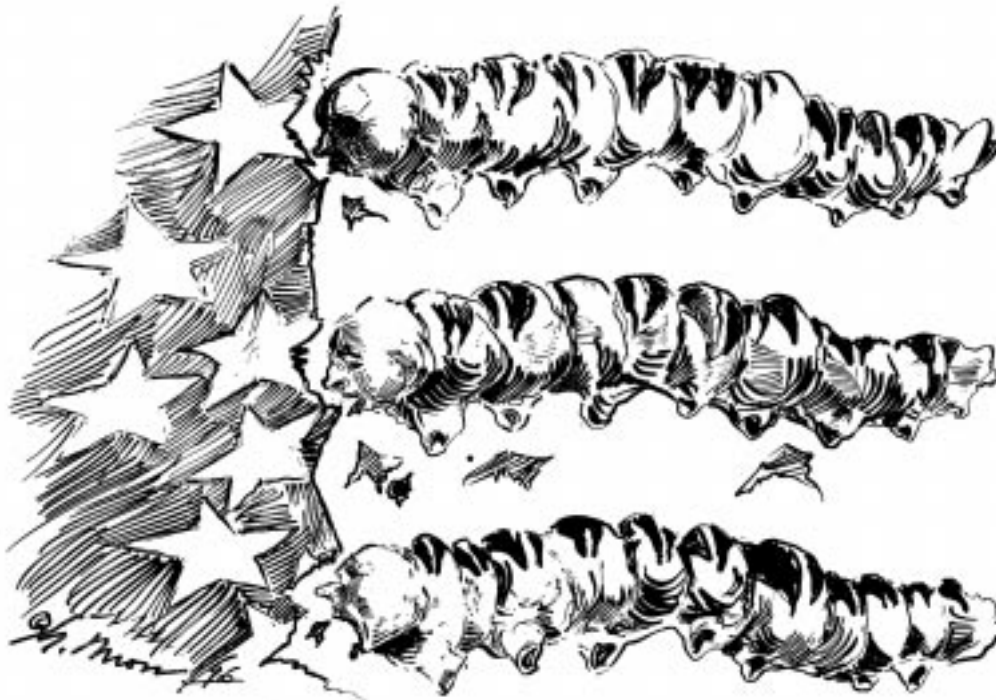


July 11, 2005

Eating away at states' rights



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Top Story

For some, the Supreme Court ruling asserting federal authority to prosecute medical marijuana users was a positive reinforcement of the Congressional power; for others, it was only the latest example of federal trampling of states' rights.

SNCJ Spotlight

States still battling D.C. over medical pot...& more

The U.S. Supreme Court's June 6 ruling allowing federal authorities to prosecute medical marijuana users, even if their state law allows it, was seen by some as a decisive blow to individual state efforts endorsing such use. But after some initial hesitation, officials in most of the states where medical pot is already legal say they don't intend to change their ways, and lawmakers in several more where it isn't legal say they won't abandon their efforts to change that.

The court's decision came in regard to *Gonzales v. Raich*, which involved a pair of CALIFORNIA medical pot users who had their marijuana plants seized by federal agents in 2002. The two women sued then-Attorney General John Ashcroft, claiming they had a doctor's endorsement that gave them a legal right to possess and smoke pot. The high court, however, did not see it that way, reasoning that federal laws governing controlled substances supersede state laws.

But lawmakers and advocates in states where medical marijuana use is legal for critically ill patients (see *Bird's eye view* on page 3) remain defiant, while others in ALABAMA, CONNECTICUT, ILLINOIS, MINNESOTA, NEW HAMPSHIRE, NEW MEXICO, NEW JERSEY, TENNESSEE and WISCONSIN continue to push legislation to grant their states' residents the same rights. The results have so far been mixed, with most bills stalled in committees and not likely to go anywhere anytime soon.

RHODE ISLAND, however, is on the other side of that equation. The Ocean State earlier this month became the first since the high court's decision to officially thumb its nose at Washington D.C. when the state Senate passed SB 710 and HB 6052, collectively known as the Edward O. Hawkins and Thomas C. Slater Medical Marijuana Act, by a combined 63-1 margin. That measure makes Rhode Island the 11th state to allow severely ill patients to grow, possess and use marijuana under a doctor's recommendation. Gov. Don Carcieri (R) immediately vetoed both measures, but the Senate quickly overrode those vetoes.

