

Response to Attorney General Kelly Ayotte’s Letter to the New Hampshire Senate

In her April 28, 2009, letter to the New Hampshire Senate, Attorney General Kelly Ayotte makes several points that are simply incorrect, and several other misleading statements that deserve correction and clarification.

“Characterizing marijuana as a medicine ... is not supported by the medical research”

There is abundant scientific evidence that marijuana is a safe, effective medicine for some people. In 1999, the National Academy of Sciences’ Institute of Medicine (IOM) reported, “Nausea, appetite loss, pain, and anxiety are all afflictions of wasting, and all can be mitigated by marijuana.”¹

Since then, extensive new research has confirmed marijuana’s medical benefits. Three University of California studies published since February 2007 have found that marijuana relieved neuropathic pain (pain caused by damage to nerves), a type of pain that commonly afflicts patients with multiple sclerosis, HIV/AIDS, diabetes, and a variety of other conditions, and for which conventional pain drugs are notoriously inadequate – and did so with only minor side effects.^{2,3,4} An observational study reported in the *European Journal of Gastroenterology & Hepatology* found that hepatitis C patients using marijuana had three times the cure rate of those not using marijuana, apparently because marijuana successfully relieved the noxious side effects of anti-hepatitis C drugs, allowing patients to successfully complete treatment.⁵

“Marijuana is an addictive drug”

In fact, dependence on marijuana is both rare and mild. In a report commissioned by the White House, the Institute of Medicine concluded, “Compared to most other drugs ... dependence among marijuana users is relatively rare ... [A]lthough few marijuana users develop dependence, some do. But they appear to be less likely to do so than users of other drugs (including alcohol and nicotine), and marijuana dependence appears to be less severe than dependence on other drugs.” The IOM reported that while 32% of tobacco users and 15% of alcohol users become dependent, only 9% of marijuana users ever become dependent.⁶

“[Marijuana] poses significant health consequences to its users”

All medicines have some negative side effects. For example, Tylenol (acetaminophen) has been estimated to kill nearly 500 Americans per year by causing acute liver failure,⁷ while no one has ever died from marijuana poisoning. But no one would seriously suggest banning Tylenol because it’s too dangerous. While all medications have side effects, medical marijuana’s are far less dangerous than death.

Indeed, a large and growing body of scientific evidence demonstrates that the health risks associated with marijuana are actually relatively minor. The 1999 Institute of Medicine report noted, “[E]xcept for

¹ Institute of Medicine, *Marijuana and Medicine: Assessing the Science Base* (Washington, D.C.: National Academy Press, 1999), 159.

² Abrams, D., Jay, C., Shade, S., Vizoso, H., Reda, H., Press S., Kelly M., Rowbotham M., and Petersen, K., “Cannabis in painful HIV-associated sensory neuropathy: A randomized placebo-controlled trial,” *Neurology*. 68: 515-521.

³ Wilsey, B. et al., “A randomized, placebo-controlled, crossover trial of cannabis cigarettes in neuropathic pain.” *The Journal of Pain*. 9(6):506-521.

⁴ Ellis, R.J. et al., “Smoked medicinal cannabis for neuropathic pain in HIV: a randomized, crossover clinical trial.” *Neuropsychopharmacology*. Published online ahead of print, Aug. 6, 2008.

⁵ Sylvestre D., Clements B., Malibu Y., “Cannabis use improves retention and virological outcomes in patients treated for hepatitis C,” *European Journal of Gastroenterology & Hepatology* 2006, 18:1057-1063.

⁶ Institute of Medicine, 98.

⁷ Lee, William, “Acetaminophen and the U.S. Acute Liver Failure Study Group: Lowering the Risk of Hepatic Failure,” *Hepatology*, 40 (1)(2004), 6-9.

the harms associated with smoking, the adverse effects of marijuana use are within the range of effects tolerated for other medications.”⁸ In 2008, the American College of Physicians agreed, citing marijuana’s “relatively low toxicity.”⁹ A government-funded study, conducted by researchers at the Kaiser Permanente HMO, found no association between marijuana use and premature death in otherwise healthy people.¹⁰ *The Lancet*, one of the world’s most prestigious medical journals, has stated, “[O]n the medical evidence available, moderate indulgence in cannabis has little ill-effect on health, and ... decisions to ban or to legalise cannabis should be based on other considerations.”¹¹

