

LAW OFFICES OF ROCKY ANDERSON

February 20, 2019

Via email –

agranato@slco.org
alma@ironcounty.net
anewton@slco.org
arbradshaw@slco.org
aturner@morgan-county.net
barbara.tidwell@cachecounty.org
bbadams@sanjuancounty.org
bbennion@co.weber.ut.us
bbradfor@utah.gov
bhatch@daviscountyutah.gov
bhorrocks@uintah.utah.gov
boh@tricountyhealth.com
bret@daviscountyutah.gov
bstringer@uintah.utah.gov
byronwoodland@gmail.com
casey.hopes@carbon.utah.gov
cbaird@grandcountyutah.net
cfrobinson@summitcounty.org
cheryl@optionsind.org
claudiaj@cut.net
commissioners@daviscountyutah.gov
craig.buttars@cachecounty.org
cslaugh@daggettcountry.org
cwells@grandcountyutah.net
darinbushman@piute.utah.gov
david.erickson@cachecounty.org
david.tebbs@garfield.utah.gov
dallantyne@morgan-county.net
dblodgett@swuhealth.org
dclyde@summitcounty.org
ddraper@co.millard.ut.us
dean.cox@washco.utah.gov
dennis@wayne.utah.gov
dfward@boxeldercounty.org

dgoode@wasatch.utah.gov
dirk@kane.utah.gov
dmbrinkerhoff@ironcounty.net
eclapper@grandcountyutah.net
garymason7@hotmail.com
gedwards@slco.org
gfroerer@co.weber.ut.us
ghalliday@grandcountyutah.net
gina.worthen@cachecounty.org
gmcphie@wasatch.utah.gov
gordon.zilles@cachecounty.org
greg.merrill@cachecounty.org
gregg@utahcounty.gov
gtodd@duchesne.utah.gov
gwright@summitcounty.org
hkydred@gmail.com
jae.potter@carbon.utah.gov
jake.mellor@carbon.utah.gov
jbarber@morgan-county.net
jbradley@slco.org
jcoombs@tooelehealth.org
jcsa@frontiernet.net
jebert@co.weber.ut.us
jerry.taylor@garfield.utah.gov
jhadfield@boxeldercounty.org
jharvey@co.weber.ut.us
jhawks@grandcountyutah.net
jlytle@daggettcountry.org
jmathis@tricountyhealth.com
jmatson@kane.utah.gov
jon.white@cachecounty.org
jparker@ualhd.org
jscott@boxeldercounty.org
jsmith@daviscountyutah.gov

February 20, 2019

Page 2

jswink@cacheattorney.org
juab.clintonpainter@gmail.com
jwilson@slco.org
jwithers@co.millard.ut.us
karl.ward@cachecounty.org
kburdick@duchesne.utah.gov
kcarson@summitcounty.org
kcrittenden@wasatch.utah.gov
keithb@emery.utah.gov
kgibson@co.weber.ut.us
kmaryboy@sanjuancounty.org
kthomas@tooeleco.org
leland.pollock@garfield.utah.gov
lloydber@brhd.org
lsmith@kane.utah.gov
lynns@emery.utah.gov
markwhitney70@yahoo.com
mbateman@tooeleco.org
mbleak@ironcounty.net
mburdick@slco.org
mhjensen@slco.org
mikedalton@beaver.utah.gov
mmcann@grandcountyutah.net
mmckee@uintah.utah.gov
mnelson@wasatch.utah.gov
mnewton@morgan-county.net
mpetersen@wasatch.utah.gov
nathani@utahcounty.gov
newell@wayne.utah.gov
nmecham@morgan-county.net
paulc@emery.utah.gov
plyman@sanjuancounty.org
ralph@utahcounty.gov
ralphandkathryn@yahoo.com
randyelliott@daviscountyutah.gov
rarmstrong@summitcounty.org
rasay@daggettcounty.org
rblackwell@sbsu.com
rbullough@summitcounty.org

