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IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

COUNTY OF SAN DIEGO, Plaintiff, v. STATE OF CALIFORNIA, SANDRA SHEWRY, Director of the California Department of Health Services in her official capacity; and DOES 1 through 50, inclusive, Defendants.	No. 06-cv-0130 WQH JMA **MOTION TO INTERVENE** Date: March 13, 2006 Time: 11 a.m. Place: Courtroom 4

MOTION TO INTERVENE

Wendy Christsakes, Pamela Sakuda, Norman Litzinger, William Britt, Yvonne Westbrook, Bill Zimmerman, Stephen O'Brien, Valerie Corral, the American Civil

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Wendy Christsakes, Pamela Sakuda, Norman Litzinger, William Britt, Yvonne Westbrook, Bill Zimmerman, Stephen O'Brien, Valerie Corral, the American Civil Liberties Union Foundation and the American Civil Liberties Union Foundation of San Diego & Imperial Counties (together "ACLU"), Americans for Safe Access ("ASA"), the Drug Policy Alliance ("DPA") and the Wo/Men's Alliance for Medical Marijuana ("WAMM") hereby move, pursuant to Fed.R.Civ. P. Rule 24(a), and, in the alternative, Rule 24(b), for leave to intervene as party defendants in this action. A copy of the Proposed Answer of Intervening Defendants is attached. This Motion to Intervene is made on behalf of the persons and organizations described below, each of whom has a compelling interest in ensuring the continued enforcement of the Compassionate Use Act of 1996 (Cal. Health & Safety Code §11362) and its implementing regulations (Cal. Health and Safety Code §11362.7-11362.83). The request to intervene is based upon this Motion, the attached Memorandum of Points and Authorities in Support of the Motion to Intervene with the attached exhibits and the Proposed Answer of Intervening Defendants.

1. Proposed Intervening Defendant WENDY CHRISTAKES ("Christakes") is, and at all times mentioned herein was, a resident of the County of San Diego and she pays taxes there. Christakes is a twenty-nine-year-old mother of two children who uses marijuana on the recommendation of her physician to treat chronic pain, sciatica, and other symptoms associated with a herniated disk. Christakes is a member of ASA.

2. Proposed Intervening Defendant PAMELA SAKUDA ("Sakuda") is,

and at all times mentioned herein was, a resident of the County of San Diego and she pays taxes there. Sakuda is a fifty-eight-year-old medical marijuana patient who uses marijuana on the recommendation of her physician to treat symptoms and side-effects of stage four rectal cancer.

3. Proposed Intervening Defendant NORBERT LITZINGER ("Litzinger") is, and at all times mentioned herein was, a resident of the County of San Diego and he pays taxes there. Litzinger is the husband of proposed intervening defendant Pamela Sakuda and he is her "primary caregiver," as defined under the Compassionate Use Act.

4. Proposed Intervening Defendant WILLIAM BRITT ("Britt") is, and at all times mentioned herein was, a forty-six-year-old medical marijuana patient who uses marijuana on the recommendation of his physician to treat symptoms associated with epilepsy and post-polio syndrome. Britt is a resident of Long Beach, California and a member of ASA.

5. Proposed Intervening Defendant YVONNE WESTBROOK ("Westbrook") is, and at all times mentioned herein was, a fifty-three-year-old medical marijuana patient who uses marijuana on the recommendation of her physician to treat muscle spasticity resulting from multiple sclerosis. Westbrook is a resident of Richmond, California and a member of ASA.

6. Proposed Intervening Defendant BILL ZIMMERMAN ("Zimmerman") was the Director of Californians for Medical Rights and served as Campaign Manager for the Proposition 215 campaign in 1996. Zimmerman is a resident of California.

7. Proposed Intervening Defendant STEPHEN O'BRIEN, M.D., ("O'Brien") is a physician licensed to practice in the State of California, is board certified in internal medicine, and currently practices medicine in Oakland, California.

8. Proposed Intervening Defendant VALERIE CORRAL ("Corral") is a resident of Santa Cruz County, California. Corral uses marijuana on the advice of her physician to control, and prevent, the onset of her debilitating seizures. Corral is also the co-founder and executive director of WAMM.

9. Proposed Intervening Defendant ACLU is a nationwide, nonprofit, nonpartisan organization with more than 500,000 members dedicated to the principles of liberty and equality embodied in the Constitution and this nation's civil rights laws. The ACLU of San Diego & Imperial Counties is a state affiliate. The ACLU's Drug Law Reform Project ("DLRP") is a project of the ACLU's national legal department. The DLRP's mission is to end punitive drug policies that cause the widespread violation of constitutional and human rights, as well as unprecedented levels of incarceration. The ACLU represents medical marijuana patients throughout the nation and has also been a vigorous advocate of the Compassionate Use Act, Cal. Health & Safety Code § 11362, and has defended it from frequent political and legal challenges.

