130 E Aurora Ave
Des Moines, IA 50313-3654
February 21, 2017

Bob Kressig
3523 Veralta Drive
Cedar Falls, IA 50613

Dear Rep. Kressig,

I am writing regarding HSB 132, an Act relating to the medical cannabidiol Act, and making related modifications.

HSB 132 would authorize the cultivation of cannabis in Iowa. The current federal penalty for cultivation of cannabis is life in prison and a $50 million fine. 21 U.S.C. § 841(b)(1)(A)(vii) (2017). HSB 132 does not say anything about federal law.

Federal law requires that controlled substances be classified by administrative regulation. The current federal regulation of cannabis, as well as the Iowa classification, is schedule 1. A condition that must be met for a substance to be included in schedule 1 is that the substance must have no accepted medical use in treatment in the United States.

HSB 132 says cannabis will be grown in Iowa to make medicine. There is a glaring inconsistency in accepting the medical use of cannabis in Iowa and leaving it classified as having none. You will be asking people to volunteer to for life in prison and a $50 million fine if you do not address this inconsistency.

I would suggest amending the language to remove marijuana from Iowa schedule 1 and include a statement that Iowa is accepting the medical use of cannabis as defined by Congress in the federal controlled substances act. If I can be of any assistance, please let me know.

Thank you!

Sincerely, Carl Olsen
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FEDERALISM

If the state can establish medical use of a federally controlled substance, then how can a federal administrative agency interpret “accepted medical use in treatment in the United States” to exclude the accepted use of that substance in a state?

Congress never defined the term “medical use.”

See ***Alliance for Cannabis Therapeutics v. DEA***, 930 F.2d 936, 939 (D.C. Cir. 1991) ("neither the statute nor its legislative history precisely defines the term 'currently accepted medical use'; therefore, we are obliged to defer to the Administrator's interpretation of that phrase if reasonable.")

The Supreme Court says the Attorney General cannot make a rule that makes illegitimate a medical practice authorized by state law.

See ***Gonzales v. Oregon***, 546 U.S. 243, 258 (2006) ("The Attorney General has rulemaking power to fulfill his duties under the CSA. The specific respects in which he is authorized to make rules, however, instruct us that he is not authorized to make a rule declaring illegitimate a medical standard for care and treatment of patients that is specifically authorized under state law.")

A U.S. Court of Appeals has held that intrastate medical use of a controlled substance is accepted medical use under the federal drug law that Congress enacted.

See, ***Grinspoon v. DEA***, 828 F.2d 881, 886 (1st Cir. 1987) ("Congress did not intend 'accepted medical use in treatment in the United States' to require a finding of recognized medical use in every state or, as the Administrator contends, approval for interstate marketing of the substance.")

It seems like the state would be negligent if it did not include language in a state law accepting the medical use of marijuana that the federal

classification of marijuana is either invalid on its face, or does not apply to state medical use of marijuana.

After all, the DEA is not initiating the acceptance of the medical use of marijuana. The state is. I think the burden is on the state to make the argument first.

I do agree that a state law cannot pre-empt a federal law.

See ***Gonzales v. Raich***, 545 U.S. 1 (2005). But the federal classification of marijuana is a federal administrative regulation, not a federal statute. ***Id***. at 28 n. 37 (federal classification of marijuana relies on the "accuracy of the findings that require marijuana to be listed in Schedule 1.")

I would like to have this defense codified in a state law if I was arrested for participating in a state medical marijuana program.

Some states are brutal about it, like Arizona, for example. This is from the application for the Arizona Medical Marijuana Program:

> You must agree to this statement to register:
>
> The sale, manufacture, distribution, use, possession, etc., of marijuana is illegal under federal law. A registry identification card or registration certificate issued by the Arizona Department of Health Services pursuant to Arizona Revised Statutes Title 36, Chapter 28.1 and Arizona Administrative Code Title 9, Chapter 17 does not protect me from legal action by federal authorities, including possible criminal prosecution for violations of federal law.

Unless we challenge this in the actual text of a state law, we'll end up like Colorado, where the Colorado Supreme Court said in ***Coats v. Dish Network***, 350 P.3d 849, 850 (Colo. 2015):

> "Therefore, an activity such as medical marijuana use that is unlawful under federal law is not a 'lawful' activity under section 24-34-402.5"

States are ceding state authority to a federal administrative agency on the basis of an interpretation of the phrase "accepted medical use in treatment in the United States" which is contrary to the way the federal courts have interpreted that phrase. Both the state and the federal courts have more constitutional authority than a federal administrative agency to interpret the language Congress used in the federal statute. The agency applies an outdated test it developed in 1994 to determine "medical use" and simply ignores the word "accepted" and the phrase "in the United States." See,

https://www.dea.gov/resource-center/2016%20NDTA%20Summary.pdf#page=120
at footnote bb

The recent petitions that have been filed, such as the one filed by the states of Washington and Rhode Island in 2011, have accepted this outdated federal interpretation from 1994 as a valid interpretation today, even though there were no states in the United States that had accepted the medical use of marijuana in 1994 and now we have 44 states in the United States that have accepted either the whole plant or extracts from the cannabis plant.

