



POLITICS

Washington Officials Join Cancer Patients In Federal Court Argument Pushing DEA To Allow Psilocybin Access



Published 2 months ago on September 3, 2021

By Ben Adlin



The Washington State attorney general’s office appeared alongside lawyers representing cancer patients on Thursday, telling a federal appeals panel that people in end-of-life care deserve legal access to psilocybin—the main psychoactive compound in psychedelic mushrooms—under state and federal right-to-try laws.

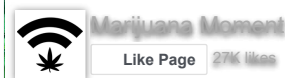
“It is entirely consistent with the purpose and language of the state and federal right-to-try laws to include any controlled substances that have completed Phase 1 trials, including Schedule I controlled substances,” Washington Deputy Solicitor General Peter B. Gonick said in oral argument before a three-judge panel of the U.S. Court of Appeals for the Ninth Circuit, referring to a category of illegal drugs that includes psilocybin. “It’s entirely inconsistent with the right-to-try laws to prevent patient access to these treatments.”

Congress and 41 U.S. states have adopted right-to-try (RTT) laws, which allow patients with terminal conditions to try investigational medications that have not been approved for general



MARIJUANA NEWS IN YOUR II

Email address:



State Attorneys General Warn About Marijuana-Infused Candy And Snacks Ahead Of Halloween: "These look-alike cannabis products are unregulated, unsafe, and illegal... Please report them to my office."

<https://www.marijuanamoment.net/state-attorneys-general-wa.../>

The group [sued DEA in March](#), after the agency replied to a request for guidance from the clinic’s co-director, Dr. Sunil Aggarwal. DEA asserted that the only way for the AIMS Institute to dispense psilocybin legally would be to obtain a federal research permit, which “would not be applicable to Dr. Aggarwal at this time.”

Out of the gate at oral argument Thursday, judges initially expressed skepticism over whether they even had jurisdiction to hear the case at this point. DEA maintains its letter to the clinic was simply an informal opinion, not a reviewable decision.



“Isn’t that the beginning and the end of this case?” Judge Ryan D. Nelson, an appointee of President Donald Trump, interjected barely 10 seconds after arguments began. “They wrote, seeking instructions on how to proceed... So if they sought instructions, how can a response for instructions ever be a final order?”

Attorney Matthew Zorn, who represented the patients and clinic suing DEA at Thursday’s oral [arguments](#), replied that the agency’s response effectively gave them no options. “That response was: There is no process,” Zorn said. “If they had identified a process, we would have used that process. Because the agency said, ‘There is nothing for you to use,’ there is nowhere for us to go.”

For several minutes, judges on the panel—which also included Trump appointee Judge Mark J. Bennett and Judge Sandra Segal Ikuta, appointed by President George W. Bush—peppered Zorn with questions about whether DEA’s reply was even reviewable under court precedent.

“You didn’t ask [DEA] for an interpretive rule,” Nelson said.

“You asked for guidance,” agreed Ikuta.

“We didn’t ask for it,” Zorn told Nelson, “but that’s what we got.”

“I agree if that’s what you got the case might be different,” Nelson answered with an audible chuckle.

Though Zorn’s allotted time ended with some questions from judges unanswered, the panel’s mood appeared to change as the attorney dissected a federal court decision out of the Eastern District of Tennessee, which Nelson raised as a challenge. Zorn explained how he thought that decision was made in error, running contrary to a U.S. Supreme Court ruling dealing with the U.S. Environmental Protection Agency.



MARIJUANAMOMENT.NET

State Attorneys General War...

SUPPORT MARIJUANA MOM

Become a patron



right-to-try law unanimously in 2017, allowing terminally ill patients access to treatments that have passed Phase 1 of the U.S. Food and Drug Administration (FDA)'s approval process.

“The average time, Phase 1 to FDA approval, is seven to 10 years,” Gonick told judges, “and Congress and 41 states determined that was just too long for some patients suffering life-threatening illnesses.”✉

The laws express the recognition that some patients “may not have time to wait for FDA approval to receive treatments,” he added, “treatments that currently have ‘no accepted medical use,’ as the drugs in Schedule I have been designated” under the federal Controlled Substances Act (CSA).

