

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,  
Plaintiff,

v.

RHONDA FIRESTACK-HARVEY, LARRY  
HARVEY, MICHELLE GREGG, ROLLAND  
GREGG, and JASON ZUCKER,  
Defendants.

No. CR-13-24-FVS

ORDER DENYING DEFENDANTS'  
MOTION TO DISMISS THE  
INDICTMENT ON THE GROUND  
THAT POSSESSION OF  
MARIJUANA IS LEGAL UNDER  
FEDERAL LAW

**THE DEFENDANTS** have filed a number of motions. The Court considered their motions at a pretrial conference that was held on April 22 and 23, 2014. This order addresses defendant Michelle Gregg's motion to dismiss the Indictment on the ground that possession of marijuana is compatible with the federal Controlled Substances Act. See Defendant's Motion . . . to . . . Dismiss Indictment (ECF No. 213) at 25-27.

**BACKGROUND**

The federal Controlled Substances Act ("CSA"), 21 U.S.C. § 801 *et seq.*, is Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970. *Gonzales v. Raich*, 545 U.S. 1, 12 and n.19, 125 S.Ct. 2195, 162 L.Ed.2d 1 (2005) (hereinafter "*Raich*"). The substances that are controlled by the CSA are placed in schedules.

1 Marijuana is a Schedule I drug. 21 U.S.C. § 812(c)(10). *Raich*, 545  
2 U.S. at 14, 125 S.Ct. 2195. "Unlike drugs in other schedules, . . .  
3 schedule I drugs cannot be dispensed under a prescription." *United*  
4 *States v. Oakland Cannabis Buyers' Co-op.*, 532 U.S. 483, 492 n.5, 121  
5 S.Ct. 1711, 149 L.Ed.2d 722 (2001). The Supreme Court reiterated that  
6 point in *Raich*, observing that the regulatory scheme which was created  
7 by the CSA "prohibit[s] entirely the possession or use of substances  
8 listed in Schedule I, except as a part of a strictly controlled  
9 research project." 545 U.S. at 24, 125 S.Ct. 2195. The preceding  
10 authorities appear to be conclusive. Not so, says Michelle Gregg (ECF  
11 No. 213 at 25-27). She insists the Harveys were entitled to grow  
12 marijuana plants for medical purposes. She begins with 21 U.S.C. §  
13 844(a), the first sentence of which states:  
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16 It shall be unlawful for any person knowingly or  
17 intentionally to possess a controlled substance unless such  
18 substance was obtained directly, or pursuant to a valid  
19 prescription or order, from a practitioner, while acting in  
20 the course of his professional practice, or except as  
21 otherwise authorized by this subchapter or subchapter II of  
22 this chapter.

23 Ms. Gregg claims a Washington healthcare provider lawfully may  
24 prescribe cannabis pursuant to the Medical Use of Cannabis Act  
25 ("MUCA"), chapter RCW 69.51A. Believing this, she claims the Harveys  
26 fit within the exception created by 21 U.S.C. § 844(a).

26 The United States disagrees with Ms. Gregg's interpretation of

1 Washington law. According to the United States, a healthcare provider  
2 may not write a prescription for cannabis. The United States says the  
3 Washington State Department of Health ("DOH") recognizes as much. The  
4 DOH has created a list of "General Frequently Asked Questions." One  
5 of them asks "Is my recommendation considered a prescription if it is  
6 written on tamper-resistant paper?" The DOH has provided the  
7 following answer to this question:  
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9 Healthcare providers cannot write prescriptions for medical  
10 marijuana. They may only write recommendations that a  
11 patient has a medical condition that may benefit from the  
12 medical use of marijuana.

13 (Omnibus Response (ECF No. 244) at 16 (quoting Washington State  
14 Department of Health, "[General] Frequently asked questions about  
15 Medical Marijuana (Cannabis) in Washington State," available at  
16 [http://www.doh.wa.gov/YouandYourFamily/Illnessand](http://www.doh.wa.gov/YouandYourFamily/IllnessandDisease/MedicalMarijuana(Cannabis)/GeneralFrequentlyAskedQuestions.aspx)  
17 [Disease/MedicalMarijuana\(Cannabis\)/GeneralFrequentlyAskedQuestions.aspx](http://www.doh.wa.gov/YouandYourFamily/IllnessandDisease/MedicalMarijuana(Cannabis)/GeneralFrequentlyAskedQuestions.aspx)  
18 x. (last visited April 16, 2014)).

19 **RULING**

20 Ms. Gregg has not cited any Washington statute that authorizes a  
21 healthcare provider to issue a prescription for marijuana as the term  
22 "prescription" is used in 21 U.S.C. § 844(a). Nor does such a statute  
23 exist. Indeed, state officials recognize the constitutional supremacy  
24 of federal law as it relates to controlled substances. Under federal  
25 law, it is illegal to manufacture marijuana, even when one intends to  
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1 distribute the marijuana for medical purposes. The authorities cited  
2 above are clear. Their meaning is not subject to debate.

3 **IT IS HEREBY ORDERED:**

4 "[Defendant Michelle Gregg's] Motion . . . to . . . Dismiss  
5 Indictment" (**ECF No. 213**) is **denied** to the extent she argues  
6 possession of marijuana is legal under the federal Controlled  
7 Substances Act.  
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9 **IT IS SO ORDERED.** The District Court Executive is hereby  
10 directed to enter this order and furnish copies to counsel.

11 **DATED** this  30th  day of April, 2014.

12  
13  s/ Fred Van Sickle   
14 Fred Van Sickle  
Senior United States District Judge  
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