rcaging@allwest.net
rick.carlton@zionsbancorp.com
rkilmer@morgan-county.net
rmbenally@sanjuancounty.org
rmconnell@morgan-county.net
rolandh@morgan-county.net
rpaxman@grandcountyutah.net
rprobst@co.wasatch.ut.us
rsnelgrove@slco.org
rwinterton@duchesne.utah.gov
saravsinclair@yahoo.com
scott@gtelco.net
sfarrell@wasatch.utah.gov
sgill@slco.org
sgranato@slco.org
shilderbrand@utah.gov
sjenkins@co.weber.ut.us
sjlundforsanpete@gmail.com
sldebry@slco.org
smilnetooelecouny@gmail.com
spark@wasatch.utah.gov
ssummers@boxeldercounty.org
sswan@morgan-county.net
stan@wayne.utah.gov
tannera@utahcounty.gov
tcannon@morgan-county.net
togden@sevier.utah.gov
tpearson@beaver.utah.gov
ttripp@tooeleco.org
twest@cut.net
victor.iverson@washco.utah.gov
whitner@tooeleco.org
westonnorm@yahoo.com
williaml@utahcounty.gov
williegrayeyes@sanjuancounty.org
williet@piute.utah.gov
wjackson@co.millard.ut.us
zachary.renstrom@washco.utah.gov

February 20, 2019

Page 3

and U.S. Mail –

Sim Gill
Salt Lake County District Attorney's Office
35 East 500 South
Salt Lake City, Utah 84111

Tammy Pearson
Beaver County Council Member
P.O. Box 119
Minersville, UT 84752

Michael Dalton
Beaver County Council Member
P.O. Box 819
Beaver, UT 84713

Mark Whitney
Beaver County Council Member
P.O. Box 61
Milford, UT 84751

Jeff Scott
Box Elder County Commissioner
01 South Main Street
Brigham City, UT 84302

Stan Summers
Box Elder County Commissioner
01 South Main Street
Brigham City, UT 84302

Jeff Hadfield
Box Elder County Commissioner
01 South Main Street
Brigham City, UT 84302

Barbara Tidwell
Cache County Council Member
199 North Main
Logan, UT 84321

Gregory Merrill
Cache County Council Member
199 North Main
Logan, UT 84321

David L. Erickson
Cache County Council Member
199 North Main
Logan, UT 84321

Gina Worthen
Cache County Council Member
199 North Main
Logan, UT 84321

Jon White
Cache County Council Member
199 North Main
Logan, UT 84321

Karl B. Ward
Cache County Council Member
199 North Main
Logan, UT 84321

Gordon A. Zilles
Cache County Council Member
199 North Main
Logan, UT 84321

February 20, 2019

Page 4

Craig Buttars
Vice Chair, Cache County Council Member
Bear River Board of Health
199 North Main
Logan, UT 84321

Jim Abel
Attn: Sylvia Tello
Box Elder County Appointed Seat A
Bear River Board of Health
655 E. 1300 N.
Logan, Utah 84341

Dale Ward
Chief Deputy Sheriff
Box Elder County Appointed Seat B
Bear River Board of Health
1 South Main St.
Brigham City, UT 84302

Cheryl Atwood
Attn: Sylvia Tello
Cache County Appointed Seat A
Bear River Board of Health
655 E. 1300 N.
Logan, Utah 84341

Dr. Jim Davis, MD
Attn: Sylvia Tello
Cache County Appointed Seat B
Bear River Board of Health
655 E. 1300 N.
Logan, Utah 84341

James Swink
Cache County Attorney
Bear River Board of Health,
Appointed Seat C
199 North Main, 3rd Floor
Logan, UT 84321

Sara Sinclair
Attn: Sylvia Tello
Cache County Appointed Seat D
Bear River Board of Health
655 E. 1300 N.
Logan, Utah 84341

Bill Cox
Rich County Commissioner
Bear River Board of Health
P.O. Box 125
Woodruff, UT 84086

