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Pot Group Sues to Make Feds Eat Words

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Medical marijuana advocates and federal prosecutors have never agreed on whether the drug has medical value.

Now, an Oakland, Calif.-based advocacy group wants a court order that would force the feds to see it their way.

Americans for Safe Access is trying to use a little-known Clinton-era law to make federal agencies take back statements about marijuana -- for example, that pot has "no currently accepted medical use." The group says this "misinformation" costs it time and money to refute.

But before the nonprofit can put any experts on the witness stand, it has to overcome a challenge to its standing to sue. The government's motion to dismiss the case is scheduled to be heard today before U.S. District Judge William Alsup of the Northern District of California.

ASA sued in February under the Information Quality Act. That law calls on federal agencies to maximize the "quality, objectivity, utility and integrity" of information they send out to the public, and it includes an administrative process for people who seek to correct inaccuracies.

In 2001 the Drug Enforcement Administration published a statement in the Federal Register saying marijuana has no currently accepted medical use in the United States.

ASA, claiming that the government's position on medical marijuana is "patently false," petitioned the Department of Health and Human Services, so far unsuccessfully, to correct the statements in its analysis.

"Of course courts are going to be leery to jump into the politics of applying science" to public policy, said Davis Wright



Tremaine partner Thomas Burke, a San Francisco lawyer who is not working on the case. The First Amendment lawyer notes that if the ASA's challenge survives the dismissal motion, activists of all stripes who oppose government policies may want to give the strategy a try. In the past Burke has helped sue to force the federal government to release records about "no fly" lists.

"The use of the statute would be very important to watch, given all of the headline-grabbing claims that the Bush administration has essentially used politics to trump science," he noted.

To get any satisfaction out of the courts, though, ASA first has to overcome the government's standing argument.

In court papers, Department of Justice attorney Steven Bressler argues that Alsup should dismiss *ASA v. Department of Health and Human Services*, 07-01049, because ASA hadn't identified any members who suffered any harm due to the "allegedly incorrect statement," and because the group lacks standing to sue on its own behalf.

To sue for itself, and not its members, Bressler said the issue in the suit has to be "germane to the plaintiff's organizational purpose." He points the court to ASA's Web site, noting that its mission there was described as "ensur[ing] safe and legal access to cannabis (marijuana) for therapeutic uses and research." Suing over alleged "misinformation," he argues, won't further that goal.

"It would not make marijuana use any more (or less) safe. Nor would a correction change the fact that DEA continues to list marijuana as a schedule I [illegal] drug," he wrote. In an e-mail, Bressler said he wasn't authorized to discuss the case further outside of court.

ASA has countered in its own court papers that its stated purpose is broader, and includes providing medical information to patients, attorneys, health and medical professionals and policymakers throughout the United States.

In a brief by its lawyer, Stanford law professor Alan Morrison, ASA argues that it can satisfy the standing requirements by alleging that the government's statements increased the resources ASA had to spend on its work.

According to Morrison, the group has spent more than \$100,000 and hundreds of hours of staff time combating the government's position. A favorable decision in court would reduce the need to spend that money, he added. Even though a favorable ruling wouldn't legalize marijuana, he said it could encourage people to lobby Congress to reform the drug laws.

"There's lots of perfectly lawful uses of that information," he said.