The DEA attorney, Department of Justice (DOJ) appellate lawyer Thomas Pulham, argued the case itself should be dismissed because the court lacks jurisdiction. If the agency had explicitly rejected the clinic’s application for a research permit, he said, only then could that decision be appealed.

“DEA’s action is not subject to judicial review, because it neither reflects the consummation of a decision-making process nor results in any legal consequences,” Pulham said. “It was an informal response to a request for assistance from a member of a regulated community that did nothing more than provide the agency’s view on existing law.”

The agency also argued to the court in a June filing that loosening restrictions on psilocybin [could fuel the illegal drug trade](#).

Judges were skeptical of the government’s stance, however, and repeatedly asked Pulham how the clinic and its patients should have proceeded, in DEA’s view.

“What about under the Right to Try law, though?” asked Judge Ikuta. “Is there a pathway where they could apply under the Right to Try Act?”

No, the lawyer for DEA replied. “As the agency indicated in its letter, there’s no procedure available under the Right to Try Act, because the Right to Try Act does not provide the agency any authority to waive the requirements of the Controlled Substances Act.”

Pulham argued that if the AIMS Institute and its patients were to proceed with psilocybin therapy and face enforcement action by the DEA, they could raise their right-to-try arguments at that point.

“Usually we don’t require a party to go and subject themselves to liability in order to appeal,” interrupted Judge Nelson. “It sounds like there might actually be some legal consequences here. I mean, it is prohibiting them from doing what they want to do, and it’s subjecting them to enforcement action if they were to go forward.”

“The letter does not do that,” Pulham stressed. “The Controlled Substances Act does that.”

“When Congress passed the Controlled Substances Act, it designated psilocybin as a controlled, Schedule I controlled substance based on findings that the drug had a high potential for abuse and no accepted medical use,” he continued. “That determination made psilocybin, in the Supreme Court’s words, contraband for all purposes, except for one exception, which is research.”

In his few remaining minutes of argument for rebuttal, Zorn emphasized that his clients are merely asking DEA to explain how clinicians and patients should move forward under right-to-try laws. “The agency has said it has no authority to give us what we’re asking for, which is a





Zorn’s colleagues and clients cheered Zorn’s performance and said they hope it helps persuade the three-judge panel to rule in their favor.

“I am so grateful for such a landmark day in a higher court for us, in which our legal team was able to help in the slow chipping away of the DEA–CSA industrial complex status quo that stymies public health, healthcare, religious freedom, and the needs of the seriously ill,” Aggarwal, co-director of the AIMS Institute, told Marijuana Moment. “Now we await a swift and just ruling.”

Attorney Kathryn Tucker, who also represents AIMS and the patients, said that the panel “appeared over the course of the argument to appreciate that the agency had left no avenue open and hence the matter was properly before the court.”


“The sense I had watching the arguments was that the judges wanted to know how DEA would accommodate RTT and enable access for therapeutic use,” she said. “DOJ had no good answer to that.”



Emerge Law Group
about 2 months ago 

Today at 1pm Federal Appellate Court Hears Argument in Landmark Case Seeking to Open Access to #PsilocybinTherapy for Seriously Ill Patients Pursuant to #RightToTry Laws.
--Link to watch live is in our blog post--

#health #law #mentalhealth #medicine #healthcare #medical #KathrynTucker #treatment #psilocybin #righttotry #depression #doctor #federalgovernment Drug Enforcement Administration - DEA Dr. Sunil Kumar Aggarwal Psychedelic Adventure Psychedelic Medicine Association Microdose Psychedelic Insights #law #FederalCourt #FederalGovernment #cancer #businesslawyer



EMERGELAWGROUP.COM

AIMS vs. DEA: "Right-To-Try" Law Heard by the Ninth Circuit Court...
A Petition for Review was filed in the United States Court of Appeals for the Ninth ...