Norman Weston
Rich County Commissioner
P.O. Box 383
Randolph, UT 84064

Thomas Weston
Rich County Commissioner
P.O. Box 156
Laketown, UT 84038

Casey Hopes
Carbon County Commissioner
751 East 100 North
Price, UT 84501

Jake Mellor
Carbon County Commissioner
751 East 100 North
Price, UT 84501

Jae Potter
Carbon County Commissioner
751 East 100 North
Price, UT 84501

February 20, 2019

Page 5

Clyde Slauch
Daggett County Commissioner
P.O. Box 219
Manila, UT 84046

Jack Lytle
Daggett County Commissioner
P.O. Box 219
Manila, UT 84046

Randy Asay
Daggett County Commissioner
Tri-County Board of Health
P.O. Box 219
Manila, UT 84046

Staci Wilson
Daggett County Representative
Tri-County Board of Health
133 South 500 East
Vernal, UT 84078

Keith Goodspeed
Duchesne County Representative
Tri-County Board of Health
133 South 500 East
Vernal, UT 84078

Terry Nelson
Duchesne County Representative
Tri-County Board of Health
133 South 500 East
Vernal, UT 84078

Brad Horrocks
Uintah County Commissioner
152 East 100 North
Vernal, UT 84078

Bill Stringer
Uintah County Commissioner
152 East 100 North
Vernal, UT 84078

Michael McKee
Uintah County Commissioner
152 East 100 North
Vernal, UT 84078

Richard Jolley
Uintah County Representative
Tri-County Board of Health
133 South 500 East
Vernal, UT 84078

Shanna Wheeler
Uintah County Representative
Tri-County Board of Health
133 South 500 East
Vernal, UT 84078

Randy B. Elliott
Commission Chair
Davis County Commission
P.O. Box 618
Farmington, UT 84025

P. Bret Millburn
Davis County Commission
P.O. Box 618
Farmington, UT 84025

Jim Smith
Davis County Commission
P.O. Box 618
Farmington, UT 84025

February 20, 2019

Page 6

Lorene Miner Kamalu, MPA
Commission Vice Chair
Davis County Commission
P.O. Box 618
Farmington, UT 84025

Bob J. Stevenson
Commissioner
Davis County Commission
P.O. Box 618
Farmington, UT 84025

Ken Burdick
Duchesne County Commissioner
P.O. Box 270
Duchesne, UT 84021

Ron Winterton
Duchesne County Commissioner
Tri-County Board of Health
P.O. Box 270
Duchesne, UT 84021

Greg Todd
Duchesne County Commissioner
P.O. Box 270
Duchesne, UT 84021

Paul Cowley
Emery County Commissioner
P.O. Box 629
Castle Dale, UT 84513

Keith Brady
Emery County Commissioner
P.O. Box 629
Castle Dale, UT 84513

Lynn Sitterud
Emery County Commissioner
P.O. Box 629
Castle Dale, UT 84513

LeLand Pollock
Garfield County Commissioner
P.O. Box 77
Panguitch, UT 84759

Jerry Taylor
Garfield County Commissioner
P.O. Box 77
Panguitch, UT 84759

David Tebbs
Garfield County Commissioner
P.O. Box 77
Panguitch, UT 84759

Evan Clapper
Grand County Council Member
125 East Center Street
Moab, UT 84532

Jaylyn Hawks
Grand County Council Chair
125 East Center Street
Moab, UT 84532

Mary McGann
Grand County Council Vice Chair
125 East Center Street
Moab, UT 84532

