Proposed Legislation - November 18, 2022

The department has been working on a federal exemption for Iowa's medical cannabis program since 2020, but hasn't been able to move forward. This board asked the department to consider a federal exemption in 2019.

At the last meeting of this board, the department said the matter is complex and a lot of folks need to be involved. That was a reasonable explanation for the delay and makes it clear what the next step should be.

One of this board's roles is to advise the department and the legislature on ways to improve the program. Federal exemption is the single greatest improvement to the program that could be made.

Please make the following recommendation to the Iowa legislature:

Authorize a task force of legal experts, similar to the current board of medical experts, to assist the department in navigating the legal issues involved.

This legislative proposal is based on the following:

1. 21 U.S.C. § 822(d) gives the Attorney General of the United States the authority to: "waive the requirement for registration of certain manufacturers [Iowa Code §§ 124E.6, 124E.7], distributors, or dispensers [Iowa Code §§ 124E.8, 124E.9] if he finds it consistent with the public health and safety." [1]

2. It would be inconsistent with public health and safety for the Attorney General to deny the state of Iowa an exception for activity the state has determined to be consistent with public health and safety. In 2019, Iowa Attorney General Tom Miller

signed a letter to Congress stating that, "the status quo poses a serious threat to public safety". That letter was also signed by the current U.S. Secretary of Health and Human Services, Xavier Becerra, who was then the Attorney General of California.

3. The intent of Congress in enacting the federal drug law was to complement state drug law, not to exclude it. 21 U.S.C. § 903:

> No provision of this subchapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which that provision operates, including criminal penalties, to the exclusion of any State law on the same subject matter which would otherwise be within the authority of the State, unless there is a positive conflict between that provision of this subchapter and that State law so that the two cannot consistently stand together.

Any perceived conflict with state authorized production and distribution of "cannabidiol (as defined in Iowa Code Chapter 124E)" can be resolved by the Attorney General of the United States simply waiving the registration requirements for Iowa's authorized manufacturers and dispensaries. *See* 21 U.S.C. § 822(d).

4. When Congress added amendments to strengthen the federal drug law in 1986, Congress recognized state authority to authorize activity otherwise prohibited. 21 U.S.C. § 863(f)(1) added by the Anti-Drug Abuse Act of 1986, Public Law 99-570, 100 Stat. 3207, Oct. 27, 1986, is one example ("This section shall not apply to ... any person authorized by local, State, or Federal law to manufacture, possess, or distribute such items ..."). [2] A similar exception has existed since 1973 in federal transportation regulations: 14 C.F.R. § 91.19(b) ("does not apply to ... substances authorized by or under any ... State statute ... or State agency") [3]

5. On September 4, 2020, the department determined the department would move forward with an exception pursuant to 21 C.F.R. § 1307.03 ("The Administrator may grant an exception in his discretion, but in no case shall he/she be required to grant an exception to any person which is otherwise required by law or the regulations cited in this section."). This board voted unanimously to move forward with a federal exemption in August of 2019. [4]. Iowa's medical cannabis program is appropriate for this exception because there is no other federal law or regulation that would provide a solution, and because there has been no adverse impact on public health and safety. Iowa's program has experienced no diversion or adverse health events.

6. On August 12, 2022, the department informed this board the department is still working on the application, because there are ("a lot of people that need to be involved in making sure that's handled in a way that's fine with everybody"). The department's explanation is perfectly reasonable. The department may either lack the specific legal expertise in this area of law or the department may simply be busy with other matters such as a global pandemic.

7. The board is made of medical experts devoted to overseeing the medical aspects of this program. A task force of legal experts devoted to this program would also be helpful to navigate the interplay with federal and international drug laws and treaties (which also contain exceptions for constitutionally enacted domestic laws). [5]

References

[1]

Gonzales v. O Centro Espírita Beneficente União do Vegetal, 546 U.S. 418, 432 (2006):

> The Act contains a provision authorizing the Attorney General to "waive the requirement for registration of certain manufacturers, distributors, or dispensers if he finds it consistent with the public health and safety." 21 U.S.C. § 822(d).

Gonzales v. O Centro Espírita Beneficente União do Vegetal, 546 U.S. 418, 433 (2006):

> And in fact an exception has been made to the Schedule I ban for religious use. For the past 35 years, there has been a regulatory exemption for use of peyote — a Schedule I substance — by the Native American Church. *See* 21 C.F.R. § 1307.31 (2005).

[2] *See Eteros Technologies USA v. United States*, Slip Op. 22-111, U.S. Court of Intl. Trade, September 21, 2022; *Keirton USA v. United States*, Slip Op. 22-118, U.S. Court of Intl. Trade, October 20, 2022.

[3] *See* 14 C.F.R. § 91.19(b) ("... does not apply to any carriage of narcotic drugs, marihuana, and depressant or stimulant drugs or substances authorized by or under any Federal or State statute or by any Federal or State agency.")

[4] Meeting Minutes, August 8, 2019, at page 6.

[5] Single Convention, Article 36, Section 2; Convention on Psychotropic Substances, Article 22, Section 2.

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