As of this writing, the House had not yet followed suit, but given the 52-10 positive vote the bills received there early in June, a veto override in that chamber is considered by most to be a mere formality. If so, Rhode Island will be just the third state to adopt such a statute through the legislature, with the other eight coming via publicly approved ballot initiatives. A 12th state, MARYLAND, does not protect users from arrest, but Gov. Robert Ehrlich Jr. did sign legislation in 2003 that prevents medical pot users from being jailed for the act.

Rhode Island's approval came three weeks after the high court's decision

The Week in Session

States in Regular Session: CA, DC, MA, NC, OR

States in Special Session: CA "a"

States in Recess: IL, MI, NH, NJ, NY, OH, PA, US, WI

Special Sessions in Recess: OK "a"

States in Special Session Projected to Adjourn: MN "a", TX "a"

States Adjourned in 2005: AK, AL, AR, AZ, CO, CT, DE, FL, GA, HI, IA, ID, IN, KS, KY, LA, MD, ME, MN, MO, MS, MT, ND, NE, NM, NV, OK, RI, SC, SD, TN, TX, UT, VA, VT, WA, WV, WY

States in Special Session Adjourned in 2005: AK "a", CT "a", KS "a", ME "a", MS "a", MS "b", MS "c", NV "a", UT "a", VT "a", WI "a", WV "a", WV "b", WV "c"

Letters indicate special/extraordinary sessions

Source: State Net, 7/8/05

sent an initial wave of confusion crashing through the numerous statehouses pondering the issue. Based on that ruling, OREGON immediately announced it would stop issuing the registration cards users must have to obtain cannabis from a legal dispensary, a decision ALASKA Attorney General David Marquez said he would duplicate in the Last Frontier State.

The following week, CONNECTICUT House Bill 6578, which would have legalized medical marijuana in the Constitution State, died in the General Assembly's Judiciary Committee. Rep. Michael Lawlor (D), the Judiciary Committee Chair, said the Court's decision had made it "almost impossible" for the bill to be debated before the session ended. In NEW YORK, the decision prompted Senate Majority Leader Joseph Bruno (R) to drop his support for SB 5040 and AB 8265, both of which once seemed to be on a fast track to Gov. George E. Pataki's (R) desk. Both bills also died a quiet death without ever seeing a floor vote.

In HAWAII, U.S. Attorney Edward Kubo called the Supreme Court ruling "the death knell to the medical marijuana issue," while insinuating that doctors handing out recommendations for medical pot could face prosecution as accomplices to the distribution of marijuana.

All of this triggered an immediate reaction from medical marijuana advocates like the Washington D.C.-based Marijuana Policy Project, which threatened to sue both Oregon and Alaska if those states permanently shut down their programs. It

Bird's eye view



Medical pot states still growing

RHODE ISLAND this month became the 11th state to allow people to grow, possess and use marijuana under a doctor's recommendation. The Ocean State is only the third to enact such a law through the legislature, while eight enacted their statutes via ballot initiatives, starting with CALIFORNIA in 1996. A 12th state, MARYLAND, removed criminal penalties for medical marijuana use in 2003, but that law does not protect patients from arrest in the manner of other states that allow medical pot use. A wording glitch has also prevented ARIZONA's 1996 ballot measure from being put into action. That measure says doctors may "prescribe" marijuana to their patients rather than just "recommending" its use, which would place the doctor in jeopardy of federal prosecution. The accompanying map shows all 12 states that, as of July 8, 2005, allow some form of medical marijuana use.



Supreme Court ruling, and at least five other cities have banned dispensaries outright, citing fears of additional drug crime and abuse.

But other observers note an even more galling aspect of the court's ruling — the ongoing trend of the Bush administration to heavily involve itself in what many states view as issues exclusively theirs to resolve. From the Terri Schiavo case to setting national driver's license standards, from No Child Left Behind mandates to the power of eminent domain, many feel an ever-increasing federal grip on state issues.

There is also growing concern in Oregon that this decision could portend negatively on their battle with the federal government over the Beaver State's physician-assisted-suicide law. The federal Dept. of Justice is challenging a 9th Circuit Court of Appeals ruling that the agency exceeded its authority when it tried to yank the licenses of Oregon doctors who, under the law, gave critically ill patients potentially fatal drug prescriptions. The state contends only states have the authority to regulate medical practices.

