



Written by [Kurt Williamsen](#) on September 18, 2008

Mary Jane Looks to Prop Up 10th Amendment

In California on August 20, U.S. District Court Judge Jeremy Fogel denied a request by the federal government in *Santa Cruz v. Mukasey* to dismiss a lawsuit brought by Santa Cruz city and the Wo/Men's Alliance for Medical Marijuana that accuses the federal government of unconstitutionally trying to nullify California's medical marijuana laws.



The suit against the federal government alleges that federal authorities have been targeting, threatening, and arresting people — doctors, government officials, and distributors of medical marijuana — to force California to re-criminalize marijuana for medical use.

The ACLU filed the lawsuit against the federal government, claiming correctly that the government was violating the 10th Amendment, which states: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, or to the people." Nowhere in the Constitution is permission given to the government to regulate state's drug laws.

Ironically, if the ruling survives appeal, it may have the effect of really strengthening the 10th Amendment and shooting holes in other arguments of the ACLU. Positions the ACLU favors that may be endangered are prohibitions against state anti-sodomy laws and prohibitions against child pornography, along with a host of other positions. The ACLU regularly ignores the constraints of the 10th Amendment. It has backed a federal requirement forcing entities that provide prescription coverage to cover women's contraception, and it has challenged in federal court state laws that require voters to present a valid ID (so that illegal immigrants could vote).

It remains only to be seen if this ruling is affirmed or goes up in smoke.



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