying restrictions.\textsuperscript{43} The restrictions covered the manufacturing, distribution, and usage of all controlled substances.\textsuperscript{44} Registration requirements existed for physicians, pharmacists, and manufacturers of controlled substances.\textsuperscript{45} Marijuana was placed in Schedule I, which prohibited any use or distribution of the substance unless it was part of an FDA pre-approved research study conforming to stringent storage and record keeping requirements.\textsuperscript{46} Schedule I drugs were so classified if they:

1) had a high potential for abuse,
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2) had no currently acceptable medical or treatment use in the United States, and
3) had no accepted safety for use in medically supervised treatment.\(^{47}\)

Under the Act, marijuana could not be prescribed legally by a physician nor could a pharmacist fill a marijuana prescription unless the research exception was granted.\(^{48}\)

Marijuana Use Is Not a Fundamental Right, Except in the Home?

Despite the statutory ban on marijuana use, there have been several cases which have attempted to assert the federal government’s actions of placing marijuana into Schedule I violate certain individual fundamental rights. However, courts overwhelmingly have refused to recognize any fundamental right to smoke marijuana for any reason. In State v. Smith, the Washington Supreme Court held “[t]he right to smoke marijuana is not fundamental to the American scheme of justice, it is not necessary to ordered liberty, and it is not within a zone of privacy.”\(^{49}\) Other courts have agreed marijuana possession is not a fundamental right guaranteed by the United States Constitution.\(^{50}\)

Ravin v. State was the only example of a court’s recognition of any fundamental right regarding marijuana.\(^{51}\) Ravin, arrested for marijuana possession in violation of a state statute, attacked the constitutionality of the statute by arguing his right to privacy had been violated.\(^{52}\) He contended his fundamental right to privacy was broad enough to include the possession of marijuana for personal use.\(^{53}\) The court noted “the right to privacy may afford less than absolute protection to the ‘ingestion of

\(^{47}\)See id. at § 812(b)(1).

\(^{48}\)Id.


\(^{52}\)Id. at 496.

\(^{53}\)Id. at 497.
food, beverages or other substances." The court continued by stating that "there is not a fundamental constitutional right to possess or ingest marijuana in Alaska." Additionally, the court noted the state had a strong interest in protecting its citizens from impaired drivers who had used marijuana. Despite these findings, the court continued its analysis by looking into the distinctive nature of one’s home as a place where one’s privacy accords special protection. Although the court noted the state needed a control mechanism for marijuana in as far as it applies to the safety of the public, "given the relative insignificance of marijuana consumption as a health problem in our society at present, we do not believe that the potential harm generated by drivers under the influence of marijuana, standing alone, creates a close and substantial relationship between the public welfare and control of ingestion of marijuana or possession of it in the home for personal use." The court went on to conclude that "no adequate justification for the state’s intrusion into the citizen’s right to privacy by the prohibition of possession of marijuana by an adult for personal consumption in the home has been shown."

Marijuana as Medicine
Although many of the legal battles surrounding marijuana have involved the recreational use of the drug, many people also argued marijuana provided a form of pain relief not found in other medications. In State v. Diana, a man convicted of marijuana possession was allowed to establish that marijuana had a beneficial effect on the symptoms of multiple sclerosis. The defendant argued his use of marijuana was medically necessary and justified his possession. The appeals court noted only one other case existed where the defense of medical necessity was applied to marijuana possession. In United States v. Randall, the defendant had

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54 Id. at 501 (citing Gray v. State, 525 P.2d 524, 528 (Alaska 1974) which stated: "But the right to privacy is not absolute. Where a compelling state interest is shown, the right may be held to be subordinate to express constitutional powers such as the authorization of the legislature to promote and protect public health and provide for the general welfare.")
56 Id.
57 Id. at 503.
58 Id. at 511.
59 Id.
61 Id. at 1315.
62 Id. at 1316.
grown marijuana plants for treating his glaucoma. The court concluded Randall’s interest in preserving his sight outweighed the government’s interest in outlawing marijuana. The court also placed special importance on Randall’s right to “preserve and protect his own health and body.” More recently, in Jenks v. State, a Florida couple was charged with cultivating marijuana plants in their home. Both the man and the woman were suffering from AIDS-related conditions which produced rapid weight loss and severe nausea. At trial, the couple’s physician testified they suffered from severe debilitating nausea for which only marijuana could provide relief. The physician also testified he would have prescribed marijuana if he legally could have done so. The court found the couple to have successfully argued the defense of medical necessity.

Despite patients suffering from debilitating illnesses praising the medical benefits of marijuana, it continues to be classified as a Schedule I drug. However, the medicinal benefit of the marijuana component THC was acknowledged in 1985 when the Food and Drug Administration approved a synthetic pill version of THC, commonly known under its brand name of Marinol. Marinol was approved for use in the treatment of vomiting and nausea, and its effects were purported to be identical to that of cannabis in proportionate amounts. In 1991, the FDA expanded Marinol use to include treatments to combat rapid weight loss in AIDS patients.

