

A PROP. 215 REALITY CHECK

by **DAVE FRATELLO**

Debunking the proposition's opposition

WHEN CALIFORNIA VOTERS APPROVED PROPOSITION 215 by a 56 percent to 44 percent margin last November, it was a real victory for patients in California. It was a partial victory for physicians in the state. Most dramatically, it was an expression, by 5.3 million voters, of disagreement with a cornerstone of federal anti-drug policy.

The vote was proof that the policy of suppressing medical marijuana cannot survive public scrutiny. DEA officials, who have blocked efforts to recognize marijuana's therapeutic potential, have thus far escaped responsibility for denying patients a medicine that works. Now that a new scientific review of medical marijuana has begun, it seems only a matter of time before the truth prevails.

In California, in the meantime, the threat of state criminal punishments of medical marijuana-using patients with cancer, AIDS, glaucoma, or other serious illnesses is greatly diminished, so long as they have their doctors' approval to use it. (Federal penalties, while a theoretical possibility, are unlikely to be imposed on small-scale patient possessors or cultivators of medical marijuana.) At last, the hopes of hundreds, even thousands of patients and their families have been heard.

Still, the Prop. 215 victory is not fully consolidated, and there is a great deal of misinformation generated by opponents since the election that deserves a response. Point-by-point below are some reality checks.

MYTH: Prop. 215 was the product of crafty out-of-state legalizers who manipulated voters into passing it.

FACT: Prop. 215 won because voters were ready for it.

Prop. 215 was the result of three years of legislative activity in Sacramento. The California legislature passed one resolution and two bills supporting patients' rights to use medical marijuana. In 1995, Governor Pete Wilson vetoed

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AMR maintains a toll-free number, (888) YES-4-215, for patients and doctors who want to know how Prop. 215 affects them. AMR can be contacted at 1250 Sixth St., #202, Santa Monica, CA 90401; tel: (310) 394-2952; fax: (310) 451-7494; email: 104730.1000@compuserve.com.

the bill that became the basis for Prop. 215.

But just as with medical marijuana's legislative history, the story of Prop. 215's success starts with a few core facts that have nearly become lost in the post-election debate. Ninety-five percent of California voters are aware that marijuana is sometimes used for medical purposes; according to a June 1996 poll conducted for the campaign. They know it is used for cancer (44 percent), glaucoma (32 percent), pain relief (21 percent), and AIDS (17 percent). Most stunningly, *one in three* registered California voters (32 percent) said they had known someone who had used marijuana medically.

In other words, Californians have deeply ingrained knowledge about medical marijuana. We held four focus group sessions in the summer to gauge opinions about the issue, and every session had someone interrupt to tell a personal story (often seconded) about an aunt, uncle, grandparent, or another loved one who had used marijuana purely for medicinal reasons — usually to fight off the nausea from cancer treatment. In one focus group composed of older women, four of the 10 ladies told personal stories about medical marijuana.

To hear from older women was apt, given that Prop. 215's lead proponent, Anna Boyce, is an active senior citizen who happens to have had a personal experience with medical marijuana — the kind of experience derided as "anecdotal evidence" throughout the campaign.

Anna's husband, J.J., was diagnosed with lung cancer in 1995. Shortly into his chemotherapy treatments, J.J. and Anna found that the standard anti-nausea drugs weren't working. Anna — having become politically active on the issue of medical marijuana just two years before, after meeting a patient who was arrested for using the drug — suggested that J.J. try marijuana. And then she argued. And pressed. And finally she got him some marijuana, once his stiff resistance to using an illegal drug gave way to his otherwise untreatable nausea.

Marijuana worked for J.J. Boyce when no other drug had. According to Anna, he had an extra year of life — with quality — as a result. J.J. and Anna traveled, she cooked and he ate, and they lived life together until J.J.'s final days. Without medical marijuana in the equation, J.J.'s story would have been brief, from diagnosis to decline to death.

J.J. and Anna's story resonated with voters because so many knew it to be just the tip of the proverbial iceberg. The fact is, almost the only people who need to be convinced that marijuana is a useful medicine are public

Text of California's Proposition 215

SECTION 1. Section 11362.5 is added to the Health and Safety Code, to read:

11362.5(a) This section shall be known and may be cited as the Compassionate Use Act of 1996.

(b)(1) The people of the State of California hereby find and declare that the purpose of the Compassionate Use Act of 1996 are as follows:

(A) To ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief.

