IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

STATE OF ARIZONA, et al.,

Plaintiffs,

vs.

UNITED STATES, et al.,

Defendants.

Case No. 11-cv-01072-PHX-SRB

RESPONSE TO OBJECTION TO MOTION TO INTERVENE

Carl Olsen ("Olsen" hereafter) hereby responds to the State of Arizona's Objection to his Motion to Intervene.

The State of Arizona correctly and understandably seeks a ruling from this court on the strength of Olsen's interest in this case.

Olsen has a right to see federal law vigorously enforced in the State of Arizona because that same federal law applies to Olsen in the State of Iowa and there should be no exception to federal law in Arizona that does not equally exist in the State of Iowa.

Federal law currently classifies marijuana as having "no accepted medical use in treatment in the United States." Because the State of Arizona has failed to file an application to have marijuana reclassified under the federal Controlled Substances Act pursuant to 21 U.S.C. 811 using the form provided in 21 C.F.R. 1308.43, the State of Arizona has failed to perform an obligation under the federal

Controlled Substances Act which has a direct impact on Olsen and the State of Iowa.

Olsen has successfully obtained a unanimous ruling from the Iowa Board of Pharmacy that marijuana is incorrectly classified in Iowa as having no accepted medical use in treatment in the United States and the Iowa Legislature is currently hesitating to approve the board's recommendation. Olsen has filed a petition for declaratory judgment on June 6, 2011, in the Iowa District Court for Polk County to have marijuana removed from Iowa's schedule I by court order. ***Carl Olsen v. State of Iowa***, No. CV 8682 (Polk County Iowa District Court, June 6, 2011).

Under Iowa law, classification under federal law is highly persuasive in Iowa's classification, so Arizona's failure to apply for federal reclassification has a direct impact on Iowa and on Olsen. See Iowa Code §124.201(4):

> If any new substance is designated as a controlled substance under federal law and notice of the designation is given to the board, the board shall similarly designate as controlled the new substance under this chapter after the expiration of thirty days from publication in the Federal Register of a final order designating a new substance as a controlled substance, unless within that thirty-day period the board objects to the new designation. In that case the board shall publish the reasons for objection and afford all interested parties an opportunity to be heard. At the conclusion of the hearing the board shall announce its decision. Upon publication of objection to a new substance being designated as a controlled substance under this chapter by the board, control under this chapter is stayed until the board publishes its decision. If a substance is designated as controlled by the board under this paragraph the control shall be temporary and if within sixty days after the next regular session of the general assembly convenes it has

> not made the corresponding changes in this chapter, the temporary designation of control of the substance by the board shall be nullified.

Iowa has enacted the Uniform Controlled Substances Act, which a total of 48 states have enacted. The corresponding section, §201(f), of the uniform act is as follows:

> If a substance is designated, rescheduled, or deleted as a controlled substance under federal law, the [appropriate person or agency] shall similarly treat the substance under this [Act] after the expiration of 30 days from the date of publication in the Federal Register of a final order designating the substance as a controlled substance or rescheduling or deleting the substance or from the date of issuance of an order of temporary scheduling under Section 508 of the federal Dangerous Drug Diversion Control Act of 1984 [21 U.S.C. 811(h)], unless within the 30-day period, the [appropriate person or agency] or an interested party objects to the treatment of the substance. If no objection is made, the [appropriate person or agency] shall adopt and publish, without making the determinations or findings required by subsections (a) through (d) or Section 203, 205, 207, 209, or 211, a final rule treating the substance. If an objection is made, the [appropriate person or agency] shall make a determination with respect to the treatment of the substance as provided by subsections (a) through (d). Upon receipt of an objection to the treatment by the [appropriate person or agency], the [appropriate person or agency] shall publish notice of the receipt of the objection, and action by the [appropriate person or agency] under this [Act] is stayed until the [appropriate person or agency] adopts a rule as provided by subsection (d).

http://www.law.upenn.edu/bll/archives/ulc/fnact99/1990s/ucsa94.pdf

The purpose of Iowa's Uniform Controlled Substances Act is to make uniform the law of those states which enact it (the Uniform Controlled Substances Act). Iowa

Code 124.601 ("This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it").

The State of Arizona clearly has no standing to challenge federal enforcement of federal schedule I in Arizona because Arizona has failed to exhaust its administrative remedy. While Olsen is tied up in the administrative process, the State of Arizona wants to skip over the administrative process, depriving Olsen of his due process rights under the same process Arizona refuses to employ.