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TREATIES

Single Convention on Narcotic Drugs, 1961 (As amended by the 1972 Protocol)

Single Convention on Narcotic Drugs, 1961, as amended by the 1972 Protocol, May 25, 1967, 18 U.S.T. 1407, 30 T.I.A.S. No. 6298, 520 U.N.T.S. 151

Article 36 Penal Provisions
Article 36(1)(a) “Subject to its constitutional limitations, …”
Article 36(2) “Subject to the constitutional limitations of a Party, its legal system and domestic law, …”

Convention on Psychotropic Substances, 1971

Convention on Psychotropic Substances, 1971, February 21, 1971, 32 U.S.T. 543, 1019 U.N.T.S. 175

Article 22 Penal Provisions
Article 22(1)(a) “Subject to its constitutional limitations, …”
Article 22(2) “Subject to the constitutional limitations of a Party, its legal system and domestic law, …”

Convention against Illicit Traffic, 1988

United Nations Convention on Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988, December 20, 1988, 28 I.L.M. 493, 1582 U.N.T.S 95

Article 3 Offences and Sactions
Article 3(1)(c) “Subject to its constitutional principles and the basic concepts of its legal system:”
Article 3(2) “Subject to its constitutional principles and the basic concepts of its legal system, …”

Federal Penalties

Federal Penalties

21 U.S.C. § 841(b)(1)(A)(vii)
1000 kilograms (2204.62 pounds / 1.10231 tons) or more of a mixture or substance containing a detectable amount of marihuana, or 1,000 or more marihuana plants regardless of weight
$10/50 million — 10 years to life in prison

21 U.S.C. § 841(b)(1)(B)(vii)
100 kilograms (220.462 pounds / 0.110231 tons) or more of a mixture or substance containing a detectable amount of marihuana, or 100 or more marihuana plants regardless of weight
$5/25 million — 5 to 40 years in prison

21 U.S.C. § 841(b)(1)(C)
50 to 99 kilograms or 50 to 99 plants
$1/5 million — up to 20 years in prison

21 U.S.C. § 841(b)(1)(D)
less than 50 kilograms of marihuana, except in the case of 50 or more marihuana plants regardless of weight, 10 kilograms of hashish, or one kilogram of hashish oil,
$250,000/$1 million — up to 5 years in prison

21 U.S.C. § 844

Any person who violates this subsection may be sentenced to a term of imprisonment of not more than 1 year, and shall be fined a minimum of $1,000, or both,

except that if he commits such offense after a prior conviction under this subchapter or subchapter II of this chapter, or a prior conviction for any drug, narcotic, or chemical offense chargeable under the law of any State, has become final, he shall be sentenced to a term of imprisonment for not less than 15 days but not more than 2 years, and shall be fined a minimum of $2,500,L

except, further, that if he commits such offense after two or more prior convictions under this subchapter or subchapter II of this chapter, or two or more prior convictions for any drug, narcotic, or chemical offense chargeable under the law of any State, or a combination of two or more such offenses have become final, he shall be sentenced to a term of imprisonment for not less than 90 days but not more than 3 years, and shall be fined a minimum of $5,000.

21 U.S.C. § 844a

(a) In general Any individual who knowingly possesses a controlled substance that is listed in section 841(b)(1)(A) of this title in violation of section 844 of this title in an amount that, as specified by regulation of the Attorney General, is a personal use amount shall be liable to the United States for a civil penalty in an amount not to exceed $10,000 for each such violation.

(b) Income and net assets The income and net assets of an individual shall not be relevant to the determination whether to assess a civil penalty under this section or to prosecute the individual criminally. However, in determining the amount of a penalty under this section, the income and net assets of an individual shall be considered.

(c) Prior conviction A civil penalty may not be assessed under this section if the individual previously was convicted of a Federal or State offense relating to a controlled substance.

(d) Limitation on number of assessments A civil penalty may not be assessed on an individual under this section on more than two separate occasions.

(e) Assessment A civil penalty under this section may be assessed by the Attorney General only by an order made on the record after opportunity for a hearing in accordance with section 554 of title 5. The Attorney General shall provide written

notice to the individual who is the subject of the proposed order informing the individual of the opportunity to receive such a hearing with respect to the proposed order. The hearing may be held only if the individual makes a request for the hearing before the expiration of the 30-day period beginning on the date such notice is issued.

Marijuana Leaf