

1 WILLIAM G. MONTGOMERY  
MARICOPA COUNTY ATTORNEY  
2 BAR ID#: 021246

3 THOMAS P. LIDDY  
Deputy County Attorney  
4 BAR ID#: 019384  
CIVIL SERVICES DIVISION  
5 222 North Central Avenue, Suite 1100  
Phoenix, AZ 85004  
6 MCAO Firm #: 00032000  
Telephone: (602) 506-8541  
7 [liddyt@maco.maricopa.gov](mailto:liddyt@maco.maricopa.gov)  
[ca-civilmailbox@mcao.maricopa.gov](mailto:ca-civilmailbox@mcao.maricopa.gov)

8 Attorneys for Plaintiffs Intervenors  
9 Maricopa County and Joy Rich

10 IN THE UNITED STATES DISTRICT COURT

11 FOR THE DISTRICT OF ARIZONA

12 STATE OF ARIZONA; JANICE K.  
BREWER, *et al.*;

13 Plaintiffs,

14 v.

15 UNITED STATES OF AMERICA; *et al.*

16 Defendants.  
17

NO. CV 11-01072-PHX-SRB

**PROSPECTIVE INTERVENORS’  
MOTION FOR ORAL ARGUMENT  
ON MOTION TO INTERVENE  
AND LEAVE TO FILE A BRIEF IN  
OPPOSITION TO DEFENDANTS’  
MOTION TO DISMISS**

18 Prospective Intervenors-Plaintiffs Maricopa County and Joy Rich move under  
19 LRCiv. Rule 7.2(f) for oral argument on their Motion to Intervene and to file a brief in  
20 opposition to defendants’ Motions to Dismiss.

21 Movants did not initially request oral argument, but under LRCov. Rule 7.2(f),  
22 this Court should exercise its discretion to grant oral argument in order to permit the

1 specific interests of the County employees to be heard.

2           During the December oral argument on the non-government parties' Motions to  
3 Dismiss, Court made specific inquiries to Plaintiff State of Arizona, which did not  
4 respond adequately to protect the unique interests of the County's employees for whom  
5 movants seek intervention.

6           During that oral argument, the Court repeatedly announced that it is self-evident  
7 that the AMMA is in direct conflict with the CSA. Counsel for the non-government  
8 defendants seeking dismissal did not argue that the two statutes can be reconciled, as  
9 indeed they could not. Maricopa County and Joy Rich agree that the CSA is in direct  
10 conflict with the AMMA.

11           There is no safe harbor for County employees.

12           During the December 12 oral argument the Court posited a question based on  
13 some hypothetical political activist seeking medical marijuana permits, etc., being  
14 willing to risk prosecution so as to create a justiciable case or controversy. Neither the  
15 State nor the defendants seeking dismissal addressed the flip side of the Court's  
16 question: what can a governmental employee who does not wish to risk prosecution do?  
17 There simply is no safe harbor for them.

18           Given the recent actions of the DOJ in California, coupled with the published  
19 warnings of then U.S. Attorney Burke, the threat of enforcement of the CSA against  
20 those whose conduct is in compliance with state Medical Marijuana laws, creates an  
21 urgency which gives rise to a controversy and ripeness sufficient to grant this Court  
22 jurisdiction and prospective intervenor standing.

1           Specifically, the case law (ignored by those arguing on December 12) does not  
2 require an individual government official or employee to violate federal criminal law to  
3 achieve standing, *New Hampshire Hemp, Inc. v. Marshall*, 203 F.3d 1, 5 (1<sup>st</sup> Cir. 2000).  
4 Maricopa County employees are not political activists who, as the Court suggested  
5 during the December 13<sup>th</sup>, 2011 hearing, have the choice of whether to risk arrest by  
6 federal law enforcement to achieve what they may perceive is a greater political  
7 objective.

8           County officials are sworn, and employees are required as a condition of their  
9 employment, to comply with state law AND federal law, irrespective of whether the  
10 policies of any particular administrators of the Department of Justice direct their  
11 subordinates to enforce said provisions of the CSA and related federal criminal laws  
12 (aiding and abetting, etc.). If these officials and employees refuse to issue permits etc.,  
13 as required by AMMA because of a fear of federal prosecution, they may suffer anxiety  
14 caused by their involuntary position as civil servants openly and notoriously ignoring  
15 federal or state law. If they comply with their jobs' requirements, they risk federal  
16 prosecution. That is exactly why the (ignored) case law exemplified by *New Hampshire*  
17 *Hemp, Inc. v. Marshall, supra*, ruled as it did.

18           Prospective Intervenor-Plaintiffs respectfully urge this Court to grant oral  
19 argument on the Motion to Intervene before a decision on the pending Motion to  
20 Dismiss. The arguments relating to Prospective Intervenor-Plaintiffs are important to  
21 the appropriate resolution of both pending motions.

22 ///



1 *Attorney for Defendant Arizona Medical  
Marijuana Association*

2

Lisa T. Hauser

3 Cameron C. Artigue

Gammage & Burnham

4 Two North Central, 15<sup>th</sup> Floor

Phoenix, AZ 85004

5 *Attorney for Defendant Arizona Medical  
Marijuana Association*

6

Thomas W. Dean

7 P.O. Box J

Flagstaff, AZ 86002

8 *Attorney for Defendant Arizona Association  
Of Dispensary Professionals*

9

Ken Frakes

10 Rose Law Group, PC

6613 N. Scottsdale Road, Suite 200

11 Scottsdale, AZ 85250

*Attorneys for Defendants Serenity Arizona,*

12 *Holistic Health Management, Levine,*

*Pennypacker, Flores, Christensen,*

13 *Pollock and Silva*

14 and copy delivered by U.S. mail and  
electronic mail to:

15

Scott Risner

16 Trial Attorney, U.S. Department of Justice

Civil Division, Federal Programs Branch

17 20 Massachusetts Ave. NW

Washington, DC 20001

18 Email: [Scott.Risner@usdoj.gov](mailto:Scott.Risner@usdoj.gov)

19 /s/ Joie Gulley

20

21

22