Synthetic THC has not been an answer for all. Many patients have contended the natural version of cannabis provided significantly better effects in controlling pain and nausea. Problems with the synthetic THC

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63 Id. (citing United States v. Randall, 104 Daily Wash. L. Rptr. 2249 (D.C. Super. Ct. 1976)).
64 Id.
65 Jenks v. State, 582 So. 2d 676, 677 (Fl. Dist. Ct. App. 1991); for another discussion of marijuana use for glaucoma, see also Florida in State v. Mussika, 14 F.LW. 1 (17 Cir. Ct. 1933).
66 Id.
67 Id. at 678.
68 Id.
69 Id. at 679.
71 Id.
have included the difficulty for some patients in taking the pill orally and objections to the single immediately acting dosage of THC, rather than receiving the use of a method of delivering that produces effects gradually. Additionally, the cost of Marinol was prohibitive for many of the patients who would have benefitted from its use. Therefore, many patients have continued to use marijuana illicitly, often with the implicit approval of their treating physicians.

Both before and after the approval of Marinol, efforts were undertaken to declassify marijuana as a Schedule I drug. The first effort to reschedule marijuana started in 1972, when the National Organization for the Reform of Marijuana Laws (NORML) filed a petition with the Bureau of Narcotics and Dangerous Drugs (BNDD) requesting marijuana be removed from the Controlled Substances Act altogether, or for marijuana to be reclassified as a Schedule V drug, the least restrictive category. Courts have heard reclassification petitions a total of five times. Probably the closest marijuana proponents have come to reclassifying marijuana occurred in 1988, when NORML and other pro-marijuana organizations presented evidence about the purported medical benefits of marijuana before Administrative Law Judge Young. Judge Young concluded marijuana had been accepted as a medically effective and safe form of relieving distress among very sick patients. Therefore, he concluded the Drug Enforcement Administration would be acting in an “unreasonable, arbitrary, and capricious” manner if it continued to deny marijuana access to very ill patients. Despite this ruling and recommendation, the DEA retained marijuana as a Schedule I drug.

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74 Id.
75 Id.
76 Id.
81 Id.
The most recent attempt at marijuana rescheduling came in 1994 in *Alliance for Cannabis Therapeutics v. Drug Enforcement Administration*. By this time, rescheduling efforts had been scaled back to requesting only that marijuana be reclassified from Schedule I to Schedule II. The court used a five part test to determine whether marijuana should be rescheduled:

1) whether the drug has a known and reproducible chemistry,
2) whether adequate safety studies were performed,
3) if there were well-controlled and adequate studies showing marijuana's efficacy,
4) whether marijuana was accepted by qualified experts, and
5) whether scientific evidence of marijuana's efficacy was widely available.

Once again, the court denied the petitioner's request for a scheduling change, because marijuana had no "currently accepted medical use" as defined by the five criteria.

**CALIFORNIA'S COMPASSIONATE USE ACT**

The Compassionate Use Act (Act) was a 1996 ballot initiative which sought to provide legal protection for severely ill patients who found marijuana useful for reducing pain and other ailments. Prior to the Act,
several prominent physicians had acknowledged they had recommended marijuana to their patients for many years. Many medical professionals believed marijuana was effective for relieving pain and nausea from such severe illnesses and conditions as breast cancer, AIDS/HIV, glaucoma, epilepsy, multiple sclerosis, paraplegia, and quadriplegia. Also, the procurement of marijuana had become quite public, an example of which was the Cannabis Buyers Club in San Francisco which had sold marijuana for medicinal purposes. In August of 1996, the Cannabis Buyers Club was raided by state narcotics agents and was permanently shut down.

The Act was overwhelmingly passed on November 5, 1996, and took effect at 12:01 a.m. on November 6, 1996. The statute provided California residents protection from state criminal prosecution for medical marijuana possession, cultivation, and usage. The Act also granted protection from state criminal prosecution to physicians who recommend or approve marijuana use for their patients. The scope of the Act was

or sanction. (C) To encourage the federal and state governments to implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana. (2) Nothing in this act shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, nor to condone the diversion of marijuana for nonmedical purposes. (e) Notwithstanding any other provision of law, no physician in this state shall be punished, or denied any right or privilege, for having recommended marijuana to a patient for medical purposes. (d) Sec. 11357, relating to the possession of marijuana, and Sec. 11358, relating to the cultivation of marijuana, shall not apply to a patient, or to a patient's primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician. (e) For the purposes of this section, "primary caregiver" means the individual designated by the person exempted under this act who has consistently assumed responsibility for the housing, health, or safety of that person."

91 Lungren v. Peron, 70 Cal. Rptr. 2d 20, 23 (Cal. Ct. App. 1997). In December of 1997, the Court of Appeals upheld the injunction, stating the Compassionate Use Act did not exempt a person who sells, provides, or gives away marijuana to a patient or primary caregiver. Id. at 30. Furthermore, organizations which sell marijuana commercially, such as the Cannabis Buyers’ Club do not qualify as a primary caregiver under the Act. Id.
92 Conant, 172 F.R.D. at 686.
93 CAL. HEALTH AND SAFETY CODE § 11362.5 (d) (West 1997).
94 See id. §11362.5 (c).
strictly medicinal, and it did not grant any right to use, possess, or cultivate marijuana for nonmedicinal, recreational reasons.\textsuperscript{95}

Following the passage of the Act, federal officials including Barry McCaffrey of the Office of National Drug Control Policy, and Thomas Constantine of the Drug Enforcement Administration, issued the Administration's Response to the Passage of California Proposition 215 and Arizona Proposition 200 (Reponse). These officials condemned the passage of the Act suggesting that any physician prescribing or other persons using marijuana could still be subject to criminal prosecution under federal laws regulating marijuana.\textsuperscript{96} In addition to criminal prosecution, the Response threatened physicians who violated the regulations regarding Schedule I substances with the possibility of DEA registration revocation and denial of Medicare reimbursement.\textsuperscript{97}

