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 Christensen, Pollock, and
 Silva*

**IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF ARIZONA**

STATE OF ARIZONA; JANICE K.
 BREWER; WILL HUMBLE; ROBERT C.
 HALLIDAY,

Plaintiffs,

v.

UNITED STATES; U.S. DEPT' OF
 JUSTICE; ERIC H. HOLDER; DENNIS K.
 BURKE; ARIZ. ASS'N OF DISPENSARY

**No. CV-11-01072-PHX-SRB
 Hon. Susan R. Bolton**

**DEFENDANTS'
 OPPOSITION TO
 PROSPECTIVE
 INTERVENORS' MOTION**

PROFESSIONALS, INC.; JOSHUA
LEVINE; PAULA PENNYPACKER;
NICHOLAS FLORES; JANE
CHRISTENSEN; PAULA POLLOCK;
SERENITY ARIZONA, INC.; HOLISTIC
HEALTH MGMT, INC.; JEFF SILVA;
ARIZ. MEDICAL MARIJUANA ASS'N;
DOES I-XX,

Defendants.

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

Defendants Arizona Medical Marijuana Association, Arizona
Association of Dispensary Professionals, Serenity Arizona, Holistic Health
Management, Joshua Levine, Paula Pennypacker, Nicholas Flores, Jane
Christensen, Paula Pollock, and Jeff Silva file this response in opposition to
the December 14, 2011 motion by Maricopa County and Joy Rich (collectively
the "Proposed Intervenors") for oral argument on their motion to intervene
and for permission to file a brief in opposition to defendants' motion to
dismiss. For the reasons stated below, the Court should deny both requests.

Proposed Intervenors' requests come too late. According to this
district's Local Rules of Civil Procedure, "a party desiring oral argument shall
request it by placing 'Oral Argument Requested' immediately below the title
of such motion or the response to such motion." LRCiv 7.2(f). Proposed
Intervenors did not comply with LRCiv 7.2(f) when they filed their motion to
intervene on July 14, 2011. Instead, they waited six months to request oral
argument. Proposed Intervenors similarly disregarded the fourteen-day
deadline applied in this district for oppositions to a motion to dismiss. *See*
LRCiv 7.2(c). Under LRCiv 7.2(c), oppositions to defendants' July 7, 2011

motion to dismiss were due no later than July 21, 2011. Proposed Intervenor's request to oppose comes nearly five months after that date. Therefore, the motion should be dismissed as untimely.

Proposed Intervenor asks the Court to overlook their tardiness. In deciding whether to permit a late filing, “[g]enerally, the court will consider several factors, including ‘the danger of prejudice to the other party, the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith.’” *Kastl v. Maricopa County Community College Dist.*, No. CV-02-1531-PHX-SRB, 2006 WL 2460636, at *2 (D. Ariz. Aug. 22, 2006) (Bolton, J.) (quoting *Comm. For Idaho’s High Desert, Inc. v. Yost*, 92 F.3d 814, 825 (9th Cir. 1996)) (brackets omitted). Proposed Intervenor has offered no excuse for waiting so long to make their requests. They do not claim that the delay was caused by factors beyond their control. Furthermore, granting the December 14 motion would considerably delay these proceedings to the prejudice of the other parties. By the time Proposed Intervenor filed their December 14, 2011 motion, all parties to the action had already convened for oral argument on defendant's motion to dismiss, and the Court had taken all pending motions under advisement. Proposed Intervenor may regret their decision not to request oral argument or to oppose defendant's motion to dismiss, but they cannot

now recover the opportunity to do so by sacrificing the other parties' and the Court's interest in the efficient disposition of the pending motions.

Finally, the relief Proposed Intervenors seek would be futile. As defendants have argued in their motion to dismiss, plaintiffs' agnosticism as to the validity of the AMMA is fatal to this action. Any arguments advanced by Proposed Intervenors cannot cure plaintiffs' failure to take a position in their complaint. Therefore, dismissal of the complaint for lack of subject-matter jurisdiction will be appropriate regardless of Proposed Intervenors' position. Furthermore, proposed Intervenors' December 14 motion fails to address the other jurisdictional flaws in plaintiffs' complaint, including the bar against states and their officials using the federal courts to validate or attack state laws, and the failure to establish ripeness.¹ For these reasons, the underlying complaint must be dismissed, and Proposed Intervenors' motion to intervene should in turn be dismissed as moot, as "there [will be] nothing left in this Court in which [to] intervene." *Zaragoza v. Bennett-Haron*, --- F.Supp.2d ---, No. 2:11-CV-01091-PMP-GWF, 2011 WL 6097754, at *13 (D. Nev. Dec. 5, 2011); *see also In re Mortgage Electronic Registration Systems (MERS) Litigation*, MDL No. 09-2119-JAT, 2011 WL 4550189, at *15 (D. Ariz. Oct. 3, 2011). Accordingly, oral argument of the motion to intervene will serve no purpose.

¹ The proposed complaint in intervention filed by the Proposed Intervenors on July 14, 2011 suffers equally from the jurisdictional flaws identified by defendants in plaintiffs' complaint. (See Mot. Intervene Ex. 1, July 14, 2011, ECF No. 31-1.) The arguments advanced in Proposed Intervenors' December 14 motion do not address these defects.

For the reasons stated above, Proposed Intervenor's December 14, 2011 motion for oral argument and for leave to file an opposition to defendant's motion to dismiss should be denied.

Dated: December 19, 2011 Respectfully Submitted,

/s/ Ezekiel Edwards

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