On September 6, 1988, after hearing two years of testimony, the Drug Enforcement Administration’s chief administrative law judge, Francis Young, ruled: “Marijuana, in its natural form, is one of the safest therapeutically active substances known...It would be unreasonable, arbitrary, and capricious for DEA to continue to stand between those suffers and the benefits of this substance.”¹²

The only health concerns the IOM report expressed were the possible negative effects of smoking marijuana. However, patients don’t need to smoke marijuana. Marijuana can be vaporized, eaten, or made into extracts and tinctures. (Such products were sold in pharmacies prior to marijuana prohibition in 1937.) The tars and other unwanted irritants in smoke have nothing to do with marijuana’s therapeutically active components, called cannabinoids. Vaporizers are simple devices that give users the fast action of inhaled cannabinoids without most of those unwanted irritants.^{13,14}

“The use of smoked marijuana is opposed by all credible medical groups nationwide.”

Numerous health and medical organizations have favorable medical marijuana positions, including: AIDS Action Council; AIDS Foundation of Chicago; AIDS Project Rhode Island; American Academy of HIV Medicine (AAHIVM); American Association for Social Psychiatry; American College of Physicians; American Nurses Association; American Public Health Association; Associated Medical Schools of New York; Being Alive: People With HIV/AIDS Action Committee (San Diego); California Legislative Council for Older Americans; California Nurses Association; California Pharmacists Association; California Society of Addiction Medicine; Colorado Nurses Association; Hawaii Nurses Association; HIV Medicine Society; Infectious Diseases Society of America; Leukemia & Lymphoma Society; Life Extension Foundation; Lymphoma Foundation of America; Medical Society of the State of New York; Medical Student Section of the American Medical Association; National Association of People With AIDS; New Mexico Nurses Association; New York County Medical Society; New York State AIDS Advisory Council; New York State Hospice and Palliative Care Association; New York State Nurses Association; New York Statewide Senior Action Council, Inc.; Ninth District of the New York State Medical Society (Westchester, Rockland, Orange, Putnam, Dutchess, and Ulster counties); Project Inform (national HIV/AIDS treatment education and advocacy organization); Rhode Island Medical Society; Rhode Island State Nurses Association; Society for the Study of Social Problems; Test Positive Aware Network (Illinois); United Nurses and Allied Professionals (Rhode Island); Wisconsin Nurses Association; Wisconsin Public Health Association; and numerous other health and medical groups.

As former U.S. Surgeon General Dr. Joycelyn Elders put it in a 2004 newspaper column, “I know of no

⁸ Institute of Medicine, 5.

⁹ American College of Physicians, “Supporting Research into the Therapeutic Role of Marijuana,” 2008.

¹⁰ Sidney S. et al., “Marijuana Use and Mortality,” *American Journal of Public Health* 87(4), April 1997, 585-590.

¹¹ “Dangerous Habits” (editorial), *The Lancet*, Nov. 14, 1998.

¹² “In the Matter of Marijuana Rescheduling Petition,” DEA Docket No. 86-22, September 6, 1988.

¹³ Abrams, D.I. et al., “Vaporization as a Smokeless Cannabis Delivery System: A Pilot Study,” *Clinical Pharmacology and Therapeutics*, April 11, 2007,; [Epub ahead of print].

¹⁴ Earleywine, M., Barnwell, S.S., “Decreased Respiratory Symptoms in Cannabis Users Who Vaporize,” *Harm Reduction Journal*, 2007, 4:11.

medical group that believes that jailing sick and dying people is good for them.”¹⁵

“Marijuana has not been tested by the Federal Drug Administration [sic]”

The federal ban on medical use of cannabis was not put in place by the Food and Drug Administration or any medical agency. It was put in place by politicians: Congress and the president.

In fact, *half of all current prescriptions have never been declared safe and effective by the FDA.* Between 40-60% of all drug prescriptions in this country are “off-label” – i.e. for drugs **not** approved by the FDA for the condition they’re being prescribed for.¹⁶ We know much more about marijuana’s safety and efficacy in cancer, AIDS, multiple sclerosis, and many other conditions than we know about most off-label prescriptions.