**CALIFORNIA VERSUS THE FEDERAL GOVERNMENT: CONANT v. MCCAFFREY**

After the passage of the California legislation with the ensuing negative federal response, physicians, patients, and nonprofit organizations filed a complaint for declaratory and injunctive relief against the United States. The complaint alleged the federal medical marijuana policy violated the First Amendment rights of the physicians and patients who may potentially communicate with each other about marijuana's possible medical benefits for certain serious medical conditions.\textsuperscript{93}

The plaintiffs, ten physicians, five patients, and two nonprofit organizations, filed the complaint in response to the federal government's

\textsuperscript{92}See id. §11362.5 (b) (2).

\textsuperscript{93}Response, supra note 6, at 6164. (The statement begins: "The recent passage of propositions which make dangerous drugs more available in California and Arizona poses a threat to the National Drug Control Strategy goal of reducing drug abuse in the United States ").

\textsuperscript{97}Id. "Department of Justice's (DOJ) position is that a practitioner's action of recommending or prescribing Schedule I controlled substances is not consistent with the 'public interest' (as that phrase is used in the federal Controlled Substances Act) and will lead to administrative action by the Drug Enforcement Administration to revoke the practitioner's registration. DOJ and HHS will send a letter to national, state, and local practitioner associations and licensing boards which states unequivocally that DEA will seek to revoke the DEA registrations of physicians who recommend or prescribe Schedule I controlled substances." Id.

reaction to the passage of the Act. The patients were concerned that physicians would be afraid to give patients their best medical judgment regarding marijuana's potential use in alleviating pain and treating disease. Thus, the fear of physician self-censorship would undermine the integrity of the physician-patient relationship. Also at issue was the "chilling" effect the government's reactions would have on physician-patient communication.

The government filed a motion to dismiss the complaint based on a letter from the Assistant Secretary for Health and the Acting Assistant Attorney General clarifying the government's marijuana policy. This clarification to the Response stated that physicians could discuss medical marijuana with their patients, but could not "intentionally provide their patients with oral or written statements in order to enable them to obtain controlled substances in violation of federal law." This clarification was intended to show the federal government did not intend to impose a "gag rule" limiting physicians from appropriately communicating their best professional judgments to their patients. Despite the issuance of the clarification, federal officials continued to threaten sanctions against physicians.

The District Court for the Northern District of California held the federal government's medical marijuana policy was "impermissibly vague" and may have infringed on the plaintiffs' First Amendment rights, resulting in the interference of the physician-patient relationship.

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100 Conant, 172 F.R.D. at 686.
101 Id.
102 Id.
103 Id. at 687.
104 Id. (citing Declaration of Kathleen Moriarty Mueller. Mueller, the Assistant Secretary for Health and the Acting Assistant Attorney General)
105 Conant, 172 F.R.D. at 688 (citing Mueller declaration).
106 Id. (In April of 1997, Defendant McCaffrey distributed materials at the American Methadone Treatment Association conference which included the December 30, 1996 Administration Response to Proposition 215, yet made no mention of the subsequent clarification. Furthermore, it "unequivocally stated that the administration would seek to revoke practitioners' licenses, prevent practitioners from participating in Medicare and Medicaid programs, and impose criminal sanctions on practitioners for 'recommend[ing]' marijuana to their patients." The petitioners also presented the court with a series of press reports which presented varying interpretations of the government's marijuana policy. Id. 172 F.R.D. at 688).
107 Id. at 685.
court held the federal government’s statements about the passage of the Act were vague and ambiguous, causing physicians to censor speech that would otherwise be protected under the First Amendment.\textsuperscript{163} Since this self-censored "chilled" speech violated a First Amendment right, irreparable injury occurred.\textsuperscript{169} However, the court did note the First Amendment did not protect all forms of speech; namely, it did not cover speech that was intertwined with criminal activity.\textsuperscript{110} Therefore, the court found it necessary to establish a bright line as to where protected speech ended and illegal conduct began.\textsuperscript{111} The court determined the bright line would be crossed when a physician participated in criminal conduct.\textsuperscript{112}

The court also found there were serious questions as to whether the federal government had the authority to sanction physicians for conduct relating to marijuana under either the Controlled Substances Act\textsuperscript{113} or the Medicare statute.\textsuperscript{114} The court concluded the government could not take action against physicians for recommending marijuana unless it could show there was good faith evidence of actual criminal activity.\textsuperscript{115} The court then issued a preliminary injunction which limited the federal government’s ability to prosecute physicians for criminal offenses, revoke prescription licenses, or prevent their participation in Medicare or Medicaid reimbursement programs.\textsuperscript{116}

