The U.S. Supreme Court has upheld the power of the federal government to seize and destroy "medical marijuana," i.e., marijuana being grown domestically for personal and medicinal use for seriously ill patients, as a valid exercise of the government’s Commerce Clause authority under the U.S. Constitution. *Gonzalez v. Raich*, No. 03-1454, (U.S. Sup. Ct., June 6, 2005).

Under the federal Controlled Substances Act, marijuana is an illegal drug that may not be used for medical purposes under any circumstances. At least nine states, however, have enacted laws permitting the use of marijuana for medical purposes. For example, California’s Compassionate Use Act of 1996 permits “seriously ill” state residents to obtain and use marijuana for medicinal purposes.

Two California residents who suffered from a variety of serious medical conditions used marijuana as a medication for several years pursuant to their doctors’ recommendation. Both women relied heavily on marijuana to function on a daily basis; one of the women grew her own supply. In August 2002, federal agents came to her home and seized and destroyed all six of her cannabis plants. Both women subsequently sued to prohibit enforcement of the federal Controlled Substance Act to the extent that it prevented them from possessing, obtaining, or manufacturing cannabis for their personal medical use. They argued that the CSA’s categorical prohibition of the manufacture and possession of marijuana as applied to the intrastate manufacture and possession of marijuana for medical purposes pursuant to California law exceeded Congress’ authority under the Commerce Clause. The federal district court denied their motion for a preliminary injunction, finding that they were not likely to succeed on the merits of their legal claims.

The U.S. Court of Appeals for the Ninth Circuit reversed that decision, holding that the women had "demonstrated a strong likelihood of success on their claims that, as applied to them, the CSA is an unconstitutional exercise of Congress' Commerce Clause authority." The Court of Appeals focused on what it deemed to be the "separate and distinct class of activities" at issue in this case: "the intrastate, noncommercial cultivation and possession of cannabis for personal medical purposes as recommended by a patient’s physician pursuant to valid California state law." The court found these activities “different in kind from drug trafficking” because interposing a physician’s recommendation raises different health and safety concerns, and because “this limited use is clearly distinct from the broader illicit drug market – as well as any broader commercial market for medicinal marijuana – insofar as the medicinal marijuana at issue in this case is not intended for, nor does it enter, the stream of commerce.”

On June 6, 2005, the U.S. Supreme Court vacated the decision of the Ninth Circuit, stating that the issue was not whether it is wise to enforce the CSA in these circumstances. Rather, the Court framed the issues as a constitutional one: whether the congressional power to regulate interstate markets for medicinal substances encompasses the portions of those markets that are supplied with drugs produced and consumed locally. The Court held that Congress did have such power. Under the Commerce Clause, Congress has the power to regulate activities that "substantially affect" interstate commerce, including the power to regulate purely local activities that are part of an economic “class of activities” that have a substantial effect on interstate commerce.
The Court reasoned that:

Given the enforcement difficulties that attend distinguishing between marijuana cultivated locally and marijuana grown elsewhere, . . . and concerns about diversion into illicit channels, we have no difficulty concluding that Congress had a rational basis for believing that failure to regulate the intrastate manufacture and possession of marijuana would leave a gaping hole in the CSA.

Thus, despite the “troubling facts” of this case, widely viewed as test of the federalism concepts which emphasize reserving regulatory power to the states, the Supreme Court held that the enforcement of the CSA against individuals who grow and use marijuana pursuant to state law is a valid exercise of federal power.

The Court’s decision does not overturn California’s medical marijuana law, or any other state medical marijuana law. (Currently, nine states apparently permit the use of medical marijuana: Alaska, California, Colorado, Hawaii, Maine, Nevada, Oregon, Vermont and Washington. Two other states, Arizona and Montana, have authorized medical use of marijuana through voter initiatives). However, even in those states, individuals may be arrested and prosecuted for growing and/or using medical marijuana in violation of federal law.

These state laws do not restrict employers from prohibiting the use of marijuana in the workplace. Employers who have “zero tolerance” workplace substance abuse policies may continue to rely on the fact that marijuana is illegal under federal law for all purposes, even if individuals using medical marijuana may be released of criminal liability under certain states’ laws. However, these state laws may continue to pose accommodation issues under state disability discrimination statutes for use outside of the workplace. (See: Medical Marijuana User May Proceed With Claim Employer Failed to Allow Request For Different Test, posted on our website on March 11, 2005).

©2005 Jackson Lewis P.C. This material is provided for informational purposes only. It is not intended to constitute legal advice nor does it create a client-lawyer relationship between Jackson Lewis and any recipient. Recipients should consult with counsel before taking any actions based on the information contained within this material. This material may be considered attorney advertising in some jurisdictions. Prior results do not guarantee a similar outcome.

Reproduction of this material in whole or in part is prohibited without the express prior written consent of Jackson Lewis P.C., a law firm that built its reputation on providing workplace law representation to clients across a wide range of practices and industries including government relations, healthcare and sports law. More information about Jackson Lewis can be found at www.jacksonlewis.com.
©2019 Jackson Lewis P.C. All rights reserved. Attorney Advertising. Prior results do not guarantee a similar outcome. No client-lawyer relationship has been established by the posting or viewing of information on this website.

*Honolulu, Hawai'i is through an affiliation with Jackson Lewis P.C., a Law Corporation

**The National Operations Center serves as the firm’s central administration hub and houses the firm’s Facilities, Finance, Human Resources and Technology departments.