3 Comment 5

As AIMS and its patients challenge DEA’s restrictions on therapeutic psilocybin for end-of-life care, jurisdictions across the country are increasingly removing or reducing penalties around drug possession and consumption, especially when it comes to psychedelics.

A task force in Seattle, where AIMS is located, recently called on the City Council, as well as state lawmakers and other municipalities, to [decriminalize all drugs as a way to curb overdose deaths](#). The group’s report also notes the potential shown by psychedelics in particular for treating various mental health disorders.

Not far north, in Canada, the country's Health Ministry has [granted case-by-case approval for some patients](#), as well as [health care professionals](#), to access psilocybin for therapeutic use.

In California, meanwhile, a Senate-passed bill to legalize possession of a wide range of psychedelics advanced through several Assembly committees this session, but [it will not move further this year](#) following a decision by the sponsor that more time is needed to build the case for the reform and solidify its chances of being enacted.

California psychedelics activists also recently [filed a petition for the 2022 ballot](#) to make the state the first in the nation to legalize psilocybin mushrooms for any use. [Oakland](#) and [Santa Cruz](#) have already enacted psychedelics decriminalization. The state's nonpartisan Legislation Analyst's Office said this week that the statewide ballot measure [could save the state tens of millions of dollars](#) in annual enforcement costs.

In Michigan, the Ann Arbor City Council [approved the policy change last year](#)—and local lawmakers recently passed a resolution to officially designate September as [Entheogenic Plants and Fungi Awareness Month](#).

In Massachusetts, cities that have enacted the policy change include [Northampton](#), [Somerville](#) and [Cambridge](#).

In Denver the first city to adopt psilocybin reform, activists are now [pushing to expand the psilocybin decriminalization policy](#) to cover gifting and communal use of the substance.

The governor of Connecticut recently signed legislation recently that includes language requiring the state to carry out [a study into the therapeutic potential of psilocybin mushrooms](#), meanwhile, and Texas recently enacted a bill to require the state [study the medical benefits of psychedelics for military veterans](#).

A New York lawmaker introduced a bill in June that would require the state to establish an institute to similarly [research the medical value of psychedelics](#).

In Oakland, the first city where a city council voted to broadly deprioritize criminalization of entheogenic substances, lawmakers [approved a follow-up resolution](#) in December that calls for the policy change to be adopted statewide and for local jurisdictions to be allowed to permit healing ceremonies where people could use psychedelics.

After Ann Arbor legislators passed a decriminalization resolution last year, a county prosecutor recently announced [that his office will not be pursuing charges](#) over possessing entheogenic plants and fungi—"regardless of the amount at issue."


The Aspen, Colorado City Council [discussed the therapeutic potential of psychedelics](#) like psilocybin and proposals to decriminalize such substances at a meeting in May. But members said, as it stands, enacting a reform would be more better handled at the state level while entheogens remain strictly federally controlled.

Activists in Portland, Oregon, meanwhile, are mounting [a push to have local lawmakers pass a resolution](#) decriminalizing the cultivation, gifting and ceremonial use of a wide range of psychedelics.

In a setback for advocates, the U.S. House of Representatives recently voted against a proposal from Rep. Alexandria Ocasio-Cortez (D-NY) that [would have removed a spending bill rider](#) that advocates say has restricted federal funds for research into Schedule I drugs,



to [expand cannabis and psychedelics research](#). The panel urged the National Institute On Drug Abuse (NIDA) to support expanded marijuana studies, for example

It further says that federal health agencies should [pursue research into the therapeutic potential of psychedelics](#) for military veterans suffering from a host of mental health conditions. 

When it comes to broader drug policy reform, Oregon voters also approved an initiative in November to [decriminalize possession of all drugs](#). This year, the Maine House of Representatives [passed a drug decriminalization bill](#), but it later [died in the Senate](#).

In May, lawmakers in Congress filed the [first-ever legislation to federally decriminalize possession](#) of illicit substances.