\textsuperscript{163}Id. at 696.
\textsuperscript{169}Id. at 697 ("The loss of First Amendment Freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." Elrod v. Burns, 427 U.S. 370, 373 (1976); American-Arab Anti-Discrimination Comm. v. Reno, 70 F.3d 1045, 1058 (9th Cir. 1995).
\textsuperscript{110}Conant, 172 F.R.D. at 698 (citing Giboney v. Empire Storage & Ice Co., 336 U.S. 490, 498 (1949); United States v. Mendelsohn, 896 F.2d 1183 (9th Cir. 1990)).
\textsuperscript{111}Id.
\textsuperscript{112}Id. at 698.
\textsuperscript{113}Id. at 699 (citing 21 U.S.C. § 801-904 (1996 Supp.), § 824 provides for the revocation of registrations under certain conditions. Prior to 1984, the DEA could suspend, deny, or revoke a physician’s prescription registration for three reasons: 1) falsification of an application to dispense, distribute, or manufacture a controlled substance, 2) a felony conviction related to a controlled substance, or 3) denial, revocation, or suspension of a state license or registration). See 21 U.S.C. § 824(a)(1)-(3). In 1983, the Dangerous Drug Diversion Control Act created a fourth reason: violation of the public interest. See 21 U.S.C. § 824(a)(4) (1981); Trawick v. Drug Enforcement Admin. 861 F.2d 72, 75 (4th Cir. 1988).
\textsuperscript{114}Conant, 172 F.R.D. at 699 (citing 42 U.S.C. §§ 1301-1324 (1996 Supp.); Sec. 1320 includes provisions for excluding physicians from Medicare program participation under certain conditions).
\textsuperscript{115}Id. at 699.
\textsuperscript{116}Id.
Following the sanctions imposed on the federal government in *Conant v. McCaffrey*, there were many questions as to how far the Act extended medical marijuana rights to physicians in California. More significantly, there had been no indication as to how far these rights would extend to patients who chose to use marijuana as a method of pain or nausea relief. The first case to address the patient’s medical marijuana rights was *People v. Trippet*.

In *Trippet*, the court held a defendant previously convicted of marijuana possession could invoke the Compassionate Use Act as a partial defense to her conviction.\(^7\) The court also held there were two tiers of physician involvement: recommendation and approval, with approval being a less formal act than recommendation.\(^8\) The court also expanded the protections under the act to include marijuana transportation, which was not expressly dealt with by the statute.\(^9\) Finally, the court concluded a right to marijuana for medicinal use did not equate to a right to an unlimited quantity of marijuana.\(^10\)

The defendant in *Trippet* was arrested for marijuana transportation following a traffic stop.\(^11\) She had approximately two pounds of marijuana which she contended was sometimes used for migraine pain relief.\(^12\) Her defense of medical necessity was not allowed at trial, and she was convicted of marijuana possession on December 1, 1995.\(^13\) She filed her appeal on November 4, 1996, one day before the passage of the

\(^{117}\) *People v. Trippet*, 66 Cal. Rptr. 2d 559, 571 (Ct. App. 1997).

\(^{118}\) *Id.* at 569.

\(^{119}\) *Id.* at 570-71.

\(^{120}\) *Id.* at 570.

\(^{121}\) *Id.* at 562.

\(^{122}\) *Trippet*, 66 Cal. Rptr. 2d at 562. The vehicle was pulled over for a lack of a license plate lamp light. The car was searched because the officer noticed a strong odor of marijuana coming from the car. Two bags of a green leafy substance, later shown to be marijuana, and several hand-rolled cigarettes were confiscated.

\(^{123}\) During trial, in which the defendant represented herself, the defendant presented a psychiatrist and self proclaimed “drug researcher” who testified during an evidentiary hearing about the medical use of marijuana for migraines and other conditions. However, because the defendant could not otherwise establish the required elements of a medical necessity defense, all evidence, including the psychiatrist’s testimony, was excluded by the trial court. *Id.*
Act. However, she made no mention of the Act in her brief. Following oral arguments in April 1997, the court granted additional time for briefing as to the applicability of the Act to the defendant’s case.

The first issue the Trippet court addressed was whether the common law medical necessity defense was properly excluded at the defendant’s trial. Although the defense of “necessity” was recognized in California, only one previous case involved the defense of “medical necessity.” To sustain her defense of medical necessity, the defendant was required to establish six elements:

1) she transported and possessed marijuana to prevent a significant evil,
2) she had no adequate alternative to marijuana,
3) the harm from possessing and transporting marijuana was not greater than the harm avoided,
4) the defendant believed her actions were necessary to prevent a greater harm,
5) her belief was objectively reasonable, and
6) she did not contribute to the creation of the emergency situation.

To exclude her defense of medical necessity, the court had to look no further than the second requirement, that the defendant have no alternative than to possess and transport marijuana since she had the alternative of using Marinol.

The defendant also contended her arrest infringed upon her First Amendment right of the free exercise of religion. The court, however, held the religion neutral laws governing marijuana did not infringe upon

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124 Id.
125 Id.
126 The Attorney General briefly noted the Act, but did not address its relevance to the case.
127 At this time, the defendant had retained counsel, who initially argued that the Act was not applicable to the defendant’s fact situation. Later, that position was changed and her counsel conceded that the Act may indeed apply. Trippet, 66 Cal. Rptr. 2d at 562.
128 Id. at 563.
129 Id. (citing People v. Forster, 29 Cal. App. 4th 1746, 1759 (1994), which assumes a medical necessity defense could be valid, but does not discuss it any further).
130 Id. (citing People v. Pena, 197 Cal. App. 3d Supp. 14, 25-6 (1983)).
131 Id. The court determined that Marinol “does afford [appellant] some relief,” and therefore, was a “‘reasonable, legal alternative to violating the law’ by possessing and transporting marijuana.” Id.
132 Id., 66 Cal. Rptr. 2d at 563.
the defendant’s religious rights or beliefs. Further, the defendant did not exhibit a strongly held religious belief, which was required to invoke a religious freedom defense.