The federal government has allowed some medical cannabis studies to proceed, but has blocked the type of research needed to develop cannabis as an FDA-approved medicine.¹⁷ The relative lack of large, controlled trials of cannabis is almost entirely due to government obstructionism. The federal government has not only refused to fund medical cannabis research, it has put in place a set of legal and bureaucratic obstacles that have kept the flow of even privately-funded medical cannabis studies to a trickle. With one hand, our government tells us “there’s no data,” while with the other hand it works to ensure there will never be enough data.

The federal government has a long history of ignoring data that contradicts official dogma on cannabis. When DEA Administrative Law Judge Francis Young ruled in 1988 that cannabis was “one of the safest therapeutically active substances known” and thus must be rescheduled, political appointees overruled him. And the White House-commissioned Institute of Medicine report’s co-author Dr. John Benson told the *New York Times* (Apr. 21, 2006) that the government “loves to ignore our report ... They would rather it never happened.”¹⁸

Additionally, state medical marijuana laws have absolutely nothing to do with the FDA drug approval process. The FDA does not arrest people for using unapproved treatments. The FDA does not bar Americans from growing, using, and possessing a wide variety of medical herbs that it has not approved as prescription drugs, including Echinacea, ginseng, St. John’s Wort, and many others.

“The safety of [medical marijuana] is highly questionable”

Marijuana is so safe that patients can easily find the proper dose themselves with no danger of overdose. As University of Washington researcher Dr. Gregory Carter and colleagues noted in a recent journal article, “THC (and other cannabinoids) has relatively low toxicity and lethal doses in humans have not been described ... It has been estimated that approximately 628 kilograms of cannabis would have to be smoked in 15 minutes to induce a lethal effect.”¹⁹ In his book, *Understanding Marijuana*, State University of New York psychology professor Mitch Earleywine explains, “Smoked marijuana may also have fewer side effects than oral THC and other drugs. Patients can smoke a small amount, notice effects in a few minutes, and alter their dosages to keep adverse reactions to a minimum.”²⁰

Furthermore, scientific studies have not demonstrated any meaningful harm to the immune system

¹⁵ Elders, Joycelyn, “Myths About Medical Marijuana,” *Providence Journal*, March 26, 2004.

¹⁶ Bernadette Tansey, “A patient’s right to know: How much should doctors disclose about treatments not approved by the FDA?” *San Francisco Chronicle*, May 1, 2005.

¹⁷ Department of Justice, “Lyle E. Craker; Denial of Application,” *Federal Register*, Vol. 74, No. 9, Wednesday, January 14, 2009.

¹⁸ Harris, Gardiner, “FDA Dismisses Medical Benefit From Marijuana,” *New York Times*, April 21, 2006.

¹⁹ Carter, Gregory T. et al., “Medicinal Cannabis: Rational Guidelines for Dosing,” *IDrugs* 2004 7(5). P. 464-470.

²⁰ Earleywine, Mitch, *Understanding Marijuana*. Oxford University Press, 2002, 171.

from marijuana. The Institute of Medicine reported, “Despite the many claims that marijuana suppresses the human immune system, the health effects of marijuana-induced immunomodulation are still unclear.”²¹ The IOM also noted, “The short-term immunosuppressive effects [of marijuana] are not well established; if they exist at all, they are probably not great enough to preclude a legitimate medical use.”²²

“By characterizing marijuana as a medicine ... it will send a false and misleading message to New Hampshire residents”

This is untrue. The experience of states with medical marijuana laws demonstrates that they do not increase teen marijuana use. For example, the state-sponsored California Student Survey (CSS) documented that marijuana use by California teens rose markedly until 1996 (the year California’s medical marijuana law passed) and then dropped dramatically afterwards – by nearly half in some age groups.²³

According to the Youth Risk Behavioral Survey (YRBS), which is conducted by states in conjunction with the U.S. Centers for Disease Control and Prevention (CDC), Vermont and Maine have experienced decreases in teen use since medical marijuana laws were enacted. In 1997, 30.4% of Maine high school students reported using marijuana within the past 30 days. Maine passed its medical marijuana law in 1999. In 2007, this YRBS statistic had been reduced to 22.0%, a 28% decrease in teen marijuana use since 1997.²⁴ In 2003, 28.2% of Vermont high school students reported using marijuana in the last 30 days. Vermont enacted its medical marijuana law in 2004, and in 2007, the statistic had fallen to 24.1%. That’s a 15% decrease in teen marijuana use since the medical marijuana law was enacted.²⁵

