

## WILL CALIFORNIA GO TO POT?

### *State High Court Hears Case Over Medical Marijuana Firing*

By Christopher W. Olmsted



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The debate over medical marijuana has culminated in a California Supreme Court case heard on November 5, 2007. The case, titled *Ross v. Ragingwire*, involves a job applicant fired after a drug test came back positive for marijuana. The issue centers on whether California employers may rely on federal drug laws to avoid state law discrimination claims by employees using medicinal marijuana.

The attorneys for the employer and employee argued their cases before the California Supreme Court on November 5<sup>th</sup>. A decision is expected early next year.

At the time of the drug test, the computer tech submitted a note from his doctor recommending that he smoke pot to alleviate back pain.

The employer terminated Mr. Ross because federal law makes marijuana illegal. Although California voters legalized medicinal marijuana in 1996, federal law contains no allowance for medicinal use. Mr. Ross sued the small telecommunications company, alleg-

ing a violation of the Fair Employment and Housing Act (“FEHA”).

As reported by Associated Press reporter Paul Elias, Chief Justice Ron George opened oral arguments with a question that cut to the chase: “California has been a



pioneer; the federal government has not. What do we do about placing an employer in the position of being a law violator under federal law, notwithstanding how understanding California law may be?”

The employer’s attorney, as quoted in the *Sacramento Bee*, argued that if marijuana use is allowed, employers could still be vulnerable to disruptive searches by federal authorities. He also echoed many of the arguments of the state’s 3rd District

Court of Appeal, which ruled against Ross in 2005, saying that drug use results in increased absenteeism from work, diminished productivity and greater health care costs – all legitimate considerations for an employer weighing a job applicant.

Attorneys for Mr. Ross said the Fair Employment and Housing Act requires employers to make “reasonable accommodations” for employees with disabilities, and argued that Ross’ use of marijuana was part of a medical treatment for his disability. They said his use did not interfere with his job performance, and it was clear that users of medical marijuana were not to use the drug during work hours on the job site.

Both the trial court and the California appellate court sided with *Ragingwire*, finding that the employer rightfully relied on federal law in concluding that marijuana is an illegal drug.

We will monitor the case and analyze the Court’s opinion when it is published sometime early next year.