The court then discussed the applicability of the Act to the defendant’s appeal. The first issue was the retroactivity of the Act, as Trippet had been convicted of marijuana transportation almost one year before the Act took effect. Her appeal was filed one day before the Act was enacted, and her brief made no mention of the Act as a possible defense. Nevertheless, the court found the Act was available retroactively to the defendant because her appeal was still pending. The court noted the legislature had presumed that intervening statutory amendments decriminalizing formerly illegal conduct would extend to defendants with pending appeals.

The next issue before the court was the applicability of the Act to the defendant’s factual situation. The court noted the rationale behind the Act was to provide relief for those in severe pain. The court also noted there was no indication of a legislative intent of the Act to substantially alter California’s existing drug laws; therefore, the court would not supersede existing legislation prohibiting persons from engaging in

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\(^{133}\) Trippet, 66 Cal. Rptr. at 565-65. The defendant attempted to argue under Frazee v. Illinois Dep’t of Employment Security, 489 U.S. 829, 830-34 (1989), that her actions only had to be religiously motivated and not a part of a recognized religious group. However, the court held under the implicit standard in Frazee, the defendant must have had a strongly held religious belief to invoke the First Amendment. The defendant never made a showing as to what her religious beliefs were either at trial or on appeal. Id. at 565-66.

\(^{134}\) Id. at 566.

\(^{135}\) Trippet, 66 Cal. Rptr. 2d at 562.

\(^{136}\) Id.

\(^{137}\) Id. at 567.

\(^{138}\) Id. (citing People v. Rossi, 18 Cal. 3d 295, 299-302 (1976), which relied on In re Estrada, 63 Cal. 2d 740 (1965) holding “a superseding reduction in the punishment accorded a particular violation could be applied retroactively; ... ‘the common law principles reiterated in Estrada apply a fortiori when criminal sanctions have been completely repealed before a criminal conviction becomes final’”). See also People v. Babylon, 39 Cal. 3d 719, 722 (1985) (stating “... absent a saving clause, a criminal defendant is entitled to the benefit of a change in the law during the pendency of his appeal ... ”).

\(^{139}\) Trippet, 66 Cal. Rptr. 2d at 567.

\(^{140}\) Id. at 567.
conduct dangerous to others, or legislation prohibiting marijuana use for nonmedical purposes.\textsuperscript{141} Deferring to the legislature, the court rejected the defendant's assertion that the Act provided wide latitude regarding the possession, transportation, and procurement of marijuana in California.\textsuperscript{142}

The court then addressed two background issues. First, the court looked at the amount of marijuana in the defendant's possession.\textsuperscript{143} In California, persons who possessed more than 28.5 grams of marijuana faced more severe punishment, including possible imprisonment, than those who possessed less than that amount.\textsuperscript{144} The defendant had approximately two pounds of marijuana, more than thirty times the trigger amount for the higher penalty.\textsuperscript{145}

Second, because the defendant admitted her marijuana use sometimes related to her relief from migraine pain, but that other times the use was related to "spiritual purposes", the court concluded the defendant could only rely on the Act as a partial defense to the charges.\textsuperscript{146} The court, having already found the defendant's defense of religious freedom had failed, found the Act could only be invoked in as far as her marijuana use related to her migraines, and not to her religious or spiritual beliefs.\textsuperscript{147}

The court then considered to what extent the defendant was entitled to a partial defense under the Act.\textsuperscript{148} The court stated the critical factor was whether the defendant's marijuana use was tied to the recommendation or approval of a physician.\textsuperscript{149} The defendant could not

\textsuperscript{141}Id. at 567-8 (citing CAL. HEALTH & SAFETY CODE §11362.5 (b) (2) (West 1997)). The statute's drafters did not envision a significant change in the existing marijuana laws. While marijuana plants may be grown for one's own personal use, police officers could still be able to arrest those who grow too much or attempt to sell it to others. Police are still able to arrest anyone for marijuana offenses. This statute simply gives those arrested a defense in court if they can prove the marijuana use was in conjunction with a physician's approval. Id. at 568.
\textsuperscript{142}Id. at 568 ("To hold as she effectively urges would be tantamount to suggesting that the proposition's drafters and proponents were cynically trying to 'put one over' on the voters and that the latter were not perceptive enough to discern as much.").
\textsuperscript{143}Id.
\textsuperscript{144}Trippet, 66 Cal. Rptr. at 568 (citing CAL. HEALTH & SAFETY CODE § 11357 and § 11360) (West 1997).
\textsuperscript{145}Id. The court assumed as true the Attorney General's assertion that this amount of marijuana would have created between 500 and 900 joints. Trippet, 66 Cal. Rptr. 2d at 568 n. 9.
\textsuperscript{146}Id. at 568.
\textsuperscript{147}Id. at 568-9. At the preliminary hearing, the arresting officer testified that when he asked the defendant how much marijuana she smoked, her reply was that she smoked as much as she could, she cooked with it, and did everything else she could do with marijuana. Id. at 569 n. 11.
\textsuperscript{148}Trippet, 66 Cal. Rptr. 2d at 569.
\textsuperscript{149}Id.
show that marijuana had been recommended to her by her physician, because, at an evidentiary hearing, her physician flatly denied recommending marijuana to the defendant. However, the court found, based on the physician's testimony, he may have implicitly approved the use of marijuana for the defendant's migraines. The court determined the terms "recommendation" and "approval" denoted slightly different levels of action, and "approval" was a slightly less formal act than "recommendation." Because the record was incomplete as to whether the defendant's psychiatrist-physician approved, or another physician had either approved or recommended marijuana, the court held open the possibility the defendant could show some physician either recommended or approved marijuana for her migraines.