Furthermore, the Maine Office of Substance Abuse conducts the Maine Youth Drug and Alcohol Survey every two years, surveying more than 70,000 students in grades 6-12 throughout the state. The 1998 survey indicated that 15.7% of all students had used marijuana within the last 30 days in 1998 (the year before the initiative passed). However, only 12.7% have used it in the last 30 days according to the 2008 survey. That’s a decrease of 19%.²⁶ The 1998 survey indicated that 28.6% of all students had used marijuana at some point in their lifetime. In 2008, only 22.7% of all students had used marijuana in their lifetime. That’s a decrease of 20%.²⁷

Indeed, in every medical marijuana state that has had a law long enough to collect data from after the law was enacted, **teen marijuana use has decreased.**²⁸ Children can and should be taught the difference between medicine and drug abuse. Doctors can prescribe cocaine, morphine, and methamphetamine, but children are not taught that these drugs are good to use recreationally just because they are used as medicines -- and no one seriously suggests banning medical use of these substances because of the "message" sent to children.

²¹ Institute of Medicine, 109.

²² Institute of Medicine, 126.

²³ “Report to Attorney General Bill Lockyer, 11th Biennial California Student Survey, Grades 7, 9 and 11,” WestEd, 2006.

²⁴ National Center for Chronic Disease Prevention and Health Promotion, “1997 Maine Youth Risk Behavior Survey”; “2007 Maine Youth Risk Behavior Survey” breakdowns available at < <http://apps.nccd.cdc.gov/yrbss/SelQuestyear.asp?cat=3&desc=Alcohol%20and%20Other%20Drug%20Use&loc=ME>>; “Youth Risk Behavior Surveillance, Youth Online: Comprehensive Results.”

²⁵ National Center for Chronic Disease Prevention and Health Promotion, “2003 Vermont Youth Risk Behavior Survey,” breakdowns available at < <http://apps.nccd.cdc.gov/yrbss/SelQuestyear.asp?cat=3&desc=Alcohol%20and%20Other%20Drug%20Use&loc=VT>>. “2007 Vermont Youth Risk Behavior Survey,” breakdowns available at < http://healthvermont.gov/pubs/yrebs2007/yrebs_2007.aspx>.

²⁶ Maine Office of Substance Abuse, “The 2008 Maine Youth Drug and Alcohol Use Survey.” breakdowns available at < http://www.maine.gov/maineosa/survey/report.php?mode=question&%23=graph&survey_id=7&graph_type=simple+bar&question_id=143&participant_group_id=m1#graph>.

²⁷ *Ibid.*, breakdowns available at < http://www.maine.gov/maineosa/survey/report.php?mode=question&%23=graph&survey_id=7&graph_type=simple+bar&question_id=142&participant_group_id=m1#graph>.

²⁸ O’Keefe, Karen, et al., “Marijuana Use by Young People: The Impact of State Medical Marijuana Laws.” Marijuana Policy Project, June 2008.

“One of the most harmful consequences of marijuana use is the role it plays in leading to the use of other illegal drugs.”

The gateway theory has been debunked by every independent scientific body that has analyzed it. For example, according to a 2006 RAND Corporation study commissioned by the British Parliament, “The gateway theory has little evidence to support it, despite copious research.”²⁹ According to the Institute of Medicine, “There is no evidence that marijuana serves as a stepping stone [to other drugs] on the basis of its particular physiological effect.”³⁰

In any case, the gateway theory is completely irrelevant to controlled use by seriously ill patients, many of whom are already being prescribed drugs that are far more addictive and dangerous than marijuana.

“Law enforcement will encounter significant problems with the enforcement of this law”

The General Accounting Office (the investigative arm of Congress, now called the Government Accountability Office) interviewed officials from 37 law enforcement agencies in four states with medical marijuana laws. A key issue they examined was whether medical marijuana laws had interfered with enforcement of laws regarding non-medical use. According to the GAO’s November 2002 report, the majority of these officials “indicated that medical marijuana laws had had little impact on their law enforcement activities.”³¹