DEA Proposes Massive Increase In Marijuana And Psilocybin Production For Research To Develop FDA-Approved Medicines



The Drug Enforcement Administration (DEA) is proposing a massive increase in the production of marijuana and psilocybin for research purposes, with the intent of aiding in the development of new federally approved therapeutic medications. In a notice set to be published in the Federal Register on Thursday, DEA said it is proposing "significant

increases" in ... [Continue reading](#)

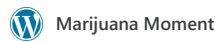


Photo courtesy of [Wikimedia/Mushroom Observer](#)

Marijuana Moment is made possible with support from readers. If you rely on our cannabis advocacy journalism to stay informed, please consider a monthly Patreon pledge.



RELATED TOPICS: #FEATURED

DON'T MISS

[Denver Will Vote On Increasing Marijuana Taxes To Fund Pandemic-Related Research This Year](#)

UP NEXT

[Possessing And Cultivating Psychedelics Would Be Legalized In Michigan Under New Senate Bill](#)



Ben Adlin

Ben Adlin is a Seattle-based writer and editor. He has covered cannabis as a journalist since 2011, most recently as a senior news editor for Leafly.

YOU MAY LIKE



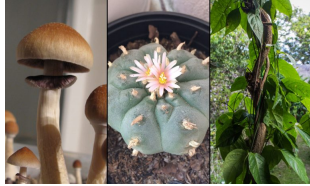
State Attorneys General Warn About Marijuana-Infused Candy And Snacks Ahead Of Halloween



Feds highlight cannabis research barriers (Newsletter: October 26, 2021)



Marijuana Legalization Is More Popular In Maryland Than President Biden, Poll Finds



Psychedelics Group Issues First Round Of Grants For Community-Based Entheogenic Education In DC



DC Voters Strongly Support Drug Decriminalization, Poll Finds As Activists Launch Campaign



Feds Must Legalize Marijuana, Top Nevada Lawmaker Says (Op-Ed)

POLITICS

State Attorneys General Warn About Marijuana-Infused Candy And Snacks Ahead Of Halloween



Published 2 hours ago on October 26, 2021

By Kyle Jaeger



As Halloween approaches, attorneys general from multiple states across the U.S. are warning parents about illicit marijuana products that resemble popular candies and snacks like Cheetos, Nerds and Oreos, which could confuse kids and lead to accidental intoxication.

In an apparently coordinated effort using identical imagery of the products in question, at least four state attorneys general recently issued advisories about edibles that are misleadingly marketed. The officials aren't necessarily suggesting that people are intentionally handing out the THC-infused candies to trick-or-treaters—a myth that cannabis



CONTINUE READING

POLITICS

Marijuana Legalization Is More Popular In Maryland Than President Biden, Poll Finds



Published 4 hours ago on October 26, 2021

By Kyle Jaeger



Marijuana legalization is more popular in Maryland than President Joe Biden and the state's two U.S. senators, a new poll found.

As lawmakers work to enact cannabis reform in the coming year, the survey from Goucher College shows a strong majority of the public (60 percent) is in favor of the policy.

But while legalization earned more support than Biden (53 percent) or either Democratic senators, Chris Van Hollen (44 percent) and Ben Cardin (46 percent), that majority support is seven percentage points lower than when Marylanders were last asked about it in March.

CONTINUE READING

Decriminalization, Poll Finds As Activists Launch Campaign



Published 7 hours ago on October 26, 2021

By Kyle Jaeger 



Washington, D.C. voters are strongly in favor of proposals to broadly decriminalize drugs and establish harm reduction centers, a new poll found.

One week after activists [announced an effort to pressure local lawmakers enact the reforms](#), a coalition of activists group organized under the banner of DecrimPovertyDC released a survey showing just how popular the policy changes are among D.C. residents. It also found that voters would be more likely to elect local legislators who embrace decriminalization.

At a top level, 83 percent of respondents said that they favor having the D.C. Council pass an ordinance to “remove criminal penalties for possession of small amounts of commonly-used

CONTINUE READING

All the cannabis news you need, all in one place. Copyright © 2017-2021 Marijuana Moment LLC ® and Tom Angell