The court then stated that even in the face of physician recommendation or approval, the defendant could not possess an unlimited quantity of marijuana. "The statute certainly does not mean, for example, that a person who claims an occasional problem with arthritis pain may stockpile one hundred pounds of marijuana just in case it suddenly gets cold." The level of marijuana held to be acceptable was an amount reasonably related to a patient's current medical needs. The factual determination as to what constituted a reasonable amount would come in part from the nature of the physician recommendation or approval, such as whether the physician suggested a certain frequency or dosage. The final issue addressed by the court was whether the transportation of marijuana was also covered under the Act. The Act only specified two types of activities relating to medical marijuana: possession and

150 Id.
151 Id. At the trial court, the defendant testified outside the jury that she thought she had "a valid verbal prescription" from her psychiatrist and that he "recommend[ed] marijuana to [her] and he would oversee it if the law allowed him to do so." Id. at 569.
152 Trippet, 66 Cal. Rptr.2d at 569.
153 Id. at 569-70 (The psychiatrist also testified that he did not think he was the defendant's only physician).
154 Id. at 570 ("The ballot arguments of the proponents ... are simply inconsistent with the proposition that either the patient or the primary caregiver may accumulate indefinite quantities of [marijuana]."
155 Id.
156 Id.
157 Trippet, 66 Cal. Rptr. 2d at 570.
158 Id.
The court noted that generally, exceptions to statutes are not created in cases where the statutes specifically spelled out the types of conduct covered. Therefore, the defendant should have known the Act did not explicitly cover the transportation of marijuana. The court stated, however, the Act might be interpreted more liberally when there were companion charges covered under the Act. If the transportation of marijuana continued not to be covered under the Act, an asinine result might follow. "[T]he voters could not have intended that a dying cancer patient’s ‘primary caregiver’ could be subject to criminal sanctions for carrying otherwise legally-cultivated and possessed marijuana down a hallway to the patient’s room." The court, however, did not provide that all transportation was covered under the Act. Rather, the test to be used was "whether the quantity transported and the method, timing and distance of the transportation are reasonably related to the patient’s current medical needs." Thus, the defendant was required to show transporting two pounds of marijuana met this test. The court then vacated and remanded the defendant’s case to the trial court for additional proceedings consistent with the court’s conclusions.

THE IMPACT OF THE TRIPPET DECISION ON THE SCOPE OF THE COMPASSIONATE USE ACT

The Retroactivity Issue
Not only does the California legislation affect future marijuana cases, but it allows any person with a pending marijuana conviction to invoke the Act as a partial or complete affirmative defense on appeal. In People v. Trippet, the defendant had been convicted of marijuana possession and

159 Id. (citing CAL. HEALTH & SAFETY CODE § 11357, § 11358) (West 1997).
160 Id.; see People v. Municipal Court, 20 Cal. 3d 523, 532 (1978).
161 Trippet, 66 Cal. Rptr. 2d at 570. The defendant argued that the Act impliedly provided a defense to the marijuana transportation charge as well, and that "transporting [marijuana] is a necessity as a matter of law." However, the court declined to extend transportation protection absolutely. Id. at 570.
162 Id. at 571.
163 Id.
164 Id.
165 Id.
166 Id.
167 Trippet, 66 Cal. Rptr. 2d at 571.
transportation almost one year prior to the passage of the Act.\textsuperscript{168} Additionally, briefing for the appeal was completed one day before the passage of the Act, with no mention of the Act’s applicability either for or against the defendant.\textsuperscript{169}

The court concluded, and the California Attorney General conceded, that absent wording to the contrary, the legislature, should be presumed to have extended to defendants whose appeals are pending, the benefits of intervening statutory amendments which decriminalize formerly illicit conduct or reduce the punishment for acts which remain unlawful.\textsuperscript{170}

The impact of retroactivity would provide relief for those defendants with pending marijuana convictions. For many, it would provide a new defense for crimes occurring before the passage of the Act; in other words, for acts that were illegal when they occurred. Although it is unknown exactly how many defendants would be able to apply the Act, what is known is that of all narcotics offenses, marijuana crimes are the most frequently prosecuted and convicted.\textsuperscript{171} Additionally, during the 1990s, the number of marijuana possession and transportation convictions has steadily increased every year.\textsuperscript{172} Should prosecutors, law enforcement officials, and judges experience increased volumes of marijuana appeals, there may be greater consideration taken before prosecuting future marijuana cases, should the factual situations produce murky waters surrounding the applicability of the Act. Therefore, the retroactivity of this Act could substantially change the landscape of both marijuana conviction appeals as well as future marijuana prosecutions.