When Vermont passed its medical marijuana law in 2004, it tasked the Marijuana Registry Program (located within the Vermont Department of Public Safety) and the Vermont Department of Health with reporting the effects of the law to the legislature. In July 2006, it issued a report that included a statewide survey of chiefs of police, sheriffs, Vermont State Police station commanders, Bureau of Criminal Investigation (BCI) captains and lieutenants, and state’s attorneys to determine the effect of the medical marijuana law on drug enforcement. They found “None of the state’s attorneys thought that the law had made it more difficult to enforce drug laws.” Additionally, “forty-three managers (84%) thought that the law had not made it more difficult to enforce drug laws, five managers (10%) thought that the law had made enforcement more difficult, and three managers (6%) did not know.” Furthermore, “four of the state’s attorneys thought that the law had not contributed to an increase in illegal marijuana use and one state’s attorney did not know.”³²

According to WCAX news in Vermont, “The police predicted the law that permits physicians to prescribe pot as a pain-killer was just a pretext to legalize marijuana for everyone. Today a top cop acknowledged those predictions have been wrong. ‘At this point, four years into this, we’re comfortable with what’s happening and we believe that the people who are getting it are getting it under the true color of what the law is,’ said Col. James Baker of the Vermont State Police.”³³

²⁹ R. Levitt, E. Nason, and M. Hallsworth, “Technical Report: The Evidence Base for the Classification of Drugs,” RAND Corporation, 2006.

³⁰ Institute of Medicine, 99.

³¹ General Accounting Office, “Report to the Chairman, Subcommittee on Criminal Justice, Drug Policy and Human Resources, Committee on Government Reform, U.S. House of Representatives. Marijuana: Early Experiences With Four States’ Laws that Allow Use for Medical Purposes” (Washington, D.C.: GAO, 2002), 32.

³² Vermont Marijuana Registry Program and Vermont Department of Health, “Report On Act 135, Of The 2004 Legislature: An Act Relating To Marijuana Use By Persons With Severe Illness Act, October, 2004 – July, 2006,” July 7, 2006.

³³ Brian Joyce, “Pot Fears Unfounded,” WCAX News (VT). October 18, 2007.

“Many patients will have to turn to criminal drug dealers.”

This claim stands reality on its head. In addition to protecting seriously ill patients from living in fear of arrest, a major benefit of HB 648 is that patients will no longer have to go to the dangerous criminal market for their medicine. Instead, patients will be able to cultivate their own medical marijuana or to designate a family member or health care provider to do so for them.³⁴ Currently, almost no patients who rely on medical marijuana cultivate their own³⁵ because doing so risks a felony conviction and up to seven years in prison.³⁶ In addition to being allowed to cultivate their medicine, patients will be allowed to provide each other with gifts of free medical marijuana.³⁷ HB 648 means less business for criminal drug dealers, not more. It also establishes a study commission of legislators to explore other options for safe access as possible amendments to the law in future years.³⁸

“There will inevitably be a demand for counterfeit ID cards.”

This has not happened in any state with a medical marijuana law, and the ID card system’s safeguards make it almost impossible that a fraudulent card could fool law enforcement. Each card will contain the patient’s name, address, a random ID number that is unique to the patient, and a photo, should the department choose to require one.³⁹ The department will maintain a confidential registry for the verification of ID cards, so if the registry ID number on a card that is presented to an officer does not correspond with a valid card, the officer will know it is fake. If the number is valid, the officer can compare the name shown in the database to the cardholder’s other identification documents and (if the department of health chooses) the officer may also be able to compare the patient’s photograph to his or her actual appearance and to other ID.⁴⁰

“[Allowing medical marijuana] may adversely affect the safety of the driving public.”

Driving under the influence of marijuana will remain illegal with the passage of HB 648.⁴¹ There is no reason to think that driving under the influence would increase. Every day, tens of millions of Americans take medicines that can interfere with driving, from nonprescription allergy pills to folk medicines like *Alstonia Bark* to *Adderral* and *OxyContin*. The *Physicians Desk Reference* and the *PDR Family Guide to Natural Medicines and Healing* are full of warnings about driving under the influence of medications,⁴² but no one seriously suggests banning these medicines because people shouldn't drive while taking them.

“Unlike alcohol, there is no readily available test to determine if a person is driving under the influence of marijuana.”

This is misleading. There is no readily available field test equivalent to a Breathalyzer to determine intoxication for most medicines that shouldn't be used while driving, just as for marijuana. This does not mean that police cannot determine whether a driver is impaired. Police have used field sobriety tests for decades. Furthermore, this is irrelevant to the discussion of whether the medical use of marijuana should

³⁴HB 648 126-S;2 (I, II); 126-S:1 (VIII)

³⁵ Personal knowledge of Matt Simon, based on conversations with more than 20 New Hampshire patients who use or have used marijuana to alleviate serious illness.