Chris Baird
Grand County Council Member
125 East Center Street
Moab, UT 84532

February 20, 2019

Page 7

Curtis Wells
Grand County Council Member
125 East Center Street
Moab, UT 84532

Rory Paxman
Grand County Council Member
125 East Center Street
Moab, UT 84532

Greg Halliday
Grand County Council Member
125 East Center Street
Moab, UT 84532

Alma Adams
Iron County Commissioner
P.O. Box 292
Parowan, UT 84761

Mike Bleak
Iron County Commissioner
2484 W. Meadow St.
Cedar City, UT 84720

Dale Brinkerhoff
Iron County Commissioner
820 W. 400 S.
Cedar City, UT 84720

Rick Carlton
Juab County Commissioner
160 North Main
Nephi, UT 84648

Clinton Painter
Juab County Commissioner
160 North Main
Nephi, UT 84648

Byron Woodland
Juab County Commissioner
160 North Main
Nephi, UT 84648

Jim Matson
Kane County Commissioner
76 North Main Street
Kanab, UT 84741

Lamont Smith
Kane County Commissioner
76 North Main Street
Kanab, UT 84741

Dirk Clayson
Kane County Commissioner
76 North Main
Kanab, UT 84741

N. Wayne Jackson
Millard County Commissioner
50 South Main
Fillmore, UT 84631

Dean Draper
Millard County Commissioner
Central Utah Public Health Department
Representative
P.O. Box 854
Delta, UT 84624

James Withers
Millard County Commissioner
P.O. Box 854
Delta, UT 84624

February 20, 2019

Page 8

William Talbot
Piute County Commissioner
Central Utah Public Health Department
Representative
P.O. Box 99
Junction, UT 84740

Rick Blackwell
Piute County Commissioner
P.O. Box 34
Circleville, UT 84723

Darin Bushman
Piute County Commissioner
P.O. Box 135
Marysvale, UT 84750

Scott Bartholomew
Sanpete County Commissioner
HC 13 Box 300506
Fayette, UT 84630

Steven J. Lund
Sanpete County Commissioner
530 E. 100 S.
Manti, UT 84642

Claudia Jarrett
Sanpete County Commissioner
630 S. 100 E. #67
Mt. Pleasant, UT 84647

Ralph Brown
Sevier County Commissioner
326 East Landslide
Central Valley, UT 84754

Garth Ogden
Sevier County Commissioner
758 N. 600 E.
Richfield, UT 84701

Gary Mason
Sevier County Commissioner
P.O. Box 111
Aurora, UT 84620

Stanley Wood
Wayne County Commissioner
Central Utah Public Health Department
Representative
P.O. Box 1446
Lyman, UT 84749

Dennis Blackburn
Wayne County Commissioner
P.O. Box 32
Bicknell, UT 84715

Newell Harward
Wayne County Commissioner
P.O. Box 208
Loa, UT 84747

Richard Snelgrove
Salt Lake County Council Chair
2001 South State Street N2-200
Salt Lake City, UT 84114-4575

Jenny Wilson
Salt Lake County Mayor
2001 South State Street N2-200
Salt Lake City, UT 84114-4575

Jim Bradley
Salt Lake County Council Member
2001 South State Street N2-200
Salt Lake City, UT 84114-4575

Arlyn Bradshaw
Salt Lake County Council Member
2001 South State Street N2-200
Salt Lake City, UT 84114-4575

February 20, 2019

Page 9

Michael H. Jensen
Salt Lake County Council Member
2001 South State Street N2-200
Salt Lake City, UT 84114-4575

Aimee Winder Newton
Salt Lake County Council Member
2001 South State Street N2-200
Salt Lake City, UT 84114-4575

Ann Granato
Salt Lake County Council Member
2001 South State Street N2-200
Salt Lake City, UT 84114-4575

Sam Granato
Salt Lake County Council
2001 South State Street N2-200
Salt Lake City, UT 84114-4575

Steve DeBry
Salt Lake County Council Member
2001 South State Street N2-200
Salt Lake City, UT 84114-4575

Max Burdick
Salt Lake County Council Member
2001 South State Street N2-200
Salt Lake City, UT 84114-4575

Roland Haslam
Council Chair
Morgan County Governing Council
P.O. Box 886
Morgan, UT 84050

Daryl Ballantyne
Vice Chair, District 4
Morgan County Governing Council
P.O. Box 886
Morgan, UT 84050

Sarah Swan
Council Member At Large
Morgan County Governing Council
P.O. Box 886
Morgan, UT 84050

Tina Cannon
District 1
Morgan County Governing Council
P.O. Box 886
Morgan, UT 84050