The Court’s Distinction Between Approval and Recommendation

The court in \textit{Trippet} went to great lengths to distinguish the level of physician involvement between that of “approval” and that of “recommendation.” The Act states, in part, that possession and cultivation of marijuana will be protected against criminal prosecution if it is used for personal medical purposes with “the written or oral recommendation or

\textsuperscript{168}Id. at 562.
\textsuperscript{169}Id.
\textsuperscript{170}Id. at 567.
\textsuperscript{171}Id.
\textsuperscript{172}Trippet, 66 Cal. Rptr. 2d at 567.
approval of a physician."\textsuperscript{173} The court noted approval involves lesser involvement than recommendation, yet the court never expressly defined what constituted the act of approval versus the act of recommendation. The court also did not give any boundaries as to what action on the part of a physician would constitute the lower threshold approval standard. For example, there is no indication a physician would have to utter the words "I approve of your marijuana use (for a particular medical condition)." The question remains open as to whether a physician's tacit approval, perhaps through a simple nod in response to a patient's stated intention to use marijuana, would meet the threshold requirement for approval.

At the upper end of the physician action spectrum, recommendation must stop short of an actual prescription. Federal law still states physicians are not permitted to indicate on a prescription pad the use of marijuana in its natural form.\textsuperscript{174} However, the California statute does permit a "written" recommendation of marijuana.\textsuperscript{175} The logical question which arises from this nomenclature is whether future courts will choose to establish a bright line between a recommendation written on a blank pad of paper and a recommendation that happens to be on a prescription pad. Although this distinction may not be a current issue for debate, should physician recommendation or approval of marijuana increase over time, thus creating increased demand, the question becomes whether dispensaries of marijuana may require solid evidence of physician recommendation through a written "prescription."\textsuperscript{176} Although such prescriptions would not be tracked by state or federal authorities as are other regulated drugs, the act of virtually writing a "prescription" would effectively contradict the federal statutory language prohibiting such physician activity.

Not only are physician prescriptions still illegal under the Act, but evidence still exists that any written statement may violate the federal drug policy. Referring back to Conant v. McCaffrey, permissible behavior

\textsuperscript{173} CAL. HEALTH AND SAFETY CODE § 11362.5 (West 1997).
\textsuperscript{175}CAL. HEALTH AND SAFETY CODE § 11362.5 (d) (West 1997).
\textsuperscript{176} Although private dispensaries of marijuana have been shut down, there has been talk of publicly run dispensaries. County Supervisors in San Mateo County, California unanimously agreed to craft a proposal to dispense contraband marijuana for medicinal use at public clinics while maintaining a ban on private cannabis clubs. Plans for First Public Pot Clinic In the Pipeline, SAN JOSE MERCURY NEWS, Nov. 19, 1997, at 1.
of physicians did not include "oral or written statements in order to enable [patients] to obtain controlled substances in violation of federal law." This would imply any written statement, regardless of whether it was an actual prescription, could violate federal law. However, it seems unlikely the federal government would affirmatively seek out physicians who write down "approvals" or "recommendations" of marijuana in light of Conant v. McCaffrey.

The Limit on Quantity
Another issue discussed by the California court in Trippet was the amount of marijuana a medically needy patient could possess under the Act. The court's definition of an acceptable level of quantity would be based on the physician's opinion of the amount of dosage and frequency of use for the patient's needs. Again, the question arises as to the level of physician participation: physician designation as to the amount and frequency of marijuana use requires a specific instruction to the patient. In such cases, it would seem appropriate that the physician would write her recommendation on paper so the patient accurately remembers what the physician said. This again creates a blurry line between what constitutes a formal prescription and a mere recommendation.

Essentially, the issue of quantity will come down to an individual case-by-case determination of how much marijuana a person may possess. Since no standards or quantity thresholds have been set, the court seems to be stating that different people are entitled to different amounts of marijuana. However, the question arises as to how far in advance one may purchase marijuana: one week, one month, every three months, etc. Additionally, no limits have been set regarding marijuana cultivated in the home. One may need several hemp plants to obtain enough high quality marijuana for the appropriate medical use, and yet no guidelines have been established to determine the maximum number of plants a person may possess.

The Transportation Issue
One interesting observation about the legislative scope of the California statute is the legislature's omission of legal protection for marijuana

178 People v. Trippet, 66 Cal. Rptr. 2d 559, 570 (Ct. App. 1997).
transportation from the wording of the Act. The *Trippet* court clearly acknowledges this omission and questioned why the Act’s drafters did not simply state that section 11360 of the California Health and Safety Code, which covers the transportation of illegal substances, was inapplicable to medical marijuana cases.\(^{179}\) Although the drafters were explicit about the cultivation and possession of marijuana, but not about its transportation, the court stated “[w]e may not imply exceptions to our criminal laws when legislation spells out the chosen exceptions with such precision and specificity.”\(^{180}\)

Despite its explicit statement, the court created an occasion for further analysis regarding whether Trippet could use the Act as a defense to transporting two pounds of marijuana, despite the absence of statutory language addressing transportation.\(^{181}\) Although it would be absurd to disallow the Act’s applicability in the case where legally cultivated marijuana was carried down a hallway to a dying patient, the court refused to give any further guidelines as to what level of transportation is permissible beyond the test of whether the quantity, method, timing, and distance of the marijuana transported was reasonable. This leaves open an extremely wide door of interpretation. For instance, it could be reasonable for one to fly from San Diego to Sacramento with marijuana intended for a dying patient, while it might not be reasonable for one to walk across the street with marijuana purported to be for someone who is feeling “a little under the weather.” It is unclear at this time as to how future courts will address the various types of transportation, from airplanes, to bicycles, to simply walking.