(B) To ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction.

(C) To encourage the federal and state governments to implement a plan to provide for the safe and affordable distribu-

tion of marijuana to all patients in medical need of marijuana.

(2) Nothing in this act shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, nor to condone the diversion of marijuana for nonmedical purposes.

(c) Notwithstanding any other provision of law, no physician in this state shall be punished, or denied any right or privilege, for having recommended marijuana to a patient for medical purposes.

(d) Section 11357, relating to the possession of marijuana, and Section 11358, relating to the cultivation of marijuana, shall not apply to a patient, or to a patient's primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician.

(e) For the purposes of this section, "primary caregiver" means the individual designated by the person exempted under this act who has consistently assumed responsibility for the housing, health, or safety of that person.

SECTION 2. If any provision of this measure or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of the measure which can be given effect without the invalid provision or application, and to this end the provisions of this measure are severable.

officials and their private-sector supplicants. Even for many opponents, the issue is not marijuana as medicine *per se*, but the fear of what admitting reality might symbolize to kids. Relax, 5.3 million voters said, we can handle that.

MYTH: Proponents successfully hid their motives and the real impact of Prop. 215.

FACT: Prop. 215 was fully debated before passage.

Opponents will never concede this point — they cannot, without admitting failure. Still, Prop. 215 was among the more controversial and "sexy" initiatives on the California ballot in 1996. As such, it was thoroughly covered by newspapers, radio, and television, beginning in earnest in early August when the bust of the San Francisco Cannabis Buyers' Club thrust the issue into the headlines.

All election-season news coverage followed the pro-con/equal-time format, and the organized opposition campaign got plenty of ink and broadcast time for its perspective. The voters simply refused to be scared into submission, and they voted their consciences. Yes, Prop. 215 could have been beaten, but it wasn't, despite the best efforts of opponents and some unhelpful actions by advocates. Polls showed a solidification of the "yes" vote well before election day, with high levels of support from people who had heard much about Prop. 215.

MYTH: Prop. 215 is moot because of federal law.

FACT: Prop. 215 is now working for patients.

Despite the loud controversy following Prop. 215's passage, and concerted efforts by federal officials to nullify it, the new law is working for many California patients. Already several patients with doctor approval for their marijuana use have turned back possible criminal charges. Willie Perkins, a 35-year-old AIDS patient in Los Angeles,

was cited by transit police for marijuana possession, but convinced city attorneys to drop the case on the strength of his doctor's written order to use medical marijuana. In a remarkable case in Northern California, Edward Willis, a 43-year-old from Mountain View, had a few marijuana plants and growing equipment returned to him three days after police had confiscated the items, along with his framed doctor's recommendation for medical marijuana.

Individual cities and counties have developed their own guidelines, but each one publicly vows to evaluate individual cases on the merits, meaning legitimate patients have little to fear from the criminal justice system today. Opponents' pre-election claims that Prop. 215 would be "unenforceable" and would create "anarchy" have thus proved to be hot rhetoric, not reality.

It is true that Prop. 215 might be easier to understand, and doctors' recommendations easier to obtain, if not for the federal threats to physicians and the general noise surrounding this issue. (A constantly updated guide about Prop. 215 is available free by calling (888) YES-4-215.) But Prop. 215 is law, it has not faced a court challenge (probably because the federal government recognized that it would lose), it cannot be nullified by the legislature, and the future gets brighter each week.

MYTH: Prop. 215 has legitimized any drug dealer who claims to sell marijuana for "medical" uses.

FACT: Arrests of growers and dealers continue, but Prop. 215 created a favorable climate for well-run buyers' clubs.

While campaign-season news about cannabis buyers' clubs was mostly negative, local officials are now, more than ever, accepting the existence of these facilities. Most recently, the city of San Jose, second-largest in the state, has created zoning restrictions and operational regulations for such

clubs. They must be in commercial areas, 500 feet or more from schools, and operate nonsmoking facilities from 9:00 AM to 9:00 PM — no sooner and no later. San Jose officials, including police, have expressed a desire to work openly with these facilities rather than risk having them operate underground. Police are even insisting that marijuana cultivation take place on site or in a secure lot nearby.