Robert McConnell
District 2
Morgan County Governing Council
P.O. Box 886
Morgan, UT 84050

John Barber
Morgan County Governing Council
P.O. Box 886
Morgan, UT 84050

Robert Kilmer
District 3
Morgan County Governing Council
P.O. Box 886
Morgan, UT 84050

Mike Newton
District 5
Morgan County Governing Council
P.O. Box 886
Morgan, UT 84050

Austin Turner
Morgan County Governing Council
2368 E. Boulder Way
Morgan, UT 84050

February 20, 2019

Page 10

Ned Mecham
Morgan County Governing Council
2030 W. Stoddard Lane
Morgan, UT 84050

Bruce Adams
San Juan County Commissioner
P.O. Box 9
Monticello, UT 84535

Rebecca M. Benally
San Juan County Commission
P.O. Box 9
Monticello, UT 84535

Phil Lyman
San Juan County Commission
P.O. Box 9
Monticello, UT 84535

Kenneth Maryboy
Chairman
San Juan County Commission
P.O. Box 9
Monticello, UT 84535

Willie Grayeyes
Vice-Chairman
San Juan County Commission
P.O. Box 9
Monticello, UT 84535

Roger Armstrong
Summit County Council Chair
P.O. Box 128
Coalville, UT 84017

Doug Clyde
Summit County Council Vice Chair
P.O. Box 128
Coalville, UT 84017

Kim Carson
Summit County Council
P.O. Box 128
Coalville, UT 84017

Chris Robinson
Summit County Council
P.O. Box 128
Coalville, UT 84017

Glenn Wright
Summit County Council
P.O. Box 128
Coalville, UT 84017

Shawn Milne
Tooele County Commissioner
47 South Main, 3rd Floor
Tooele, UT 84074

Kendall Thomas
Tooele County Commissioner
47 South Main, 3rd Floor
Tooele, UT 84074

Tom Tripp
Tooele County Commissioner
47 South Main, 3rd Floor
Tooele, UT 84074

Wade B. Bitner
Tooele County Commission
47 South Main
Tooele, UT 84074

Myron E. Bateman
Tooele County Commission
47 South Main
Tooele, UT 84074

February 20, 2019

Page 11

William C. Lee
Commission Chair
Utah County Commission
100 E. Center Street, Suite 2300
Provo, UT 84606

Nathan Ivie
Utah County Commissioner
100 E. Center Street, Suite 2300
Provo, UT 84606

Tanner Ainge
Commission Vice-Chair
Utah County Commission
100 E. Center Street, Suite 2300
Provo, UT 84606

Gregory Graves
Utah County Commission
100 East Center, #2300
Provo, UT 84606

Greg McPhie
Wasatch County Council Chair
25 North Main
Heber City, UT 84032

Spencer Park
Wasatch County Council
25 North Main
Heber City, UT 84032

Kendall Crittenden
Wasatch County Council Vice Chair
25 North Main
Heber City, UT 84032

Danny Goode
Wasatch County Council Member
25 North Main
Heber City, UT 84032

Steve Farrell
Wasatch County Council Member
25 North Main
Heber City, UT 84032

Mark Nelson
Wasatch County Council Member
25 North Main
Heber City, UT 84032

Mike Petersen
Wasatch County Council Member
25 North Main
Heber City, UT 84032

Victor Iverson
Washington County Commissioner
197 East Tabernacle
St. George, UT 84770

Zachary Renstrom
Washington County Commissioner
197 East Tabernacle
St. George, UT 84770

Dean J. Cox
Washington County Commissioner
197 East Tabernacle
St. George, UT 84770

James H. Harvey
Weber County Commissioner
2380 Washington Blvd Suite #360
Ogden, UT 84401

Gage Froerer
Weber County Commissioner
2380 Washington Blvd Suite #360
Ogden, UT 84401

February 20, 2019

Page 12

Scott Jenkins
Weber County Commissioner
2380 Washington Blvd Suite #360
Ogden, UT 84401