The transportation and quantity issues also converge when one thinks of the methods available for procuring marijuana for medical use. With the closing of private facilities such as San Francisco’s Cannabis Buyers Club, medically needy patients may have to travel long distances to procure marijuana. Although marijuana seems to be widely and easily available for those who need it, many patients may not feel comfortable buying marijuana “off the street.” Problems may arise from the likelihood

\(^{179}\) *Id.* at 570.

\(^{180}\) *Id.* (citing People v. Municipal Court, 20 Cal. 3d 523, 532 (1978), which states that when the legislature has given criminal defendants specific discovery tools, the court will not exercise its inherent powers to achieve a result which conflicts with the legislation by allowing for additional discovery tools).

\(^{181}\) *Trippet*, 66 Cal. Rptr. 2d at 571.
that some patients who procure marijuana from drug dealers may unwittingly contribute to a more extensive illicit drug trade involving "hard" drugs such as cocaine and heroin. The only other option would be to grow one's own supply, which would require time and advance planning. Faced with a limited means of procuring marijuana, it might be entirely reasonable for one to "stockpile" marijuana as one could stockpile other medications, simply because of the inconvenience that occurs in simply procuring the drug.

The Facts Of *People v. Trippet:*
Is This What California Voters Had In Mind?
Perhaps the most fascinating aspect of the court's holdings in *People v. Trippet* was the facts of the case itself. Although the defendant was not suffering from a terminal illness, migraine conditions were specifically recognized in the Act.182 However, she was not bedridden and apparently not in a debilitative state, and furthermore never provided evidence of a diagnosis of migraine headaches from a physician to either the trial court or appellate court.183 Therefore, the court referred to her migraines as only an "alleged" condition.184 Although migraine headaches can be quite painful and should not necessarily be taken lightly, the defendant admitted her marijuana use was sometimes for "spiritual" purposes and other times for "medical" purposes; even with the introduction of this information, she never attempted to clearly identify the division between the two.185

The court's willingness to allow the Act as a partial defense to the defendant's offense was even more interesting when examined in the light of the legislative intent behind the passage of the Act. The Act was intended to help "seriously ill Californians," and this intention was written into the Act itself.186 The determination then becomes, what constitutes a "seriously ill" person, or whether "seriously ill" is an important element of a physician's discussion of marijuana with a patient. The court in *People v. Trippet* seemed to disregard any threshold level of illness that is a prerequisite of protection under the Act. While few supporters of the Act would question the right to use marijuana in the most critical of

183Trippet, 66 Cal. Rptr. 2d at 562.
184Id. at 562.
185Id. at 568.
186See CAL. HEALTH AND SAFETY CODE § 11362.5(b)(1)(A) (West 1997).
medical circumstances, there may be a point where a line will need to be drawn between those truly "seriously ill" patients and those who are not sufficiently ill and may be more able to use other forms of pain relief. If this line is not drawn, California may be involved in further conflict with the federal government. As of today, the federal government maintains a strong position against any form of marijuana use, and does not recognize that marijuana has any proven medical benefit. However, the Act's success may depend on the state's ability to tightly regulate possession, use, and now transportation of marijuana. Should the federal government, and perhaps even some of California's citizens themselves, start to feel the use of marijuana has spread beyond those who are truly and seriously ill, the possibility of a backlash against any medicinal use of marijuana could occur, especially if marijuana becomes too easily available to children. Although there are many citizens who feel that marijuana should be legal for all purposes, both medical and recreational, the passage of the Compassionate Use Act was based a more moderate position. Should these voters feel the scope of the Act has expanded beyond its original purpose, the threat of a complete lack of access to marijuana could loom.

CONCLUSION

The foregoing discussion provides insight into both the history of marijuana laws in the United States, as well as the recent legal changes in California law resulting from the enactment of the Compassionate Use Act. As the issue of the legalization of marijuana will likely be a part of the legal environment for years to come, the conclusions of the court in People v. Trippet provide an intriguing starting point for possible future applications of medical marijuana laws in other states. Also in flux is the way in which the federal government will react to judicial decisions regarding the medical use of marijuana.

The court in People v. Trippet expanded the boundaries of the Compassionate Use Act in several ways. First, it applied the Act retroactively to include defendants found guilty of marijuana use or

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188See Response, supra note 6, at 6164.
possession whose appeals were pending at the time of the passage of the Act.\textsuperscript{189} Also, the court distinguished two levels of physician participation, that of recommendation or approval.\textsuperscript{190} Further, the court placed limits on the quantity of marijuana an individual could possess for medical purposes, although it did not explicitly state the maximum quantity of marijuana that would be legal under the Act.\textsuperscript{191} Lastly, the court expanded the boundaries of the Act to include the limited protection of transportation of marijuana for medical purposes.\textsuperscript{192} However, the question still remains as to how the federal government will react to California’s interpretation of its medical marijuana law as well as interpretations of potential laws in other states.

\textsuperscript{189} People v. Trippet, 66 Cal. Rptr. 2d 559, 571 (Ct. App. 1997).
\textsuperscript{190} Id. at 569.
\textsuperscript{191} Id. at 570.
\textsuperscript{192} Id. at 570-71.