For guidance, San Jose need only look to Oakland, Los Angeles, and Santa Cruz — three areas where cannabis clubs have operated for some time under cooperative arrangements with local authorities. Oakland's club seems to have pioneered a nonsmoking rule, operating more like a pharmacy than a social club. Santa Cruz's and L.A.'s clubs have led the way in terms of record-keeping and tight intake procedures — the latter necessitating a willingness to say "no" to some people who, sick as they may be, cannot provide sufficient documentation.

What's remarkable about how Prop. 215 has helped providers is that the law itself does not specifically authorize cannabis clubs. It is the *spirit* of what voters supported that is driving this activity on the part of local officials.

MYTH: Voters were hoodwinked by Prop. 215's slick ads.

FACT: The ads featured true stories and played a minor role late in the campaign.

Once it became clear that the "Yes on 215" campaign would run television ads, and the opposition campaign could not afford to run any ads, you could see the post-passage argument coming from a mile away: "Prop. 215 passed because of a massive advertising blitz that misled voters." This claim is now commonly made by opponents to explain the Prop. 215 victory. Joe Califano, head of the Center on Addiction and Substance Abuse in New York City, wrote in a December 4 *Washington Post* column that voters were "bamboozled" by Prop. 215's ads. Two days earlier, the Senate Judiciary Committee had replayed the ads as "proof" of voter manipulation.

The fact is that no ads ran before October 25, less than two weeks from election day, November 5. And that was a time in which all manner of campaign ads were competing with one another for placement and voters' attention in the election season's final hour.

Moreover, beginning in June, California's airwaves were saturated with political ads, none of them for or against Prop. 215. Bob Dole ran several weeks' worth of ads in California — including two stoking hysteria over marijuana. And there were several much higher-profile initiative campaigns under way, with television ads for and against the most controversial measures beginning in early summer.

The truth is, with over \$100 million spent on California initiative campaigns in 1996, the overall "Yes on 215" effort was very modest. We did what we had to do and nothing more. The late ads, with moderate exposure in the last week, may have solidified support for 215, but the campaign did not have the capacity to reach voters with heavy repetition or to convert "no" votes to "yes" votes, even

assuming such a "conversion" were possible.

The content of the ads is the real issue if we are to investigate Califano's "bamboozling" charge. Our three TV ads featured real people and true stories, a fact never admitted or faced by opponents. Anna Boyce, the senior citizen, Orange County nurse and official proponent of Prop. 215, appeared in one spot. Dr. Richard Cohen, who chairs the oncology department of a major Northern California hospital, explained how he has seen marijuana help many cancer patients, and pleaded with voters to "let us physicians treat you with every medication that works." Finally, Judith Cushner, a breast cancer survivor, told her "secret" — she had broken the law and used marijuana to combat nausea caused by her treatment.

The ads were true, compelling, and on point. But rather than listen, opponents like Stu Mollrich, who ran the "No" campaign (*pro bono*, he says), complained that the ads "ignore[d] loopholes in the initiative." James Copple, director of the Community Anti-Drug Coalitions of America, which is coordinating the fight against future incarnations of Prop. 215 in other states, hosted a nationwide teleconference on March 25 in which he broadcast the Prop. 215 ads and critiqued them. To suit his theory that medical marijuana advocates are pushing marijuana use generally, he snidely said this of Dr. Cohen and nurse Boyce: "Notice how there are medical people at the beginning of these spots, who really tried to articulate a pro-use of marijuana message, for medical purposes. They gave an interesting picture of how we should be compassionate." True to form, Copple just didn't hear the message that's really there.

MYTH: The opposition campaign was an undermanned, underfunded "grass-roots" effort.

FACT: The "No" forces benefitted from undeclared gifts and contributions, including help from government officials.

When I hear opponents complain that the "No on 215" campaign was underfunded and purely a "grass-roots" effort — albeit one led by police agencies — it rings hollow. After all, who were the real challengers in this scenario — advocates of reforming elements of drug policy or political leaders and law enforcement bureaucracies?

The opponents' bizarre sour-grapes attitude was memorably expressed on election night, on a radio show I joined after the 215 victory was declared. On San Francisco's KQED, a large public radio station, I was surprised to be put up against Carla Lowe, an activist with Drug Watch International, the loose-knit group of conspiracy-mongering housewives and scientists that fights "legalization" in every form.

