

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,) CR. NO. 10-00384(01) LEK
))
 Plaintiff,))
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 vs.))
))
ROGER CUSICK CHRISTIE (01),))
et al.,))
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 Defendants.))
_____)

**ORDER DENYING DEFENDANT ROGER CUSICK CHRISTIE'S
MOTION TO DISMISS INDICTMENT**

Before the Court is Defendant Roger Cusick Christie's ("Christie") Motion to Dismiss Indictment ("Motion"), filed on December 3, 2012. [Dkt. no. 468.] Defendant Aaron George Zeeman ("Zeeman") filed his Joinder in the Motion on December 10, 2012. [Dkt no. 478.] Defendant John Debaptist Bouey, III ("Bouey") filed his Joinder on December 10, 2012. [Dkt no. 484]. Defendant Sherryanne L. St. Cyr ("St. Cyr") filed her Joinder on December 10, 2012. [Dkt no. 488].¹ The United States of America ("the Government") filed its memorandum in opposition on January 14, 2013. [Dkt. no. 504]. Christie filed his reply on February 25, 2013. [Dkt. no. 549.] This matter came on for hearing on March 4, 2013. Appearing on behalf of Christie was Thomas Otake, Esq., appearing on behalf of St. Cyr was Lynn E.

¹ Christie, Zeeman, Bouey, and St. Cyr are collectively referred to as "Defendants."

Panagakos, Esq., appearing on behalf of Bouey was Cynthia A. Kagiwada, Esq., appearing on behalf of Zeeman was William M. Domingo, Esq., and appearing on behalf of the Government was Assistant United States Attorney Michael K. Kawahara. Christie and St. Cyr were also present at the hearing.

After careful consideration of the Motion, supporting and opposing memoranda, and the arguments of counsel, Zeeman, Bouey, and St. Cyr's Motions for Joinder are HEREBY GRANTED, and Christie's Motion is HEREBY DENIED for the reasons set forth below.

BACKGROUND

On June 24, 2010, a grand jury sitting in the District of Hawai'i returned a three-count Indictment against Defendants charging them with:

- Count I: knowingly and intentionally conspiring to manufacture, to distribute, and to possess with the intent to distribute marijuana, a Schedule I controlled substance, and involving 100 or more marijuana plants, as well as harvested and processed marijuana and other products containing marijuana;

- Count II: knowingly and intentionally manufacturing marijuana, a Schedule I controlled substance, and involving 100 or more marijuana plants; and

- Count III: knowingly and intentionally possessing with the intent to distribute marijuana, a Schedule I

controlled substance, and involving 100 or more marijuana plants.
[Dkt no. 1.]²

In the instant Motion, Defendant asks the Court to dismiss the Indictment on the basis that the Controlled Substances Act's ("the Act") classification of marijuana as a Schedule I substance violates Christie's due process rights as guaranteed by the Fifth Amendment of the Constitution. Specifically, Christie argues that marijuana has been shown by scientific evidence to be a safe and efficacious treatment for various recognized medical conditions, and thus there is no rational basis for marijuana to be classified as a Schedule I controlled substance. Further, public opinion has changed dramatically since the Act was initially enacted, and is currently in favor of medical marijuana use and decriminalization. Christie therefore urges this Court to dismiss the charges against him.

In opposition, the Government points out that, when the Act was enacted in 1970, Congress classified marijuana as a Schedule I controlled substance and established specific procedures governing the removal of substances from the Act's various schedules. Subsequently, the Administrator of the Drug

² On January 17, 2013, shortly after the instant Motion was filed, a grand jury returned the First Superseding Indictment. [Dkt. no. 509.] Counts I through III of the First Superseding Indictment are identical to those counts in the Indictment. [Id. at 1-5.]

Enforcement Administration ("DEA") was delegated the responsibility "for adding or removing substances from the schedules (control or decontrol), or to transfer a drug or substance between schedules (reschedule)." [Mem. in Opp. at 1 (citing 21 U.S.C. § 811(b)).] The Government argues that numerous efforts, most recently in 2011, to reschedule marijuana have failed. [Id. at 3 (citing 76 Fed. Reg. 40552-40589 (July 8, 2011), 2011 WL 2648257 (F.R.)).] Hence, it contends, considerable controversy and debate exist as to whether marijuana should be removed as a Schedule I controlled substance. Lastly, the Government argues that the liberty interest alleged by Christie "is the unrestricted right to manufacture, traffick and possess marijuana . . .," and that alleged right has never been held to be a fundamental one. [Id. at 11.] As such, the Government submits, Christie must demonstrate that the congressional classification of marijuana as a Schedule I controlled substance has no rational basis; this is a burden that he cannot meet.

