
SENATE RESOLUTION

REQUESTING THE ATTORNEY GENERAL TO FILE AN INJUNCTION IN THE UNITED STATES DISTRICT COURT TO ENJOIN ENFORCEMENT OF STATE AND FEDERAL LAWS PROHIBITING CANNABIS, AS A SCHEDULE I CONTROLLED SUBSTANCE, UNTIL IT CAN BE RECLASSIFIED, AND REQUESTING THE GOVERNOR TO REQUEST THE ATTORNEY GENERAL OF THE UNITED STATES TO RECOGNIZE THE RIGHT OF HAWAII TO DETERMINE THE APPROPRIATE ISSUANCE AND USE OF MEDICAL MARIJUANA THAT IS BASED ON THE FACT THAT CANNABIS NO LONGER MEETS THE FEDERAL CRITERIA FOR A SCHEDULE I CONTROLLED SUBSTANCE.

1 WHEREAS, Act 228, Session Laws of Hawaii 2000, enacted the
2 medical use of marijuana law; and

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4 WHEREAS, marijuana is classified as a schedule I controlled
5 substance under section 329-14(d)(20) and (29), Hawaii Revised
6 Statutes, which follows federal law; and

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8 WHEREAS, the criteria applicable to classification as a
9 schedule I substance are:

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11 (1) The drug or other substance has a high potential for
12 abuse;

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14 (2) The drug or other substance has no currently accepted
15 medical use in treatment in the United States; and

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17 (3) There is a lack of accepted safety for use of the drug
18 or other substance under medical supervision; and

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20 WHEREAS, Hawaii's medical marijuana law, codified in part
21 IX of chapter 329, Hawaii Revised Statutes, is an explicit
22 recognition that marijuana has a legitimate medical use, which
23 is not similarly recognized under federal controlled substance
24 laws; and

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26 WHEREAS, in *Gonzales v. Oregon* (546 U.S. 243, 2006), the
27 United States Supreme Court held in a case involving a schedule
28 II substance that the Controlled Substances Act does not allow



1 the Attorney General to prohibit doctors from prescribing
2 regulated drugs for use in physician-assisted suicide under
3 state law permitting the procedure; and

4
5 WHEREAS, the Court stated in pertinent part:

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7 The dispute here involves controlled substances listed
8 in Schedule II, which are generally available only by
9 written prescription, 21 U.S.C. §829(a). A 1971
10 regulation promulgated by the Attorney General
11 requires that such prescriptions be used "for a
12 legitimate medical purpose by an individual
13 practitioner acting in the usual course of his
14 professional practice." 12 CFR §1306.04. To prevent
15 diversion of controlled substances, the CSA regulates
16 the activity of physicians, who must register in
17 accordance with rules and regulations promulgated by
18 the Attorney General. He may deny, suspend, or revoke
19 a registration that, as relevant here, would be
20 "inconsistent with the public interest."

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22 In determining consistency with the public interest,
23 he must consider five factors, including the State's
24 recommendation, compliance with state, federal, and
25 local law regarding controlled substances, and "public
26 health and safety." §823(f). The CSA explicitly
27 contemplates a role for the States in regulating
28 controlled substances.

29
30 WHEREAS, although the Gonzales case involved a schedule II
31 controlled substance and marijuana is a schedule I controlled
32 substance, nonetheless Gonzales is instructive in this instance
33 as to the authority of the United States Attorney General in
34 enforcement of controlled substances; and

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36 WHEREAS, section 329-125(a), Hawaii Revised Statutes,
37 provided immunity from prosecution -- "A qualifying patient or
38 the primary caregiver may assert the medical use of marijuana as
39 an affirmative defense to any prosecution involving marijuana
40 under this part or chapter 712; provided that the qualifying
41 patient or the primary caregiver strictly complied with the
42 requirements of this part"; and



1 WHEREAS, Hawaii's medical marijuana law is at risk of being
 2 eviscerated by current federal enforcement of federal laws that
 3 prohibit the use, sale, or possession of medical marijuana as a
 4 schedule I controlled substance; and

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 6 WHEREAS, registered medical cannabis patients in Hawaii are
 7 at risk of federal prosecution for the medical use of marijuana
 8 as a Schedule I controlled substance; now, therefore,

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 10 BE IT RESOLVED by the Senate of the Twenty-sixth
 11 Legislature of the State of Hawaii, Regular Session of 2012,
 12 that the State Attorney General is requested to file an
 13 injunction in the United States District Court to enjoin
 14 enforcement of state and federal laws prohibiting cannabis, as a
 15 schedule I controlled substance, until it can be reclassified;
 16 and

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 18 BE IT FURTHER RESOLVED that the Governor is requested to
 19 request the Attorney General of the United States to recognize
 20 the right of the State of Hawaii to determine the appropriate
 21 issuance and use of medical marijuana that is based on the fact
 22 that the Legislature has determined that marijuana has a
 23 legalized medical use in Hawaii and therefore no longer meets
 24 all of the federal criteria for a schedule I controlled
 25 substance; and

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 27 BE IT FURTHER RESOLVED that certified copies of this
 28 Resolution be transmitted to the Governor and the State Attorney
 29 General.

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OFFERED BY: Will Eyo

Carol Johnson
J. Kani Elish

Annex
Annex
Erzanne Chun Cellano
Randy H. Bell
[Signature]