

Opinion: SLT cultivation ordinance is unlawful and dangerous

Dear members of the South Lake Tahoe City Council,

Although I have publicly commended the council for the new cultivation ordinance, recent events have made me realize that this ordinance is clearly unconstitutional and represents a profound threat to the freedom and safety of city residents and their innocent family pets. I urge the council not to adopt this ordinance. If approved in its present form, I urge my fellow citizens not to obey any law that violates their constitutional rights.

The reason for my about face on this ordinance is based upon the announcement last Friday by United States Attorney General Eric Holder that federal agents will continue to raid, arrest and prosecute marijuana gardeners, even if Prop. 19 passes. In addition, Steve Cooley, who is currently in the lead to be elected as California attorney general, has publicly stated his belief that most, if not all, dispensaries are breaking the law by accepting money in exchange for marijuana and he has publicly promised to undertake massive felony prosecutions. "It's a target-rich environment," he proclaimed.

Now that the federal government and Cooley have gone on record that they will aggressively prosecute marijuana gardeners, regardless of what voters decide on Nov. 2, everything has changed. Such an openly hostile pronouncement, in the midst of an election, is an unprecedented attack on the very principles upon which this country was founded.

As a result of these direct threats by Holder and Cooley, it is clear that police and drug agents at the state and federal level will be targeting anyone who grows marijuana. Thus, any

public disclosure that one is growing, such as is required to obtain a building permit, would create a real and appreciable hazard of incrimination, home invasions and felony prosecutions against otherwise law-abiding citizens. Such complete lack of respect for civil rights and state law by the United States attorney general, as well as the likely California attorney general-elect, is not only deeply disturbing, it shows that the current SLT cultivation ordinance will expose our residents to severe and traumatic attacks by federal agents who refuse to recognize state law or obey the U.S. Constitution or Bill of Rights.

The legal consequences for those who are forced to incriminate themselves under the proposed SLT cultivation ordinance are extreme. Under current federal law, growing just 101 plants could force a cannabis grower to face a ten year mandatory minimum in sentencing. Furthermore, as was the case for Dr. Marion Fry in nearby Cool, Calif., the feds can add up how many plants one grows over several years and if that number exceeds 100, the feds can demand a 10 year mandatory sentence.

There are other serious consequences for anyone who incriminates themselves by obeying the new cultivation ordinance. That's because drug agents are notorious for shooting family dogs, even if the dog shows no aggressive behavior or is actually fleeing. Just ask Cheye Calvo, the mayor of Berwyn Heights, Md., about how SWAT team members burst into his home without knocking and shot his two dogs to death, as the dogs attempted to flee, all because a pound of marijuana was accidentally delivered to his home a few minutes earlier.

In *Leary v. United States*, 395 U.S. 6 (1969), the U.S. Supreme Court ruled upon the constitutionality of the Marijuana Tax Act. Dr. Timothy Leary, a professor and activist, was arrested for the possession of marijuana in violation of the Marijuana Tax Act. Dr. Leary challenged the act on the ground that the act required self-incrimination, which violated the Fifth

Amendment. The unanimous opinion of the court was penned by Justice John Marshall Harlan II and declared the Marijuana Tax Act unconstitutional:

“Compliance with the transfer tax provisions would have required petitioner unmistakably to identify himself as a member of [a]...‘selective’ and ‘suspect’ group, we can only decide that when read according to their terms these provisions created a ‘real and appreciable’ hazard of incrimination.”

Even requiring growers to disclose their activity to landlords violates their Fifth Amendment rights. If property owners don't want marijuana grown in their homes, they can say so on their leases and evict anyone who violates those terms.

Most legal medical marijuana growers want to comply with the law, but if that law requires disclosures of any kind, it is not constitutional and not legally binding.

Meanwhile, the City Council should seriously consider crafting a cultivation ordinance that makes it a crime for agents conducting a drug raid to shoot a family dog or discharge a weapon when children are present. In fact, the city should demand that no marijuana raid can be conducted by any drug agents, unless a real victim – who is not an agent or paid informant – actually files a real police report and an investigation shows actual violations of state law taking place.

In closing, I dare you to watch this deeply disturbing video of a drug raid showing agents shooting the family dog with a 7-year-old boy present – even though no drugs were ever found. This is exactly the kind of violent, dangerous, state-sponsored terrorism that the current SLT cultivation ordinance would unleash upon our otherwise peaceful and law-abiding community.

Let freedom grow,

Steve Kubby, South Lake Tahoe