³⁶ NH RSA 318-B:26 (I)(c)(5)

³⁷ 126-S;2 (V).

³⁸ HB 648, section 3.

³⁹ 126-S;3 (V).

⁴⁰ 126-S;3 (VII) (c).

⁴¹ 126-S:5 (a)(1)

⁴²The PDR Family Guide to Natural Medicines and Healing p. 263,, *Alstonia Bark* entry, “Use caution when handling heavy machinery or driving.” *Physicians Desk Reference*, *Adderral* “Be careful, too, about driving or operating machinery until you know how this drug affects you. It may impair judgment and coordination.” *Physicians desk reference*, *OxyContin*, “Like other narcotic painkillers, *OxyContin* can slow your reactions and make you drowsy. Do not drive, operate dangerous machinery, or undertake other hazardous activities until you know how the drug affects you.”

remain a crime. Patients are already using other medications which also can impair their driving ability. No one has suggested banning the medical use of OxyContin, Vicodin, or Adderall because officers don't have a breath test to determine whether patients are impaired by those drugs. After more than 12 years of experience with state medical marijuana laws, opponents remain unable to document any increase in driving while intoxicated.

“The possession, use, and cultivation of marijuana are all illegal under federal law ... The passage of HB 648 will provide no legal protection to New Hampshire residents.”

The claim that HB 648 will “provide no legal protection to New Hampshire residents” is simply false. HB 648 provides that patients may no longer be arrested by state or local officials or prosecuted in state or local courts for possession or cultivation of marijuana in compliance with the law.⁴³

While it is true that New Hampshire cannot change federal law, only one percent of all U.S. marijuana arrests are for violations of federal law.⁴⁴ So the worst-case scenario would be that HB 648 would provide 99% protection to New Hampshire patients.

In addition, President Barack Obama and Attorney General Eric Holder have said federal marijuana laws would not be enforced against state-legal patients and providers.⁴⁵ And even before the new administration was sworn in state medical marijuana laws provided virtually complete protection for patients with modest amounts of marijuana. Although the federal government raided store front dispensaries and large gardens, marijuana policy experts are not aware of a single state-legal patient or caregiver who was prosecuted by the federal government in the last decade for the amount of marijuana allowed by HB 648 — up to six plants and two ounces.

Back in 1976, however, glaucoma patient Robert Randall was federally prosecuted for cultivating his own medicine. He proved the necessity defense in a federal district court, and was acquitted after showing that marijuana was medically necessary to preserve his sight.⁴⁶ Decades later, Angel Raich asserted medical necessity in a federal lawsuit to enjoin any possible federal prosecution. The court would not decide on the merits of her defense because she had not been prosecuted, and neither side of the case even knew of any federal prosecution for any patient for simple possession of marijuana in California ever.⁴⁷ All indications are that HB 648 would actually provide total protection to patients from being imprisoned for using their medicine.

⁴³ 126-S;2 (I, II).

⁴⁴ *FBI Uniform Crime Reports 2004* (U.S. Government Printing Office) Table 4.1 and Table 29 and *Compendium of Federal Justice Statistics 2004* (Bureau of Justice Statistics) p. 13, Figure 1.1. Calculations derived from the two cited *Uniform Crime Reports* tables show that there were a total of 773,605 marijuana arrests nationwide during 2004. The *Compendium of Federal Justice Statistics* table states that there were 8,117 arrests for federal marijuana offenses in the 12-month period ending on September 30, 2004. Thus the arrests for federal marijuana charges are 1.049% of the total marijuana arrests.

⁴⁵ Josh Meyer and Scott Glover, “U.S. Won't Prosecute Medical Pot Sales,” *Los Angeles Times*, March 18, 2009.

⁴⁶ “Robert Randall, 53: Sued for Marijuana,” *New York Times*, June 8, 2001.

⁴⁷ *Raich v. Gonzales*, 500 F.3d 850, 870 (9th Cir, 2007). “[c]ounsel for Raich acknowledged at oral argument that, to his knowledge, there has never been a federal criminal prosecution for simple possession or use of medicinal marijuana against anyone anywhere in California. Counsel for the government likewise indicated a lack of knowledge of any such prosecution and stated that it would be ‘incredibly unlikely’ that any such federal prosecution would ensue in the future.”