

STATE OF NEW MEXICO
COUNTY OF EDDY
FIFTH JUDICIAL DISTRICT

LEONARD FRENCH,

Plaintiff,

v.

BOARD OF COUNTY COMMISSIONERS
FOR THE COUNTY OF EDDY,
DAVID EDMONDSON, Commander of the
Pecos Valley Drug Task Force, and
JOHN DOES #1-4, Eddy County Sheriffs' Deputies,

Defendants.

**COMPLAINT FOR TORT DAMAGES AND DECLARATORY
AND INJUNCTIVE RELIEF**

COMES NOW PLAINTIFF, through the undersigned counsel, and brings this action for declaratory relief and injunctive relief pursuant to the New Mexico Declaratory Judgment Act, NMSA 1978, §§ 44-6-1 to 44-6-15 (1975), New Mexico statutory and common law, and for damages under the New Mexico Tort Claims Act, NMSA 1978, § 41-4-1 to 41-4-27. In addition to bringing tort claims against Defendants, Mr. French also requests that this court declare that Defendants' seizure of his marijuana, used for medical purposes pursuant to a license issued by the New Mexico Department of Health, violated his rights under the New Mexico Constitution and applicable New Mexico statutory and common law.

Mr. French has paraplegia, caused by damage to the nervous tissues of his spinal cord, and suffers from severe pain due to intractable spasticity. In order to lawfully grow, possess, and use limited amounts of marijuana, Mr. French obtained a medical marijuana license from the New Mexico Department of Health pursuant to the Lynn and Erin

Compassionate Use Act, NMSA 1978, § 26-2B-1 to 26-2B-7, in July of 2007. He also obtained a prescription from his physician for marijuana.

On September 4, 2007, John Does #1-4, members of the Pecos Valley Drug Task Force and the Eddy County Sheriff's Department, came to Mr. French's house, seized several small marijuana plants, a growing system, and paraphernalia that Mr. French lawfully uses to ingest marijuana. John Does #1-4 subsequently turned the seized materials over to the U.S. Drug Enforcement Administration (DEA) in violation of the Lynn and Erin Compassionate Use Act, the New Mexico Forfeiture Act (NMSA 1978, § 31-27-1 to 31-27-8), and Article II, Section 10 of the New Mexico Constitution. Mr. French also asserts that Defendants committed the tort of conversion for Defendants' unlawful exercise of dominion and control over property belonging to Mr. French in defiance of Mr. French's rights.

JURISDICTION, VENUE, AND PARTIES

1. Jurisdiction of this Court is invoked pursuant to the New Mexico Tort Claims Act, N.M.S.A. 1978 § 41-4-1 to 41-4-27 and New Mexico common law. All acts complained of occurred in Eddy County, New Mexico.
2. Venue is proper pursuant to NMSA 1978, § 38-3-1 (1988).
3. Mr. Leonard French is a resident of Eddy County, New Mexico. Mr. French is confined to a wheelchair because he has paraplegia. Mr. French has lawfully used marijuana pursuant to a physician's prescription and the Lynn and Erin Compassion Use Act since July 2007 to control pain and muscle spasms.
4. Defendant Board of County Commissioners for the County of Eddy (hereinafter "Board") is the proper party subject to suit regarding claims against Eddy County.

5. Defendant David Edmondson is and was at all pertinent times the Commander of the Pecos Valley Drug Task Force. Defendant Edmondson is the direct supervisor for John Does#1-4.

6. Upon information and belief, Defendants JOHN DOES #1-4 are and/or were at all relevant times herein, employees and agents of Eddy County, the Eddy County Sheriff's Department, and the Pecos Valley Drug Task Force, and at all times were acting within the scope of their duties. Plaintiff is presently unaware of the true identities of the Deputy John Does #1-4 and therefore sues these defendants by fictitious names. Plaintiff will amend his complaint to add the true identities of these defendants once they are discovered.

ALLEGATIONS OF FACT

7. Mr. French has had paraplegia since he was involved in a motorcycle accident in 1987, in which his spinal cord was severely damaged.

8. Since the motorcycle accident, Mr. French has been subscribed numerous medications to control pain and severe muscle spasms.

9. Over time, these medications lost their effectiveness and failed to control Mr. French's pain and muscle spasms.

10. In July 2007, his physician prescribed Mr. French marijuana, pursuant to the Lynn and Erin Compassionate Use Act, to control his pain and muscle spasms.

11. In compliance with the laws of New Mexico, Mr. French applied to and obtained from the New Mexico Department of Health in July of 2007 a license to lawfully cultivate, possess, and use limited quantities of marijuana.

12. Marijuana has provided Mr. French more relief from pain and muscle spasms than have traditional forms of medication. Mr. French's physician believes that marijuana is the best available treatment for Mr. French's conditions.
13. On September 4, 2007, Mr. French was in his home in Malaga, New Mexico, when John Does #1-4 arrived and began asking Mr. French questions about marijuana.
14. At first, Mr. French believed that John Does #1-4 were from the New Mexico Department of Health.
15. Mr. French later found out that John Does #1-4 were members of the Pecos Valley Drug Task Force.
16. The Pecos Valley Drug Task Force is an agency managed and operated by Eddy County.
17. One of the John Does told Mr. French, "We are here about the marijuana."
18. Mr. French, believing that John Does #1-4 were checking on his compliance with the Lynn and Erin Compassionate Use Act, presented John Does #1-4 with his state issued license.
19. One of the John Does took Mr. French's license, went to his vehicle, and proceeded to make cell phone calls for at least 90 minutes.
20. Another of the John Does proceeded to walk around outside Mr. French's house.
21. The remaining two John Does followed Mr. French into his house. Mr. French showed the John Does his hydroponics growing system, which contained two small marijuana plants and three dead marijuana sprouts.
22. Mr. French informed John Does#1-4 that he was licensed by the State of New Mexico to legally possess said materials. Defendants did not respond to this statement.