10. Proposed Intervening Defendant ASA is the largest grassroots Organization working solely to protect the right of patients who use marijuana for medical purposes, as well as the doctors who recommend marijuana to them. ASA has litigated civil and criminal cases in state and federal court on behalf of medical marijuana patients and doctors. ASA's goal is to ensure safe and legal access to medical marijuana to the seriously ill who need it.

11. Proposed Intervening Defendant DPA is a non-profit corporation headquartered in New York with offices in New Jersey, New Mexico, and the District of Columbia, and four offices in California, including Berkeley, San Francisco, Sacramento, and Southern California. A representative of DPA's Southern California office is based in San Diego. With 25,000 individual members, the DPA has played—and continues to play—a central role in efforts, in California and elsewhere, to bring marijuana regulation in line with medical reality.

12. Proposed Intervening Defendant WAMM is a collective located in the City and County of Santa Cruz. WAMM has a maximum membership of 250 patients who suffer from HIV/AIDS, multiple sclerosis, glaucoma, epilepsy, various forms of cancer, and other serious illnesses and diseases. The majority of these patients are terminally ill. These patients use marijuana with the written recommendations of their physicians, in full compliance with California's medical marijuana laws. Each patient's "primary caregiver," defined by California law as the individual designated by the patient who consistently assumes responsibility for the housing, health, or safety of the patient, Cal. Health & Safety Code § 11362.5(e), is also a member of WAMM. WAMM was a vigorous advocate of Proposition 215 and S.B. 420, the legislation codified at California Health & Safety Code §§ 11362.5 and11362.7-11362.83. WAMM and individual WAMM members, including proposed intervening defendant Valerie Corral, are co-plaintiffs, along with the City and County of Santa Cruz, California, in *County of Santa Cruz, California et. al. v. Ashcroft et. al.*, Case No. C 03-01802, currently pending in the federal district court for the Northern District of California. The plaintiffs have raised

claims in that case seeking to defend and vindicate California's medical marijuana laws and the rights of patients and their physicians under those laws.

13. The individually-named applicants, the ACLU, ASA, DPA and WAMM (collectively "Applicants" or "Proposed Defendant Intervenors") should be permitted to intervene as a matter of right because this lawsuit directly threatens their vital interests in ensuring that seriously and terminally ill patients are not considered criminals under state law for their use of medical marijuana, and that physicians are protected from any type of punishment or denial of any right or privilege for recommending marijuana to a patient for medical purposes. Plaintiffs seek to enjoin the State of California ("the State") and the Director of the California Department of Health Services ("the Director") from enforcing California law that permits doctors to recommend medical marijuana and patients to use and cultivate it. A disposition in favor of plaintiffs will effectively brand patients as criminals under state law for pursuing a medically beneficial treatment option, will threaten physicians with loss of their state medical license and potential criminal liability for discussing or recommending medical marijuana as a treatment option, and will contravene the expressed will of the overwhelming majority of California voters and the California legislature.

14. Intervention is warranted because the Defendants are inadequate representatives of Applicants' interests. First, although the State has an interest in defending its laws, as a public actor it is subject to various pressures, including upcoming elections in November, which may temper its ability to vigorously defend the use of medical marijuana. Second, Defendants have already demonstrated hostility to the very statutes they are now asked to defend. In July 2005, the State and the Director

improperly suspended operation of California's Medical Marijuana Program and issuance of patient identification cards required under state law, and resumed compliance with these duly-enacted laws only when the ACLU and DPA threatened to bring legal action against them. Third, the State faces less risk of harm than do Applicants if plaintiffs were to prevail: while the State will continue to function normally, Applicant face serious impairment of their interests, including criminal sanctions and the loss of medical licenses. Applicants' interests are more direct, substantial and compelling than those of the named defendants.

15. Finally, even if there were any doubt as to Applicants' entitlement to intervene as of right, Fed. R. Civ.P.24(b) provides that where, as here, a timely application poses no threat of prejudice to the present parties and involves legal and factual questions that substantially overlap with those raised by the initial parties, intervention should be liberally granted.

16. Whether as a matter of right or of the Court's sound discretion, Applicants request that the Court grant them the status of parties defendant in this litigation.