Kerry Gibson
Weber County Commission
2380 Washington Blvd. #360
Ogden, UT 84401

James Ebert
Weber County Commission
2380 Washington Blvd. #360
Ogden, UT 84401

Jill Parker
Executive Director
Utah Association of Local Health
Departments
817 West 950 South
Brigham City, UT 84302

Sue Hilderbrand
Director, Central Utah Public Health
Department
70 Westview Dr.
Richfield, UT 84701

Lloyd Berentzen
Director, Bear River Health Department
655 East 1300 North
Logan, UT 84341

Brian Hatch
Director, Davis County Health Department
Davis County Health Department
P.O. Box 618
Farmington, Utah 84025

Gary Edwards
Director, Salt Lake County Health
Department
2001 South State, S2500
Salt Lake City, UT 84190-2150

Kirk Bengel
Director, San Juan Public Health
735 South 200 West, Suite B
Blanding, UT 84511-0089

Brady Bradford
Director, Southeast Utah Health Department
28 South 100 East
Price, UT 84501

David Blodgett
Director, Southwest Utah Health
Department
20 South 400 East
St. George, UT 84770

Rich Bullough
Director, Summit County Health
Department
650 Round Valley Drive
Park City, UT 84060

Jordan D. Mathis
Director, Tri-County Board of Health
133 South 500 East
Vernal, UT 84078

Jeff Coombs
Director, Tooele County Health Department
151 North Main Street
Tooele, UT 84074

Ralph Clegg
Director, Utah County Health Department
Utah County Health & Justice Building
151 South University Ave.
Provo, UT 84601

Randall Probst
Director, Wasatch County Health
Department
55 South 5th East
Heber, UT 84032

Brian Bennion
Director, Weber-Morgan Health Department
477 23rd Street
Ogden, UT 84401

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.

– 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 Legislature¹ 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

¹See, 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

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.

As the courts have made clear, **any assurances that people will not be prosecuted** for violations of federal law, even if such assurances are communicated by agents of the Department of Justice or the Drug Enforcement Agency, are **entirely irrelevant to the preemption question**. If state law conflicts with federal law—regardless of the risk of prosecution—the state law is invalid.

Please read the op-ed piece authored by me, which can be found at <https://www.slttrib.com/opinion/commentary/2018/12/16/rocky-anderson-smoking/>. Also, please consider carefully the following two cases addressing the precise issue involved here:

People v. Crouse, 2017 CO 5, 388 P.3d 39 (found at <https://caselaw.findlaw.com/co-court-of-appeals/1653194.html>) (state constitutional provision requiring police to return marijuana to those acquitted on drug charges is invalid and preempted by the federal Controlled Substances Act because state law would require “distribution” of marijuana in conflict with federal law)

[A Colorado constitutional provision] requires law enforcement officers to return seized marijuana and marijuana products to medical marijuana patients after an acquittal. . . . The CSA, however, prohibits the distribution of marijuana without regard to whether state law permits its use for medical purposes. 21 U.S.C. § 841. The CSA defines “distribute” to mean “to deliver a controlled substance or a listed chemical.” . . . The CSA further defines “deliver” to mean “the actual, constructive, or attempted transfer of a controlled substance.” . . . **An officer returning marijuana to an acquitted medical marijuana patient will be delivering and transferring a controlled substance. Therefore, based on the CSA definition, when law enforcement officers return marijuana in compliance with section 214(2)(e), they distribute marijuana in violation of the CSA. Because compliance with one law necessarily requires noncompliance with the other, there is a “positive conflict” between [the Colorado constitutional provision] and the CSA such that the two cannot consistently stand together.**

*

*

*

We therefore hold that the return provision of [the Colorado constitutional provision] is in positive conflict with and thus preempted by the federal Controlled Substances Act.

Id., ¶¶ 14, 19.