Stephen Griffin, a constitutional law professor at Tulane University in New Orleans, says this is a trend that defies most people's expectations.

"I think many people would have expected some relief once Republicans controlled all three branches of government, but that hasn't happened," Griffin said. "If there's an important policy objective they really care about, states' rights just doesn't deter them."

The White House doesn't see it that way. As spokesperson Taylor Gross put it, the Bush administration, has always "sought to preserve the traditional role of states in our federal system."

But while states are undoubtedly unhappy with what they see as excessive federal interference in their affairs, most also note that they do not expect much to change on their respective medical marijuana fronts.

"This case continues the status quo," said Paul Befumo, a Montana medical marijuana advocate. "As a practical matter, less than 1 percent of marijuana convictions are federal."

"Unfortunately," he adds, "the government has to target people sick and dying for something that, I think, is strictly a political issue."

(NEW YORK TIMES, USA TODAY, MISSOULIAN, STATESMAN JOURNAL [SALEM], ROCKY MOUNTAIN NEWS, OREGONIAN [PORTLAND], HONOLULU STAR-BULLETIN, ANCHORAGE DAILY NEWS, PROVIDENCE JOURNAL, HONOLULU ADVERTISER, RUTLAND HERALD, PORTLAND PRESS HERALD, ALBUQUERQUE TRIBUNE, LAS VEGAS REVIEW-JOURNAL, SAN FRANCISCO CHRONICLE, CORVALLIS GAZETTE-TIMES, MOBILE REGISTER, ARIZONA REPUBLIC [PHOENIX])

— *Compiled by RICH EHISEN*



Budget & taxes

GOVERNMENT SHUTDOWN IN MN: MINNESOTA kicked off the month of July by closing highway rest stops, suspending state payments for foster children and furloughing nearly 9,000 public employees, including all but 196 of the state's 1,379 public health workers — who, over the last week, faced outbreaks of West Nile virus, salmonella and Legionnaire's Disease. The cutbacks in public services were just a few of the effects of the first partial government shutdown in the state's 147-year history, brought about by the failure of Gov. Tim Pawlenty (R) and state lawmakers to agree on a budget for the fiscal year that began at 12:01 on July 1. The shutdown could have been much worse if many services deemed critical to public health and safety were not kept operating by a court order, but it was still bad enough to spur plenty of defensive finger pointing. Pawlenty and House Speaker Steve Sviggum (R) derided Senate Democrats for adjourning hours before the budget deadline in an effort to embarrass the governor. "When it came to crunch time, they left," Pawlenty said. But Senate Majority Leader Dean Johnson (D) contended that the early adjournment of his chamber was prompted by an 11th-hour offer from the governor that was actually a step backward in the budget negotiations. Jim Monroe, the executive director of the Minnesota Association of Professional Employees, which represents about half of the workers who are now idle, was more inclusive in placing blame for the shutdown. "It's everybody's fault. It's just an example of government having failed," he said. Five other states also failed to meet their July 1 budget deadline: CALIFORNIA, NORTH CAROLINA, OREGON, PENNSYLVANIA and WISCONSIN. But, unlike those other states, Minnesota had no provision in place to keep its government operating until a new budget is approved. The Senate did pass a "lights on" measure, but House Republicans rejected it because they feared it would take the urgency away from the issue. Now there's plenty of urgency, with a looming July 15 deadline when the state's furloughed workers will have used up their vacation time and will be formally laid off. (ASSOCIATED PRESS, MINNEAPOLIS STAR TRIBUNE, NEW YORK TIMES, ST. PAUL PIONEER PRESS)