Respectfully Submitted,

Dated: January 24, 2006

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COUNTY OF SAN DIEGO, Plaintiff, v. STATE OF CALIFORNIA, SANDRA SHEWRY, Director of the California Department of Health Services in her official capacity; and DOES 1 through 50, inclusive, Defendants.	No. 06-cv-0130 WQH JMA **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO INTERVENE** Date: March 13th 2006 Time: 11am Place: Courtroom 4

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By the accompanying motion the individually-named applicants, the American Civil Liberties Union Foundation Drug Law Reform Project and the American Civil Liberties Union Foundation of San Diego & Imperial Counties (together "ACLU"), Americans for Safe Access ("ASA") and the Drug Policy Alliance ("DPA") (collectively "Applicants" or "Proposed Defendant Intervenors") seek to intervene pursuant to *Rule 24(a)* or, in the alternative, Rule 24(b) of the Federal Rules of Civil Procedure as defendants in this lawsuit brought to invalidate California's medical marijuana laws. Proposed Defendant Intervenors have a significant legal interest in the subject matter of this litigation and such interest will not be adequately represented by existing parties.

Applicants for intervention respectfully request that this Court grant them leave to intervene as of right in the instant matter or, in the alternative, that this Court grant them permissive intervention.

INTRODUCTION

Marijuana has been used for centuries by physicians and patients all over the world. Patients and physicians report a range of benefits from the use of marijuana, including: the reduction of the extreme nausea caused by cancer chemotherapy; the increase of appetite for patients with chronic nausea and AIDS "wasting syndrome"; the reduction of eye pressure in glaucoma; and control of muscle spasms, seizures and chronic pain. Marijuana is also used medically by patients with epilepsy, paralysis, arthritis, multiple sclerosis, spinal cord injuries and migraines.

In 1996, a coalition of physicians, patients and various patients' rights and advocacy organizations led a California campaign to introduce a voter initiative to make it lawful under state law for certain qualified patients to cultivate and use marijuana for

medical purposes when they do so with the recommendation and advice of their physicians. The initiative further extended protection to California physicians from any type of punishment or denial of any right or privilege for recommending marijuana to a patient for medical purposes. Commonly known as Proposition 215, the initiative was passed by 56 percent of the California voters. It is now codified as state law at California Health and Safety Code §11362.5 ("Compassionate Use Act" or "Act").

In 2003, the California legislature enacted Senate Bill 420, codified at California Health and Safety Code §11362.7 *et. seq.* Senate Bill 420 implements the Compassionate Use Act by establishing, among other provisions, an identification card system and protection from arrest for qualified patients. This combined statutory scheme ("California's medical marijuana laws") has for the past decade extended significant protections to physicians and patients throughout the state. California's medical marijuana laws represent a significant step in protecting the health and welfare of Californians by affording protection under state law for patients to use, and physicians to recommend, a medication that many patients and physicians have found to provide the best—and in some cases the only—relief for a variety of serious illnesses and ailments.

The federal government has consistently opposed the choice by California (and many other states) not to regulate marijuana in the same manner as federal law. Federal officials have sought, through a variety of means, to convince California to enact marijuana laws in lockstep with federal statutes. However, federal officials have never claimed—in public or through litigation—that California was obliged to mimic federal law.

The County of San Diego now argues a view of federal preemption that federal officials have declined to make. This lawsuit seeks nothing less than the complete invalidation of the state's medical marijuana laws. If successful, San Diego's lawsuit will render illegal under state law a medicine currently used, and relied on, by thousands of seriously ill Californians. This lawsuit endangers the health and well-being of medical marijuana patients throughout the State of California, and additionally threatens to detrimentally affect those physicians who recommend marijuana to their patients.

While Applicants acknowledge that the named defendants, the State of California ("the State") and the California Director of Health Services ("the Director"), have some stake in defending against this lawsuit, the State and the Director have in the very recent past starkly demonstrated a marked antipathy toward the very statutes they are now called upon to defend. Moreover the interests of medical marijuana patients, physicians and the Applicant organizations are more direct, substantial and compelling than those of the named defendants. Applicants, and not the State or the Director, are the direct beneficiaries of California's medical marijuana laws. It is Applicants whose very health and well-being is threatened and who are, in fact, the direct targets of this lawsuit. This case will determine their future health prospects and the quality of their day-to-day lives. It is essential that they participate meaningfully in the adjudication of their rights and interests.

ARGUMENT

I. PROPOSED INTERVENING DEFENDANTS ARE ENTITLED TO INTERVENE AS OF RIGHT.

Rule 24(a) of the Federal Rules of Civil Procedure provides, in pertinent part:

> Upon timely application anyone shall be permitted to intervene in an action . . . when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Fed.R.Civ.P.24(a)(2). The Ninth Circuit has recognized that intervention furthers the important goals of "efficient resolution of issues and broadened access to the courts" and has thus counseled that "[i]n determining whether intervention is appropriate . . . the requirements for intervention are broadly interpreted in favor of intervention." See United States v. City of Los Angeles, 288 F.3d 391, 397-98 (9th Cir. 2002) (internal quotation omitted).