In upholding the constitutionality of the federal Controlled Substances Act, the U.S. Supreme Court clearly identified the solution to Arizona's problem:

> We acknowledge that evidence proffered by respondents in this case regarding the effective medical uses for marijuana, if found credible after trial, would cast serious doubt on the accuracy of the findings that require marijuana to be listed in Schedule I. See, e.g., Institute of Medicine, Marijuana and Medicine: Assessing the Science Base 179 (J. Joy, S. Watson, & J. Benson eds. 1999) (recognizing that "[s]cientific data indicate the potential therapeutic value of cannabinoid drugs, primarily THC [Tetrahydrocannabinol] for pain relief, control of nausea and vomiting, and appetite stimulation"); see also Conant v. Walters, 309 F.3d 629, 640-643 (CA9 2002) (Kozinski, J., concurring) (chronicling medical studies recognizing valid medical uses for marijuana and its derivatives). But the possibility that the drug may be reclassified in the future has no relevance to the question whether Congress now has the power to regulate its production and distribution. Respondents' submission, if accepted, would place all homegrown medical substances beyond the reach of Congress' regulatory jurisdiction.

Gonzales v. Raich, 545 U.S. 1, 28 n.37 (2005). Clearly, Arizona must file for federal reclassification of marijuana.

The State of Arizona must file for federal reclassification and then file a petition for a civil injunction in this court to enjoin the enforcement of federal schedule I for medical use of marijuana in the State of Arizona. The federal administrative agency, the DEA, cannot legally deny the petition from Arizona for federal reclassification. ***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").

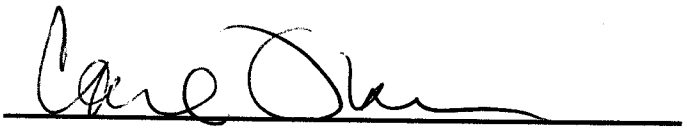
Olsen has also moved to intervene in the Petition for Writ of Mandamus in the U.S. Court of Appeals for the District of Columbia, ***In re Coalition for Rescheduling Cannabis***, No. 11-5121, filed on May 23, 2011. The State of Arizona could simply join that petition for federal reclassification or file its own.

Courts of equity need to ensure that the plaintiff who is complaining to the court has not actually brought about the conduct being complained of because of the plaintiff's own wrongdoing.

http://definitions.uslegal.com/c/clean-hands-doctrine/

Dated: June 20, 2011

Respectfully submitted,



Carl Olsen, Pro Se
Post Office Box 4091
Des Moines, IA 503333
515-288-5798 home phone
515-343-9933 cell phone
carl-olsen@mchsi.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via first class mail upon the following parties:

Aubrey Joy Corcoran
Kevin D Ray
Lori Simpson Davis
Office of the Attorney General
1275 W Washington St.
Phoenix, AZ 85007-2926

Robert Evans Kopp
U.S. Department of Justice
(DOJ) Civil Division, Appellate Staff
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Dennis K. Burke
United States Attorney
Two Renaissance Square
40 N. Central Avenue, Suite 1200
Phoenix, AZ 85004-4408

Arizona Association of Dispensary Professionals, Inc.

17233 N. Holmes Boulevard, Suite 1615
Phoenix, AZ 85053

Brian Bergin
Rose Law Group
6613 N. Scottsdale Road, Suite 200
Scottsdale, AZ 85250
Counsel for Joshua Levine, Paula Pennypacker, Dr. Nicholas Flores, Jane Christensen, Paula Pollock, Serenity Arizona, Inc., Holistic Health Management, Inc., and Jeff Silva

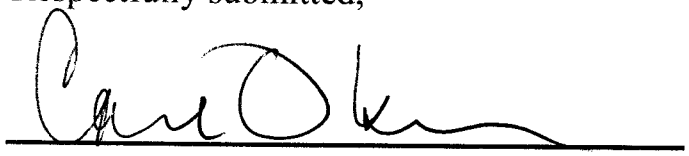
Arizona Medical Marijuana Association
c/o Lisa T. Hauser
Gammage & Burnham
Two North Central, 15th Floor
Phoenix, AZ 85004

Arizona Dispensary Solutions
1517 N Wilmot, Suite 252
Tucson, AZ 85712

Thomas W. Dean
Thomas W. Dean Esq. PLC
323 N Leroux Street, Suite 101
Flagstaff, AZ 86001

Dated: June 20, 2011

Respectfully submitted,



Carl Olsen, Pro Se
Post Office Box 4091
Des Moines, IA 503333
515-288-5798 home phone
515-343-9933 cell phone
carl-olsen@mchsi.com