BUDGET DEAL REACHED IN CA: The weeks-long budget standoff in CALIFORNIA finally ended last Tuesday when a deal was struck by the state's "Big Five" — Gov. Arnold Schwarzenegger (R) and the majority and minority leaders of the Senate and Assembly. The Democrats who control the Legislature



did manage to win some concessions from Schwarzenegger and the Republicans, such as agreements not to cut wages for in-home care workers or scale back the state's welfare-to-work grant program. But the \$116 billion budget was more of a victory for the governor, meeting two of his major goals: avoiding a tax increase and allocating proceeds from the state gas tax for transportation projects, in accordance with a voter initiative passed three years

ago. The Democrats also gave up their battle to extract billions that education officials say they are owed under an agreement they made with the governor last year. So, there was good reason for the governor to be enthusiastic when he and legislative leaders emerged after more than 12 hours of closed-door negotiations over the Fourth of July weekend to announce that they'd agreed on a spending plan. "This is a terrific budget; it's a budget that moves California forward," Schwarzenegger said. But even Democrats had positive things to say about the budget agreement. "Today's actions are a reflection that we are back on track and we are going to start working together in the spirit of cooperation," said Assembly Speaker Fabian Nunez (D). Capitol observers suggest those remarks are a response to the recent Field Poll indicating that 59% of California's voters feel the state is headed in the wrong direction, and that the Democrats backed off on their budget demands in order to place themselves in a stronger position to take on the governor's November special election agenda, which includes measures to curb spending, lengthen the amount of time required for teachers to earn tenure and take away the Legislature's redistricting authority. (LOS ANGELES TIMES, SACRAMENTO BEE)

Upcoming Elections (07/06/2005 - 07/27/2005)

07/09/2005
Louisiana Special General
Senate 006

07/19/2005
Alabama Special Election
House 072

07/19/2005
Pennsylvania Special Election
House 131

BUDGETS IN BRIEF: The battle over **TEXAS'** school funding system went before the state Supreme Court last week. The high court could take several months to rule on the state's appeal of a lower court ruling last year declaring the system to be unconstitutional (SAN ANTONIO EXPRESS-NEWS). • **MON-TANA** Attorney General Mike McGrath (D) has declared the state's 1981 cap on spending growth unconstitutional. Republicans fear the ruling, which has the force of law unless the courts or Legislature overturn it, may allow Democrats to go on a spending spree during the special session scheduled for December (BILLINGS GAZETTE). • **WISCONSIN'S** Republican-controlled Legislature approved a two-year, \$54 billion state budget last week. The spending plan includes a couple of controversial provisions granting a tax break for parents who home school their children or send them to private schools, and requiring

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Governors

FLETCHER AIDES INDICTED IN HIRING SCANDAL: The controversy over hiring practices in Bluegrass State government grew bigger last week when KENTUCKY Gov. Ernie Fletcher's (R) chief of staff and two others were indicted on charges of firing or demoting merit employees and filling the posts with their political allies. It is the second time since June 6 that the grand jury has returned indictments in the case. Dick Murgatroyd, Fletcher's deputy chief of staff, was charged with 16 counts of political discrimination, two counts of violating the rights of an executive employee and one count of criminal conspiracy. Two other high-ranking administration members — Corey Meadows, a Transportation Cabinet executive director, and Dan Druen, a transportation administrative services commissioner — were charged with 14 combined counts of political discrimination and one count each of criminal conspiracy. Druen is also facing three misdemeanor counts related to the firing of a ranking transportation deputy inspector general who contends he was let go because he is a Democrat. If convicted, the three men face up to a year in jail, steep fines and a five-year ban on state employment. Lawyers for the three accused men say they will plead not guilty on all counts. Fletcher's office called the charges a "travesty of justice," saying they are politically motivated. Attorney General Greg Stumbo, who initiated the investigation in May, is a Democrat. (COURIER-JOURNAL [LOUISVILLE])

Quote...

"The governor thinks it's the right thing to do, so he's going to put the full force of his office behind it."

— *Pete Giangreco, campaign manager for ILLINOIS Gov. Rod Blagojevich (D) on why the governor sponsored a bill mandating state campaign finance reform.*

... unquote

"Whenever a politician makes a campaign or an ethics stunt during a period where they are under siege, people are less inclined to take them seriously."

