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HUBER WATCH: US Attorney for Utah: Important detail has been lost in medical marijuana debate

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Posted on **9/23/2018, 12:25:46 PM** by **Jack Black**

SALT LAKE CITY — Utah's top federal law enforcement officer said one "important detail" is being overlooked in the heated debate over medical marijuana in the state.

"Marijuana is against the law, federal law," U.S. Attorney for Utah John Huber said Thursday. "That very important aspect cannot be lost in this discussion."

The use, production, distribution and transportation of marijuana violates federal law, he said.

"That has not changed, and although there are talks about change, it's the current state of the law, and it's my obligation to enforce federal law," Huber told reporters during a roundtable discussion in his office.

"I'm not a policymaker, don't get into the politics behind these things," he said. "My main concern is law enforcement."

Utah voters will decide in November whether to allow doctor-approved marijuana treatment for certain medical conditions. Opponents of the proposal say the ballot initiative is a guise for legalized recreational marijuana.

Advertise with usReport this ad Huber said it is "to be determined" how his office would enforce federal law in Utah if the initiative passes.

"It's an interesting question. It's one I ponder as I observe the political process on this," he said. "I can't really answer that. … When a case is presented to me, I'll review it."

During the roundtable, Huber cited statistics showing the ill effects of legalized marijuana use from a newly released federal Rocky Mountain High Intensity Drug Trafficking Area report that has studied the impact of recreational marijuana in Colorado since 2013. Huber and other state and local law enforcers are part of the area's executive board, along with officials from Colorado, Montana and Wyoming.

(Excerpt) Read more at ksl.com ...

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KEYWORDS: deepstate; huber; huberwatch; mueller; potheads

Navigation: use the links below to view more comments.
first **1-20**, 21-40, 41-46 next last

Huber Watch

U.S. Attorney for Utah John Huber in the News

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Re: H.B. 3001 Requirement that Health Department Employees Commit Federal Felonies - Preemption and Invalidity of State Central Fill and Participation by Health Departments in Procurement, Purchase, Storage, Distribution, Transportation, and Sale of Marijuana

> *The CSA [federal Controlled Substances Act] prohibits the manufacture, distribution, and possession of marijuana.* ***Anyone in any state who possesses, distributes, or manufactures marijuana for medical or recreational purposes (or attempts or conspires to do so) is committing a federal crime.*** *The federal government can prosecute such offenses for up to five years after they occur . . . .* ***Nor does any state law "legalize" possession, distribution, or manufacture of marijuana. Under the Supremacy Clause of the Constitution, state laws cannot permit what federal law prohibits. U.S. Const. art. VI, cl. 2. Thus, while the CSA remains in effect, states cannot actually authorize the manufacture, distribution, or possession of marijuana. Such activity remains prohibited by federal law.***
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> – *United States v. McIntosh*, 833 F.3d 1163, 1179, n.5 (9th Cir. 2016).

Dear Gentlemen and Ladies:

By the passage of H.B. 3001, the Utah Legislature has mandated that all local health departments, which are financed in part by the counties (Utah Code Ann. § 26A-1-115(1)), designate one or more location as a "**state central fill shipment distribution location**" and designate "a sufficient number of personnel to ensure that at least one individual is

available at all times during business hours." § 26-61a-607(1)(a), (b). That unfunded mandate by the Utah Legislature[1] is a legally invalid mandate for *you* and many others to violate, or aid and abet the violation of, federal criminal laws.

The Utah Legislature, in a bill entirely different than medical cannabis laws passed in states throughout the nation, has *required* the Utah Health Department and local health departments, to participate in what, under current federal law, constitutes a felonious, full-service drug cartel.

For instance, H.B. 3001 requires local health departments "to *distribute* state central fill shipments."[2] (Emphasis added.) "State central fill shipment" is defined in H.B. 3001 as "a shipment of cannabis"[3]—that is, a shipment of marijuana. Under H.B. 3001, the health departments are to participate in arranging for the purchase, distribution, transportation, storage, and sale of a Schedule 1 controlled substance—all of which is absolutely forbidden by the federal Controlled Substances Act. Each violation is a federal felony.[4]

It gets even worse. As Kim Carson, a member of the Summit County Council noted, "75% of our funding in our health department comes from federal grants. . . . [T]hose funds

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[1] *See, e.g.,* Katie England, "Utah County looking for medical cannabis implementation funding this legislative session," *Daily Herald*, January 27, 2019 ("Hiring more personnel and making the security changes needed to distribute the medicine from its current location in downtown Provo means the Utah County Health Department is looking for funding to be allocated this year in order to be up and running the mandated implementation date of March 1, 2020.")

[2] Utah Code Ann. § 26-61a-607(1)(b)(ii).

[3] Utah Code Ann. § 26-61a-102(39).