23. John Does #1-4 proceeded to seize Mr. French's hydroponics grow system and his marijuana plants. One of the John Does handed Mr. French an inventory list and also returned Mr. French's state issued medical marijuana license.

24. John Does asked Mr. French if he had any "pipes." Mr. French gave John Does #1-4 a pipe which he used to smoke marijuana. John Does #1-4 then left Mr. French's residence.

25. On September 7, 2007, Mr. French called the Pecos Valley Drug Task Force to inquire about his seized property.

26. An unknown official from the Pecos Valley Drug Task Force informed Mr. French that his hydroponics growing system, marijuana plants, and pipe had been turned over to the DEA and that the Pecos Valley Drug Task Force had closed its case.

27. Defendants Board and Edmondson exercise direct supervisory responsibility and/or control over the John Does #1-4 and are therefore responsible for their negligent acts under the doctrines of respondeat superior and vicarious liability.

28. Defendant Board enjoys actual de facto control over John Does #1-4 and is therefore responsible for their acts under the doctrines of respondeat superior and vicarious liability.

COUNT I

DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF
VIOLATION OF THE LYNN AND ERIN COMPASSIONATE USE ACT
(ALL DEFENDANTS)

29. Plaintiff incorporates by reference all preceding allegations as if fully set forth herein.

30. Under the New Mexico Constitution and the applicable New Mexico statutory and common law, Defendants did not have authority to seize Mr. French's property.

31. Defendants' actions violated the Lynn and Erin Compassionate Use Act, NMSA 1978, § 26-2B-1 to 26-2B-7 (2007).

COUNT II

DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF
VIOLATION OF THE NEW MEXICO FORFEITURE ACT
(ALL DEFENDANTS)

32. Plaintiff incorporates by reference all preceding allegations as if fully set forth herein.

33. Defendants' actions violated the New Mexico Forfeiture Act, NMSA 1978, § 31-27-1 to § 31-27-8, by turning over Mr. French's property to the DEA without first following procedure and depositing Mr. French's property in the District Court.

COUNT III
DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF
VIOLATION OF ARTICLE II, SECTION 10 OF THE NEW MEXICO
CONSTITUTION
(ALL DEFENDANTS)

34. Plaintiff incorporates by reference all preceding allegations as if fully set forth herein.

35. Defendants violated Mr. French's rights secured under Article II, Section 10 of the Constitution of the State of New Mexico by seizing his property without reasonable suspicion or probable cause to believe that he had been or was engaged in committing a crime.

COUNT IV
N.M. TORT CLAIMS ACT
CONVERSION
(ALL DEFENDANTS)

36. Plaintiff incorporates by reference all preceding allegations as if fully set forth herein.

37. Defendants unlawfully converted Mr. French's property, which he lawfully possessed, by seizing it and subsequently turning it over to the DEA.

38. Defendants unlawfully exercised dominion and control over property belonging to Mr. French in defiance of his rights. Defendants made an unauthorized and injurious use of Mr. French's property and wrongfully detained it after demand had been made for its return.

39. As a result of Defendants' actions, Mr. French has suffered the loss of the value of his hydroponics grow system and has been unable to grow his own medical marijuana.

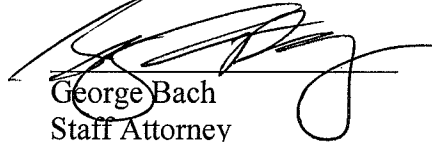
40. The actions of Defendants were not justified or privileged under state law.

RELIEF REQUESTED

WHEREFORE, Plaintiff respectfully requests that this Court:

- A. Enter a declaratory judgment that Defendants violated the Lynn and Erin Compassionate Use Act, the New Mexico Forfeiture Act, and Mr. French's rights secured under Article II, Section 10 of the New Mexico Constitution;
- B. Enter an order enjoining Defendants from unlawfully interfering with Mr. French's rights to grow, possess, and use marijuana for medical purposes as secured by the Lynn and Erin Compassionate Use Act;
- C. Award appropriate compensatory damages to Mr. French for Defendants' tortious conduct;
- D. Award attorney fees pursuant to the private attorneys general doctrine and the substantial benefit doctrine; and
- E. Award such other and further relief as this Court deems just and proper.

Respectfully submitted,



George Bach
Staff Attorney
ACLU of New Mexico
P.O. Box 566
Albuquerque, NM 87103
(505) 243-0046
Facsimile (505) 266-5916

Philip Davis, Co-Legal Director
ACLU of New Mexico
814 Marquette NW
Albuquerque, NM 87102
(505) 242-1904
Facsimile (505) 242-1864
Of Counsel

Attorneys for Plaintiff