— *ILLINOIS Sen. Kirk Dillard (R) expressing his skepticism over Blagojevich's proposal. (STATE JOURNAL-REGISTER [SPRINGFIELD])*

BLAGOJEVICH FAILS HIS OWN ETHICS REFORM STANDARD: ILLINOIS Gov. Rod Blagojevich's (D) push for ethics reform turned heads last week when it was revealed that only \$1 out of every \$6 he has raised in office meets the criteria of his own proposed reform package. The governor is pushing SB 1822, which is patterned after the 2002 federal McCain-Feingold law that limits the size and number of campaign contributions candidates can gather. Blagojevich's bill would limit individual contributions to \$2,000 per candidate per election and no more than



using geography and workers' health to set rates for small businesses with less than 50 employees. The new statute also caps premium increases on those companies (CONCORD MONITOR). • The **WEST VIRGINIA** Supreme Court rules that the Mountain State cannot sue several national brokerage firms, including Stearns & Co., Citigroup Global Markets Inc., Credit Suisse First Boston, Goldman Sachs & Co., Lehman Brothers Inc., and Merrill Lynch among others, for allegedly using false financial forecasts to bilk consumers out of their investments. The court said state consumer protection laws do not protect people involved in highly specialized financial transactions (CHARLESTON DAILY MAIL).

CRIME & PUNISHMENT: Alleging that medical incompetence and neglect within the system kills one prisoner a week, a federal court announces it will place the **CALIFORNIA** prison healthcare system under control of a receiver. It is the first time in U.S. history that a government operation the size of the Golden State's prison system has been placed under federal receivership (LOS ANGELES TIMES). • **ARIZONA** authorities add additional officers to a squad assigned solely to keep track of registered sex offenders after it is determined authorities there have lost track of almost 1,000 such criminals. The Grand Canyon State will now have 10 total officers keeping an eye on more than 14,000 registered sex offenders (ARIZONA DAILY STAR [TUCSON]). • The **NORTH CAROLINA** House narrowly approves a proposal that would allow minors convicted of nonviolent crimes to clear their criminal records, provided they can show they are reformed. Candidates will have to perform community service in addition to their regular sentence. The House must vote on it again before it moves to the Senate (CHARLOTTE OBSERVER). • **ILLINOIS** officials announce that the Prairie State will begin a pilot program in December that will use global positioning system technology to track dangerous sex offenders 24-hours a day. The state currently uses the system, but only tracks offenders at home or at work. Approximately 200 offenders will be involved in the program (ST. LOUIS POST-DISPATCH).

EDUCATION: The University of **CALIFORNIA** agrees to allow the California State University system to begin issuing doctoral degrees as early as 2007. Lawmakers must also sign off on the deal as current state law bars the CSU system from issuing doctorates. The agreement applies only to education degrees (CONTRA COSTA TIMES). • A federal judge rejects a challenge to a **KANSAS** law that allows illegal immigrants to attend the University of Kansas for in-state tuition rates. The suit was brought by several out-of-state students, who pay about \$4,000 more per semester than do in-state students. The plaintiffs have vowed to appeal (KANSAS CITY STAR).

are supported by the procedure. Another Doyle proclamation designated June 4 as “Paul La Schiazza Day.” In case the name is unfamiliar, La Schiazza is president of SBC Wisconsin. Still puzzled? La Schiazza gave Doyle’s re-election campaign \$1,000.

HEAT THIS. Apparently, LOUISIANA winters now qualify as glacial. Why else would state Insurance Commissioner Robert Wooley need heated leather seats in his taxpayer-financed 2005 Ford F-250 pickup? Come to think of it, why would Wooley need a deluxe, fully outfitted \$40,000 Harley-Davidson edition of the truck? Probably to maintain a tradition started in 2004 when he bought, at taxpayer expense, a \$40,000 Eddie Bauer-edition Ford Expedition, complete with DVD navigation system, CD player and leather seats. Wooley’s tradition irritated more than a few state lawmakers, however. Thanks to a bill on the governor’s desk, officials now must secure legislative approval before spending taxpayer money on a luxury vehicle. The bill, notes the *New Orleans Times-Picayune*, recently passed the House 97-2 after speeding through the Senate. (The governor and lieutenant governor are exempt for security reasons.) A chagrined Wooley has given the two vehicles back to the state. No word on whether he now drives a stripped-down Mazda.

In the Hopper

State Net’s database tracks tens of thousands of bills in all 50 states at any given time. Here’s a snapshot of what’s in the legislative works:

Number of 2005 profiles last week: 192

Number of 2005 Intros last week: 695

Number of bills enacted/adopted last week: 913

Number of 2005 profiles to date: 33,550

Number of 2005 Intros to date: 153,103

Number of enacted/adopted overall in 2005: 33,210

— Compiled By JAMES ROSS
(Measures current as of 7/7/05)
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— By A.G. BLOCK



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