Bourgoin v. Twin Rivers Paper Co., 2018 ME 77, 187 A.3d 10 (found at https://scholar.google.com/scholar_case?case=18152109543534109944&hl=en&as_sdt=6&as_vis=1&oi=scholar) (employer could not be *required* by the state medical marijuana act to reimburse an employee for medical marijuana because the state statute’s requirement was in direct conflict with the CSA)⁷

[T]he dispositive question presented here is whether [the employer] is necessarily in violation of the CSA if it were to comply with the [Workers’ Compensation] Board’s order to pay for the medical marijuana that [the employee] is authorized to use pursuant to the [state’s medical marijuana act].

* * *

[T]he CSA makes it a crime to knowingly or intentionally “manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense” marijuana . . . , as well as to “knowingly or intentionally . . . possess a controlled substance. . . .”

* * *

It also bears noting that aside from the exposure to a federal conviction itself, the penalties for violation of the CSA can be significant.

* * *

[C]an [the employer] be *required* to pay for [the employee’s] acquisition and use of marijuana—conduct that is proscribed by federal law but allowed by the State because a [medical marijuana act] certification had been issued to him?

Compliance with both is an impossibility. Were [the employer] to comply with the hearing officer’s order and knowingly reimburse [the employee] for the cost of the medical marijuana as permitted by the

⁷ See Andrea L. Schlafer, “Court Holds That Federal Law Trumps State Marijuana Law,” found at <https://njworkerscompblog.com/court-holds-that-federal-law-trumps-state-marijuana-law/>.

[state medical marijuana act], [the employer] would be aiding and abetting [the employee]—in his purchase, possession, and use of marijuana—by acting with knowledge that it was subsidizing [the employee’s] purchase of marijuana.

* * *

[S]tate laws, such as the [state medical marijuana act], provide safe harbor from *state* prosecution, but do not—and cannot—create a “state right to commit a federal crime,” meaning that the state law protections have no bearing on *federal* criminalization or exposure to federal prosecution for that conduct.

* * *

The preemptive effect of the CSA on state marijuana laws has been addressed in several cases involving circumstances similar to the one presented here, where a party—such as [the employer]—was confronted with a **mandate to engage in conduct that would be violative of the CSA.**

* * *

As these cases demonstrate, **a person’s right to use medical marijuana cannot be converted into a sword that would require another party, such as [the employer], to engage in conduct that would violate the CSA.**

* * *

[T]he magnitude of the risk of criminal prosecution is immaterial in this case. Prosecuted or not, the fact remains that [the employer] would be forced to commit a federal crime if it complied with the directive of the Workers’ Compensation Board.

* * *

The Legislature . . . does not have the power to change or restrict the application of federal law that positively conflicts with state law. . . . So long as marijuana remains a Schedule I substance under the CSA. . . , **an employer that is ordered to compensate an employee for medical marijuana costs is thereby required to commit a federal crime defined by the CSA.** . . . This creates a positive conflict between the CSA and this application of the [state medical marijuana act]. As invoked against [the employer], **the [state medical marijuana act] requires what federal law forbids, and the authority ostensibly provided by the [state] law is “without effect.”**

February 20, 2019

Page 20

A simple means for testing the lawfulness of the requirement in H.B. 3001 that health departments and employees participate in procuring, storing, transporting, distributing, and selling marijuana in violation of the CSA is to ask the courts if these requirements in H.B. 3001 are preempted by the CSA and, if so, to declare the requirements set forth in H.B. 3001 “without effect.”

If you are interested in joining or supporting patient advocates in asking the courts to determine the validity of H.B. 3001, please let me know at your earliest convenience. No one can blame anyone for simply asking the courts: Is the statute requiring me to violate federal law valid?

The people of this state deserve an answer to this question before more precious state resources are spent fulfilling the illegal requirements of H.B. 3001, while exposing health department employees and perhaps others to potential criminal liability under the CSA. Also, regardless of any risk of criminal prosecution, the people of this state are entitled to know that our state laws are not in conflict with federal laws, in violation of the Supremacy Clause of the United States Constitution.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ross C. Anderson", with a long horizontal flourish extending to the right.

Ross C. Anderson