

MAR -6 2012

SENATE CONCURRENT 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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1 WHEREAS, in Gonzales v. Oregon (546 U.S. 243, 2006), the
2 United States Supreme Court held in a case involving a schedule
3 II substance that the Controlled Substances Act does not allow
4 the Attorney General to prohibit doctors from prescribing
5 regulated drugs for use in physician-assisted suicide under
6 state law permitting the procedure; and

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8 WHEREAS, the Court stated in pertinent part:

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

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

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

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



1 patient or the primary caregiver strictly complied with the
2 requirements of this part"; and
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4 WHEREAS, Hawaii's medical marijuana law is at risk of being
5 eviscerated by current federal enforcement of federal laws that
6 prohibit the use, sale, or possession of medical marijuana as a
7 schedule I controlled substance; and
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9 WHEREAS, registered medical cannabis patients in Hawaii are
10 at risk of federal prosecution for the medical use of marijuana
11 as a Schedule I controlled substance; now, therefore,
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13 BE IT RESOLVED by the Senate of the Twenty-sixth
14 Legislature of the State of Hawaii, Regular Session of 2012, the
15 House of Representatives concurring, that the State Attorney
16 General is requested to file an injunction in the United States
17 District Court to enjoin enforcement of state and federal laws
18 prohibiting cannabis, as a schedule I controlled substance,
19 until it can be reclassified; and
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21 BE IT FURTHER RESOLVED that the Governor is requested to
22 request the Attorney General of the United States to recognize
23 the right of the State of Hawaii to determine the appropriate
24 issuance and use of medical marijuana that is based on the fact
25 that the Legislature has determined that marijuana has a
26 legalized medical use in Hawaii and therefore no longer meets
27 all of the federal criteria for a schedule I controlled
28 substance; and
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30 BE IT FURTHER RESOLVED that certified copies of this
31 Concurrent Resolution be transmitted to the Governor and the
32 State Attorney General.
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