Ms. Lowe predicted that the initiative would be overturned in court, that voters would repeal it, etc., altogether denying the reality that 215 had won convincingly. Then Lowe repeatedly tried to relate the 215 victory to the biblical story of David and Goliath. Strangely, Lowe cast herself and her friends in the role of David, the young warrior mismatched against the Philistines' hulking killing machine. She ended this awkward analogy with a cute

catchphrase, a sort of warning: "Remember, in the end, it was Goliath who got stoned."

Biblical drug humor is pretty rare, but this was funny more for the through-the-looking-glass perspective Ms. Lowe revealed. The truth is, Prop. 215, while essentially a mainstream proposition, represented a rebellion against all established political authority in California, and against major national leaders.

Consider the weight behind the "No on 215" effort: Every major police organization in the state, from sheriffs' groups to individual police chiefs to the monied and influential prison guards union, not only opposed Prop. 215 but served as the leading "grass-roots" campaigners for the "No" side. The California Narcotics Officers Association donated half of the "No" campaign's \$28,000 budget. District attorneys and members of Congress held press conferences and campaigned in their districts against 215. California Attorney General Dan Lungren clearly used his police powers to try to influence the election, busting the San Francisco Cannabis Buyers' Club with a major media blitz, then, three weeks before the election, announcing arrests in the case at a news conference in Los Angeles, of

Doonesbury



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all places — L.A. being home to a media market with many more undecided voters at the time.

On top of those state and local officials, U.S. Senator Dianne Feinstein was a leading opponent, doing press conferences and writing op-eds. Clinton drug czar Barry McCaffrey first spoke out in August, then orchestrated several press conferences around the state featuring himself and drug-treatment monolith Phoenix House, Senator Feinstein, a San Jose-area high school football team, and others. McCaffrey also circulated a letter signed by three of the four living ex-presidents (Ford, Carter, and Bush) condemning 215, and he helped the California Medical Association produce and distribute a Video News Release featuring former Surgeon General C. Everett Koop. Bob Dole even spoke out at one point, although Bill Clinton never said a word.

Among the national groups opposing 215 was DARE America, which isn't used to losing anything, the Partnership for a Drug-Free America, and Joe Califano's New York-based Center on Addiction and Substance Abuse. Califano paid for a statewide poll of voters he released at a Los Angeles press conference a week before the election. The

poll's clear electioneering intent constituted a "contribution" to the "No on 215" campaign under state law, but neither Califano nor the "No" campaign has ever reported that expense (roughly \$25,000). State election officials and the state tax board are investigating.

So, upon revisiting Lowe's David and Goliath analogy, it appears that Goliath *did* "get stoned" — on election night. The "poor me" post-election attitude of 215's opponents smacks of a mix of jealousy and frustration, not knowing what to make of being out of touch with the electorate. Still, they remain convinced that every government official they've talked to can't be wrong. Therein lies a very big problem that isn't going away any time soon.

MYTH: Prop. 215 circumvented this country's medical-scientific process for approving medicines.

FACT: If anything, the vote energized that process.

Opponents said during and after the campaign that Prop. 215 sidestepped established scientific and medical procedures and became, essentially, "medicine by referendum." The *Washington Post* said on December 31, "Ordinary voters, no matter how well intentioned their aims, are not equipped to do the FDA's job."

BY GARRY TRUDEAU

All of these sources ignored what was really decided on election day — a criminal justice question supported by a medical rationale. The question before voters was not, "Should marijuana be available through pharmacies?" Instead, it was, "Shall criminal penalties for possession and cultivation of marijuana continue to apply to persons for whom the drug's use is authorized by a physician for the treat-

ment of a serious illness?"

Prop. 215 simply created a distinction in the law for a specified class of people. It did not create the idea of marijuana's being used as a medicine, nor did it authorize marijuana's immediate entry into the pharmacopeia. Instead, the law directs physicians and law enforcement officers to consider whether someone obtains medical benefits from an otherwise illegal plant drug, and to judge them differently if they can prove their medical use is legitimate.

Importantly, the controversy resulting from passage has led the federal government to pay serious attention to the medical evidence for marijuana, jump-starting a long-dead process that could lead to marijuana's approval for some medicinal uses. In that sense, Prop. 215 did not "sidestep" the standard medical approval process, it *reinvigorated* that process — perhaps giving it a chance to work. Everything we do as medical marijuana advocates in the coming months and years will be directed at keeping the federal government's feet to the fire, making sure that the process now begun is not shelved, like so much politically difficult science related to drugs routinely is. ♦