Carl Olsen
January 14, 2012

Janice K. Brewer
Governor of Arizona
1700 West Washington Street
Phoenix, Arizona 85007

Dear Governor Brewer,

On June 3, 2011, I tried to intervene in your case against the United States, Arizona v. United States, No. 11-cv-01072-PHX-SRB (Docket No. 6)[1], arguing that the proper course for Arizona to protect its citizens would be to notify U.S. Attorney General Eric Holder that marijuana has accepted medical use in the United States (in Arizona) and must therefore be immediately removed from its current federal classification as a substance with no accepted medical use in the United States. I cited the U.S. Supreme Court decision in Gonzales v. Oregon, 546 U.S. 243 (2006) (state lawmakers, not federal administrative officials, decide what is accepted for medical use in a state), as proof of the validity of my claim.

On July 6, 2011, the Honorable Susan R. Bolton dismissed my motion to intervene (Docket No. 29)[2], stating that I did not have a sufficiently protected interest in the case to justify granting my motion and that any rights I might arguably have had were protect by the other parties in the case. As it turns out, the case was dismissed on January 4, 2012 (Docket No. 71)[3], and any rights I might arguably have had were protected.

I see you have decided not to join the states of Washington and Rhode Island in their petition to have marijuana reclassified by the DEA[4]. Nor have you decided to join the state of Colorado in its request to have marijuana reclassified by the DEA[5]. I'm writing to tell you that you've made the right decision not to support those efforts, because those states are giving away the store by failure to assert states' rights according to the U.S. Supreme Court ruling in Gonzales v. Oregon. I like your letter to Acting U.S. Attorney Ann Birmingham Scheel[6], but you need to be more aggressive. Your letter does not assert that marijuana is misclassified under the federal Controlled Substances Act, which is the key to this whole mess.

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[1] http://www.iowamedicalmarijuana.org/States/pdfs/az-11-cv-01072_006.pdf
[2] http://www.iowamedicalmarijuana.org/States/pdfs/az-11-cv-01072_029.pdf
[3] http://www.iowamedicalmarijuana.org/States/pdfs/az-11-cv-01072_071.pdf
[4] http://www.iowamedicalmarijuana.org/States/pdfs/wa_federal_scheduling_20111130.pdf
[5] http://www.iowamedicalmarijuana.org/States/pdfs/co_1325267714-barbara_brohl_letter.pdf
[6] http://www.iowamedicalmarijuana.org/States/pdfs/az_20120113_governor.pdf

The reason you should listen to me is because I'm currently an intervenor in the federal marijuana rescheduling petition for judicial review, Americans for Safe Access, et al. v. DEA, No. 11-1265, in the United States Court of Appeals for the District of Columbia Circuit. My motion to intervene was granted on September 1, 2011[7]. The DEA filed a motion to dismiss me from the case on September 9, 2011[8]. A three judge panel denied the DEA's motion to dismiss me on December 7, 2011[9], and set a briefing schedule for the parties (including me) on December 8, 2011[10]. My original argument for intervening was that none of the states that have accepted the medical use of marijuana had notified the federal government that marijuana must be removed from its current classification as a substance with no medical use in the United States. And, of course, on November 30, the states of Washington and Rhode Island filed requests with the DEA to have marijuana reclassified.

Unfortunately, the Governor of Washington tells me the decision on whether marijuana has accepted medical use in the United States should be made by a federal regulatory administrator, not by state lawmakers[11]. I'm going to write to the Governor of Colorado later this weekend to complain about Colorado's letter to the DEA, which also cedes state sovereignty to a federal regulatory administrator. I will be complaining about these states in my argument before the U.S. Court of Appeals, because it violates the Tenth Amendment balance between state and federal governments, formally known as "federalism." State cannot cede their power to the federal government unless Congress specifically preempts them in clear and unambiguous language. Gonzales v. Oregon makes it clear that Congress never intended to preempt the states from deciding what to accept or reject for medical use. That is why we have 50 state controlled substances acts, instead of one federal law to rule them all.

If I can be of any further assistance to you, please let me know. Your point that state employees deserve protection is well taken, and state citizens deserve protection as well. It is within your power to protect them, so I wish you every success in fulfilling your constitutional duty to protect and serve the people who elected you.

Sincerely,

Carl Olsen

[7] http://petition.iowamedicalmarijuana.org/pdf/usca_11_1265_20110901.pdf
[8] http://petition.iowamedicalmarijuana.org/pdf/usca_11_1265_20110909.pdf
[9] http://petition.iowamedicalmarijuana.org/pdf/usca_11_1265_20111207.pdf
[10] http://petition.iowamedicalmarijuana.org/pdf/usca_11_1265_20111208.pdf
[11] http://www.iowamedicalmarijuana.org/States/pdfs/wa_20111205_governor.pdf

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