Carl Olsen
January 15, 2012

Barbara J. Brohl
Colorado Department of Revenue
State Capitol Annex
1375 Sherman Street, Room 409
Denver, Colorado 80261

Dear Executive Director Brohl,

On November 7, 2000, the People of Colorado amended the Colorado Constitution by adding Article XVIII, Section 14, Medical use of marijuana for persons suffering from debilitating medical conditions[1], specifically stating, "'Medical use' means the acquisition, possession, production, use, or transportation of marijuana or paraphernalia related to the administration of such marijuana to address the symptoms or effects of a patient's debilitating medical condition, which may be authorized only after a diagnosis of the patient's debilitating medical condition by a physician or physicians, as provided by this section."

As a condition for placement in federal Schedule I, Congress directed the U.S. Attorney General to remove anything from Schedule I that has accepted medical use in the United States. 21 U.S.C. § 812(b)(1)(B).[2]

Legislators in Colorado seem to be confused as to the meaning of "medical use" and the role of the federal government in regulating the medical use of controlled substances, because on June 7, 2010, the Colorado legislature enacted a statute purportedly requiring state officials to tell the U.S. Drug Enforcement Administration that marijuana has "potential medical value." See Colorado 2010 Session Laws, Chapter 355, Section 12-43.3-202(1)(g) (Colorado House Bill 10-1284)[3]. Potential medical value and actual medical value are not the same. The People of Colorado did not authorize state officials to subvert the will of the people by distorting the meaning of the Colorado Constitution.

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]. Instead, you have decided to make your own request to have marijuana reclassified by the DEA[5]. I'm writing to tell you that you've made the wrong decision, as have the states of Washington and Rhode Island. You are giving away the store by virtue of your failure to assert states' rights according to the U.S. Supreme Court ruling in Gonzales v. Oregon, 546 U.S. 243 (2006). Your letter does not assert that marijuana is misclassified under the federal Controlled Substances Act as a matter of law, which is the key to this whole mess.

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[1] http://www.cdphe.state.co.us/hs/medicalmarijuana/amendment.html
[2] http://www.fda.gov/RegulatoryInformation/Legislation/ucm148726.htm
[3] http://www.state.co.us/gov_dir/leg_dir/olls/sl2010a/sl_355.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

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[6]. The DEA filed a motion to dismiss me from the case on September 9, 2011[7]. A three judge panel denied the DEA's motion to dismiss me on December 7, 2011[8], and set a briefing schedule for the parties (including me) on December 8, 2011[9]. My original argument for intervening was that none of the states that have accepted the medical use of marijuana have 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[10]. I'm writing to you to make the same objection to Colorado's letter to the DEA, which also cedes state sovereignty to a federal regulatory administrator. I will be complaining about your states in my argument before the U.S. Court of Appeals, because what you are doing violates the Tenth Amendment balance between state and federal governments, formally known as "federalism" and subverts the will of the people who elected you to represent the state, not the DEA. 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 state seems to understand that its citizens deserve protection from federal misclassification of marijuana, but you don't seem to understand who is actually in control. It is within your power to protect the citizens of your state, so I wish you every success in fulfilling your constitutional duty to protect and serve the people who elected you.

Sincerely,

Carl Olsen

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

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