

Opinion: SLT's cultivation ordinance would put lives at risk

By Steve Kubby

It's the holiday season, our mountains are filled with a record snowpack and local businesses are prospering. Life is good, unless you happen to be a patient who depends upon medical marijuana for relief. For this group, the actions of the South Lake Tahoe City Council are a direct threat to their safety and very lives, all because of the misguided attempt by the City Council to fix something that isn't broken.

What new medical marijuana cultivation ordinance can we expect from the South Lake Tahoe City Council in 2011? So far, we've seen proposed ordinances that demand fees and inspections of patient gardens, without offering any meaningful protection in return. The city also wants to demand building permits for anyone who grows cannabis at home, creating a public record for thieves and drug agents to use to locate and invade the homes of bona fide medical marijuana patients.

Even if you are already carefully following every confusing detail of the laws regarding medical marijuana, drug agents have their own interpretations of the law which they believe allows them to ignore the Constitution and enter homes or vehicles, without a warrant or any probable cause other than the alleged odor of marijuana. Too bad that the City Council is about to force patients to violate their own rights and place themselves in the crosshairs of a deadly drug raid.

Leading the fight against sick people is Councilmember Bruce Grego, who has been accused by a grand jury of illegally obtaining and retaining nearly a thousand dollars of city funds. So if the city continues to press for marijuana

regulations, while ignoring the findings of the Grand Jury, the very legitimacy of the Council to pass any ordinance will be called into question and brought before the courts.

Whatever the council attempts to pass in the way of marijuana ordinances, it will be dead on arrival if it violates the privacy of patients. That's because the Supreme Court has ruled unanimously that laws cannot be used to force marijuana users into incriminating themselves.

In *Leary v. United States*, (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 patients to disclose their activity to landlords creates a hazard of incrimination and thereby 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 patients want to comply with the law, but if any law or local ordinance requires disclosures of any kind, it is not constitutional and will not be tolerated. Although California offers a photo ID to patients, those cards have only a photo and a code number which allows law

enforcement to determine if the card is valid. No personal information is allowed.

The consequences for anyone who is viewed by law enforcement as a member of a "selective" and "suspect" group associated with cannabis can be as severe as a terrorist attack by Al-Qaeda. That's because drug agents are notorious for kicking down doors, detonating stun grenades, terrorizing occupants, and shooting family dogs, even if the dog shows no aggressive behavior or is actually fleeing. Just ask Cheye Calvo, the mayor of Berwyn Heights, Maryland, about how SWAT team members burst into his home without knocking, terrorized his family 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.

It's been just over a decade since my own family was surveilled during the Christmas holidays and then raided by 20 heavily armed agents. I pointed out to the invading deputies that I was only exercising rights that had been granted by the voters in the passage of Prop. 215, an initiative I helped to write and pass. I was told that California's new medical marijuana law "might be fine for those faggots in San Francisco, but it didn't fly in Placer County." They seized everything, even Christmas presents to our daughter.

My wife and I were then jailed and charged with 19 felonies, over something that was ultimately dismissed. To his credit, Placer County Sheriff Ed Bonner apologized to me and promised his department would respect the new law. Unfortunately, the physical and emotional scars of that holiday raid still haunts my family, especially this time of year when our family should be able to enjoy all that life has to offer.

This holiday that brings so much joy and happiness to the world, isn't quite so rosy when you consider the terrifying threat of any contact with a federal drug agent. Under current federal law, simply growing a small tray of 100 seedlings or

clones could force a medical marijuana patient to face a 10 year mandatory minimum in sentencing. Furthermore, as was the case for El Dorado County's own long-time resident, Dr. Marion Fry and her husband Dale, the feds can add up how many plants one grows over several years and if that number exceeds 100, prosecutors can demand and get a 10 year mandatory minimum sentence.

Instead of further endangering sick people, the City Council should be crafting a cultivation ordinance that provides meaningful protection to patients from violent crimes by drug agents conducting a drug raid who shoot the 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.

For those who might think anything written here is any sort of exaggeration, I dare you to watch this video of a drug raid showing agents shooting the family dog with a seven-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 proposed cultivation ordinance would unleash upon our otherwise peaceful and law-abiding community.

Steve Kubby is a South Lake Tahoe resident who has been active in legalized medical marijuana in California.