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

THIS DOCUMENT IS NOT IN PROPER FORM ACCORDING TO FEDERAL AND/OR LOCAL RULES AND PRACTICES AND IS SUBJECT TO REJECTION BY THE COURT.

REFERENCE: LRCiv 7.1(b)(1)
(Rule Number/Section)

MOTION TO INTERVENE

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Carl Eric Olsen ("Olsen" hereafter) moves for leave to intervene in Arizona's Complaint for Declaratory Judgment.

In 2008, Olsen filed a petition to remove marijuana from schedule I of the Iowa Uniform Controlled Substances Act, Iowa Code 124.204(4)(m). On February 17, 2010, in a unanimous ruling, the Iowa Board of Pharmacy found that marijuana no longer meets the statutory requirement of having "no accepted medical use in treatment in the United States" and recommended the Iowa Legislature remove marijuana from state schedule I:

http://www.iowa.gov/ibpe/pdf/2010_02_17minutes.pdf

Since 1996 a total of 16 states and the District of Columbia (with Congressional approval) have enacted medical marijuana legislation, and yet not one of those states has reviewed the classification of marijuana under their own versions of the Uniform Controlled Substances Act (with the exception of Oregon[1]) or applied for federal reclassification of marijuana. Oregon reclassified marijuana in schedule II on July 1, 2010, but it was done legislatively and not by administrative action. 2009, SB 728. The Oregon Legislature ordered the Oregon

[1] Because Or. Rev. Stat. § 475.035 antedates the Federal Controlled Substances Act, 21 USC §§ 811 to 812, Or. Rev. Stat. § 475.005(6) and Or. Rev. Stat. § 475.035 show a legislative policy to apply different criteria from those of the federal act when classifying controlled substances; Oregon has not chosen to include medical use as a factor. *State v. Eells*, 72 Or. App. 492, 696 P.2d 564 (1985), review denied by 299 Ore. 313, 702 P.2d 1110 (1985).

Although Or. Rev. Stat. § 475.005(6) states that a controlled substance is defined by reference to the schedules under the Federal Controlled Substances Act, 21 USC §§ 811 to 812, the statute does not adopt the federal criteria, as Oregon has its own standards for amendment of the schedule, as set out in Or. Rev. Stat. § 475.035. *State v. Eells*, 72 Or. App. 492, 696 P.2d 564 (1985), review denied by 299 Ore. 313, 702 P.2d 1110 (1985).

Board of Pharmacy to pick one of the other four schedules and forbid them from picking schedule I. 2009 Oregon Acts, c.898 § 2.

THE STATE OF ARIZONA HAS FAILED TO APPLY FOR FEDERAL RECLASSIFICATION OF MARIJUANA

The state of Arizona has failed to seek state reclassification of marijuana under its own state's Uniform Controlled Substances Act and/or file civil action in an Arizona court complaining of the failure of Arizona to remove marijuana from its schedule I classification in Arizona or to apply for federal reclassification. Because of this failure to vigorously defend the state medical marijuana law (Proposition 203, November 2010) enacted by the voters in 2010 there is now a conflict between the Arizona medical marijuana law and state and federal classification of marijuana as having no accepted medical use in treatment in the United States.

A letter written in 1975 from the Acting Secretary of the U.S. Department of Health and Human Services to the Acting Deputy Administrator of the U.S. Drug Enforcement Administration concluded there was no accepted medical use of marihuana in the United States. ***NORML v. DEA***, 559 F.2d 735, 749 (D.C. Cir. 1977). There were no state laws recognizing the medical use of marijuana in 1975. Since 1996, a total of 16 states and the District of Columbia (with Congressional approval) have enacted laws defining marijuana as medicine.

The Marijuana Rescheduling Petition which concluded in 1994 in ***Alliance for Cannabis Therapeutics***, 15 F.3d 1131 (D.C. Cir. 1994), was, again, concluded before any state laws began defining marijuana as medicine. California was the first state to define marijuana as medicine by state law in 1996.

The Gettman petition which concluded in 2002 was filed in 1995, which, again, was a year before any state had enacted a state law defining marijuana as medicine. ***Gettman v. DEA***, 290 F.2d 430 (D.C. Cir. 2002).

A state government has the right to force the Drug Enforcement Administration to reclassify marijuana as now being accepted for medical use in treatment in the United States. ***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.

Federal scheduling of controlled substances is an administrative rule making process. For the same reason the Attorney General (the DEA) cannot make a rule which would declare an accepted state medical standard for care and treatment specifically authorized by state law illegal under federal law, the Attorney General (the DEA) cannot maintain an existing rule if the rule declares an accepted state medical standard for care and treatment specifically authorized by state law illegal under federal law. In other words, the DEA cannot legally deny a petition for

rescheduling of marijuana if the petition is authorized by a state government and supported by a state law defining marijuana as medicine.

There is no excuse for 16 state governments and the District of Columbia, which have accepted the medical use of marijuana, failing to apply for federal reclassification of marijuana.

OLSEN HAS SUCCESSFULLY CHALLENGED THE CLASSIFICATION OF MARIJUANA IN IOWA

Unlike Oregon, Iowa does use the same statutory criteria for scheduling as found in the federal act. The eight factor test found in Iowa Code 124. 201 is the same 8 factor test found in 21 U.S.C. 811. The schedule I criteria found in 124.203 are the same criteria found in 21 U.S.C. 812. This is no coincidence. The scheduling criteria in Iowa are derived from the Uniform Controlled Substances Act [found at http://www.law.upenn.edu/bll/archives/ulc/fnact99/1990s/ucsa94.pdf]. See Iowa Code 124.601. The Uniform Controlled Substances Act, in turn, references the federal Controlled Substances Act, Prefatory Note for Uniform Controlled Substances Act (1990):

> The Uniform Controlled Substances Act (1990) is designed to supplant the Uniform Controlled Substances Act adopted by the National Conference of Commissioners on Uniform State Laws in 1970. The 1970 Uniform Act was designed to complement the federal Controlled Substances Act, which was enacted in 1970.
> . . .

> This Uniform Act was drafted to maintain uniformity between the laws of the several States and those of the federal government.
> . . .
> A main objective of this Uniform Act is to continue a coordinated and codified system of drug control initiated with the federal act and the 1970 Uniform Act.

Thus, the similarity in scheduling criteria is no coincidence. It is also no coincidence that the states that have adopted the uniform act have maintained their state sovereignty to make scheduling decisions independently of the federal government. There would be no reason for Arizona to have its own list of controlled substances if the federal list was binding on the state scheduling.

In other words, federal rescheduling begins with a state determination of accepted medical use which requires reclassification at both the state and federal level.

CONCLUSION

For the foregoing reasons, Olsen moves to intervene in Arizona's Complaint for Declaratory Judgment because the state of Arizona has neglected to perform a duty which it is obligated to perform under the federal controlled substances act. The negligence of Arizona affects federal law and impacts on everyone in the United State. Arizona must apply for federal reclassification of cannabis in order to cure the defect in Arizona's claim in this case.

Dated: May 31, 2011

Respectfully submitted,

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CERTIFICATE OF SERVICE

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

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