[4] 21 U.S.C. § 841 (a) provides, in part: "Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally--(1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance . . . ."
21 U.S.C. § 841 (b)(1)(C) provides, in part: "In the case of a controlled substance in schedule I [where marijuana is listed] . . . , such person shall be sentenced to a term of imprisonment of not more than 20 years and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not less than twenty years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18 or $1,000,000 if the defendant is an individual or $5,000,000 if the defendant is other than an individual, or both."
21 U.S.C. § 841(b)(1)(D) provides, in part: "In the case of less than 50 kilograms of marihuana, except in the case of 50 or more marihuana plants regardless of weight, . . . such person shall, except as provided in paragraphs (4) and (5) of this subsection, be sentenced to a term of imprisonment of not more than 5 years, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18 or $250,000 if the defendant is an individual or $1,000,000 if the defendant is other than an individual, or both."

could be at risk since cannabis is still a schedule one drug."[5] Yes, indeed. To have marijuana on the premises of any entity, or for that entity to distribute, dispense, possess, or store marijuana, could mean the termination of any federal benefits, including all federal grants, to that entity for up to five years.[6]

As demonstrated below, the Legislature is absolutely without power to compel anyone to violate federal law, regardless of the likelihood of prosecution. Hence, the provisions of H.B. 3001 that set up a DABC-like organization for the purchase, storing, transportation, distribution, and sale of marijuana are preempted by federal law and wholly invalid.

Every dollar spent and every minute devoted to planning for the implementation of H.B. 3001 is an utter waste of precious resources because the law will never—can never—be put into operation.

The only legitimate aim and effect of recent *state* laws *permitting* the purchase, sale, cultivation, and distribution of marijuana under certain circumstances is to provide that people will not be prosecuted by *state or local authorities* under *state* laws for certain

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[5] Rick Brough, "State Medical Marijuana Law Offers Challenges To Summit County, KPCW, February 8, 2019, found at https://www.kpcw.org/post/state-medical-marijuana-law-offers-challenges-summit-county#stream/0.

[6] 41 U.S.C. § 8103 (Drug-free workplace requirements for Federal grant recipients) provides, in part:

(a)

(1) A person other than an individual shall not receive a grant from a Federal agency unless the person agrees to provide a drug-free workplace by—(A) publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violations of the prohibition; . . . (D) notifying the employee in the statement required by subparagraph (A) that as a condition of employment in the grant the employee will—(i) abide by the terms of the statement . . . (G) making a good faith effort to continue to maintain a drug-free workplace through implementation of subparagraphs (A) to (F).

(b)

(1) Payment under a grant awarded by a Federal agency may be suspended and the grant may be terminated, and the grantee may be suspended or debarred . . . if the head of the agency or the official designee of the head of the agency determines in writing that—(A) the grantee is violating, or has violated, the requirements of [sections of the statute]. . . .

(3) A grantee debarred by a final decision under this subsection is ineligible for award of a grant by a Federal agency, and for participation in a future grant by a Federal agency, for a period specified in the decision, not to exceed 5 years.

activities involving marijuana that previously were illegal under *state* law. **Those *state* laws** do not impact the status of *federal* laws prohibiting marijuana and **cannot, under any circumstances, *compel* the violation of those federal laws**, as H.B. 3001 does.

As you are no doubt well aware, **Section 6 of H.B. 3001 (the bill replacing Proposition 2) requires state and local health departments to participate in the procurement, purchase, storage, distribution, transportation, and sale of marijuana.** In other words, it requires what federal law prohibits—which, under the Supremacy Clause, it *cannot* do, even if there is little or no risk of prosecution for the federal offenses.

This is not a close question, subject to *any* legal question or doubt: **The provisions in Section 6 of H.B. 3001, compelling state and local health departments to procure, purchase, store, distribute, transport, and sell marijuana, are in violation of the Supremacy Clause of the United States Constitution and invalid since they are in direct conflict with federal law**, including the Controlled Substances Act ("CSA").

> **A handful of states have proposed supplying marijuana directly to qualified patients via state-operated farms and distribution centers . . . . The CSA, however, clearly preempts any such state program.**

Robert A. Mikos, *On the Limits of Supremacy: Medical Marijuana and the States' Overlooked Power to Legalize Federal Crime*, 62 Vand. L. Rev. 1421, 1432 (2009).

Please ask anyone involved, including our legislators, to find *one* lawyer—or even a non-lawyer familiar with the Supremacy Clause and principles of federal preemption—who will opine in writing that H.B. 3001 is *not* preempted by the CSA.

State and County officials, particularly the Governor, Attorney General, Mayor Jenny Wilson, members of County Councils and County Commissions, and health department officials have a duty to understand that **the involvement of state or county health department officials in the marijuana distribution scheme under H.B. 3001 not only subjects all participants to possible prosecution under federal law (each violation of the CSA is a federal felony), but it also puts at risk many millions of dollars of federal grant money** paid to, or to be paid to, the State of Utah and counties. They also have a duty to ask the courts for a declaratory judgment as to the validity of H.B. 3001 without any further delay.