In reply, Christie stresses that he is not requesting a legal determination for the decriminalization of marijuana, nor is he requesting that the Court reschedule marijuana under the Act. Rather, he emphasizes that he seeks a finding that there is no rational basis for the current classification of marijuana as a Schedule I controlled substance. [Reply at 2.] As a result, Christie contends, the Indictment violates his substantive due

process rights and must be dismissed. He also reiterates that there is substantial scientific evidence supporting that marijuana does not have a high potential for abuse, has medicinal benefits, and can be safely used under medical supervision. He intends to have his expert witness, Charles Webb, M.D., testify at the hearing regarding the scientific support for the safe and effective use of marijuana. [Id.] Lastly, he argues public opinion has changed drastically since the passage of the Act in 1970, and current sentiment largely favors decriminalization of marijuana use. Christie argues that this large body of scientific evidence, as well as the compelling change in public opinion, cannot be ignored and must be taken into account in determining the legal analysis regarding marijuana's classification as a controlled substance.

At the hearing held on March 4, 2013, Christie presented Dr. Webb as his expert witness, and Dr. Webb testified about his experience as a physician and his opinion that marijuana is safe and efficacious in treating various medical conditions, and that, unlike other substances, marijuana use does not cause serious adverse effects.

DISCUSSION

Christie contends that the Indictment should be dismissed because of the Act's unconstitutionality. Specifically, Christie argues that marijuana's classification as a Schedule I controlled substance is irrational and capricious,

and thus violates the due process mandate of the Fifth Amendment of the United States Constitution. He submits that this classification is without basis because medical science shows that marijuana does not meet the criteria to be included as a Schedule I controlled substance because it does not have a high potential for abuse, has currently accepted medical use, and can be used safely with medical supervision. See 21 U.S.C. § 812(b)(1) (setting forth the standard for a Schedule I drug).

The rational basis standard is highly deferential; the statute is presumed to be constitutional absent a showing that it bears no rational relationship to a legitimate legislative purpose. F.C.C. v. Beach Communications, Inc., 508 U.S. 307, 313 (1993) (A statutory classification that "neither proceeds along suspect lines nor infringes fundamental constitutional rights must be upheld against equal protection challenge if there is any reasonable conceivable state of facts that could provide a rational basis for classification."). The classification of marijuana as a Schedule I controlled substance has been determined in this circuit to be constitutional. United States v. Mirovan, 577 F.2d 489, 495 (9th Cir. 1978). Christie has not shown that Mirovan has been abrogated or is no longer controlling law.

Further, the Supreme Court has upheld Congressional authority to regulate cultivated medical marijuana. Gonzales v. Raich, 545 U.S. 1, 9 (2005). In doing so, the Court noted that

"[the Act] provides for the periodic updating of schedules and delegates authority to the Attorney General, after consultation with the Secretary of Health and Human Services, to add, remove, or transfer substances to, from, or between schedules Despite considerable efforts to reschedule marijuana, it remains a Schedule I drug." Id. at 14 (internal citation and footnote omitted). The Court "ha[d] no difficulty concluding that Congress acted rationally in determining that none of the characteristics making up the purported class, whether viewed individually or in the aggregate, compelled an exemption from the [Act]; rather th[is] . . . class of activities . . . was an essential part of the larger regulatory scheme of the [Act]." Id. at 26-27. In short, the Court found the Act's classification of substances, including marijuana, on its schedules was rationally related to its legislative purpose.

Christie therefore cannot carry his burden to demonstrate irrationality, and his Motion must be denied.

CONCLUSION

On the basis of the foregoing, Defendant Roger Cusick Christie's Motion to Dismiss Indictment, filed on December 3, 2012, is HEREBY DENIED. The Motions for Joinder filed by Aaron George Zeeman, John Debaptist Bouey, III, and Sherryanne L. St. Cyr are HEREBY GRANTED.

IT IS SO ORDERED.

DATED AT HONOLULU, HAWAII, May 7, 2013.



/S/ Leslie E. Kobayashi
Leslie E. Kobayashi
United States District Judge

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