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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. In fact, it is the position of the Prospective Intervenors-
11 Plaintiffs that, because of this direct conflict, and because Congress intended federal law
12 to occupy the field of drug enforcement, the State law AMMA is preempted by the
13 federal CSA.

14 There is no safe harbor for County employees.

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

21 Given the recent actions of the DOJ in California, coupled with the published
22 warnings of then U.S. Attorney Burke, the threat of enforcement of the CSA against

1 those whose conduct is in compliance with state Medical Marijuana laws, creates an
2 urgency which gives rise to a controversy and ripeness sufficient to grant this Court
3 jurisdiction and prospective intervenor standing.

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

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

21 Prospective Intervenors-Plaintiffs respectfully urge this Court to grant oral
22 argument on the Motion to Intervene before a decision on the pending Motion to

1 Dismiss. The arguments relating to Prospective Intervenor-Plaintiffs are important to
2 the appropriate resolution of both pending motions.

3 RESPECTFULLY SUBMITTED this 14th day of December 2011.

4 WILLIAM G. MONTGOMERY
5 MARICOPA COUNTY ATTORNEY

6 BY: /s William G. Montgomery
7 WILLIAM G. MONTGOMERY
8 Attorneys for Plaintiffs Intervenor
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10 CERTIFICATE OF SERVICE

11 I hereby certify that on December 14, 2011, I caused the foregoing document to
12 be electronically transmitted to the Clerk's Office using the CM/ECF System for filing
13 and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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22