In light of the Rule and its goals, courts have granted motions to intervene as of right when the following four criteria are met: (1) the motion is timely; (2) the applicants have a significant protectable interest in the subject matter of the pending litigation; (3) the disposition of the action may impair or impede the applicants' ability to protect their interest; and (4) the existing parties cannot adequately protect the applicants' interest. Id. at 397. Applicants clearly meet these requirements in this case.

A. The application is timely.

This lawsuit was filed on January 20, 2006. No discovery has taken place and no dispositive motions have been filed. Applicants have moved quickly to assert their rights and to satisfy the Rule's timeliness requirement. See Northwest Forest Resource Council v. Glickman, 82 F.3d 825, 836-37 (9th Cir. 1996) (permitting the intervention of a non-party that moved to intervene less than a week after the original complaint was filed,

before the defendants had answered, and before any substantive proceedings had taken place).

B. The Applicant physicians, patients and membership organizations have a "significant protectable interest" in this case.

California's medical marijuana laws allow seriously and terminally ill patients to legally use marijuana with a physician's permission. It provides relief from pain to thousands of Californians and has freed physicians to effectively treat their patients. The Compassionate Use Act has had a decisive, profound impact on improving the quality of care given to, and received by, many California citizens. It would be unconscionable for this case to proceed without them; they are the real targets of plaintiffs' suit.

Applicants' shared and individual interests are far more urgent, direct, and addressable than the Rule requires. The Ninth Circuit and other courts have set a low threshold for what constitutes a "significantly protectable interest." United States v. Alisal Water Corp., 370 F.3d 915, 919 (9th Cir. 2004); see also, e.g., Michigan State AFL-CIO v. Miller, 103 F.3d 1240, 1245 (6th Cir. 1997) (explaining the court subscribes to a "rather expansive notion of the interest sufficient to invoke intervention of right"), Coalition of Arizona/New Mexico Counties for Stable Economic Growth v. Dept. of Interior, 100 F.3d 837, 841 (10th Cir. 1996) (recognizing that Congress has enacted, and courts have recognized, a "broad right of intervention").

The "interest" test is not a bright-line rule. Alisal Water Corp., 370 F.3d at 919 (citing So. Cal. Edison Co. v. Lynch, 307 F.3d 794, 803, modified on other grounds, 353 F.3d 648 (9th Cir.2003)). To establish a significantly protectable interest, "it is generally enough that the interest [asserted] is protectable under some law, and that there is a

relationship between the legally protected interest and the claims at issue. Sierra Club v. EPA, 995 F.2d 1478, 1484 (9th Cir. 1993). Proposed Defendant Intervenors have enunciated a specific interest in the subject matter of this case and thus satisfy this prong of the test.

1. The patients and physicians may intervene as a matter of right because their interests are directly protected by the challenged statute.

An applicant may intervene as of right if his interest is protectable under a statute. Sierra Club , 995 F.2d at 1484. The Compassionate Use Act, and its implementing regulations, protects the patients and defined caregivers who possess or cultivate marijuana for medical treatment recommended by a physician from criminal laws which otherwise prohibit possession or cultivation of marijuana. The connection between the patients' interests and this litigation is sufficiently clear because California's medical marijuana laws are threatened by this lawsuit.

Similarly, California's medical marijuana laws provide physicians who recommend use of marijuana for medical treatment shall not be punished or denied any right or privilege. These laws give attending physicians the freedom to have an open, honest discussion about a potential treatment, to make recommendations based on their reasoned medical judgment and to further their professional goals of protecting the life, health and comfort of their patients. In the absence of California's medical marijuana laws, physicians would stand to lose their medical license and face potential criminal sanctions for providing this advice and these recommendations. Like the patients, the physicians' interests are directly connected to this litigation and are thus a significantly protectable interest. See id.

2. The ACLU, ASA, DPA and WAMM may intervene as a matter of right because their members have a significantly protectable interest and because the organizations support the challenged legislation.

The ACLU, ASA, DPA are non-profit membership organizations. WAMM is a collective, with a membership consisting of seriously and terminally ill patients and their caretakers. These organizations claim a significant number of members who are medical marijuana patients, and also physicians and other individuals who support the use of medical marijuana. See Decl. of Allen Hopper at ¶ 3 (Jan. 24, 2006) ("Hopper Decl."), attached hereto as Exhibit 1; Decl. of Joseph D. Elford at ¶ 3 (Jan. 24, 2006) ("Elford Decl."), attached hereto as Exhibit 2; Decl. of Daniel N. Abrahamson at ¶¶ 3-4 (Jan. 24, 2006) ("Abrahamson Decl."), attached hereto as Exhibit 3; Decl. of Valerie Corral at ¶¶ 22-25 (Jan. 24, 2006) ("Corral Decl."), attached hereto as Exhibit 4. The Applicant organizations thus have legally protectable interests for the same reason as the patients and physicians who seek to intervene: because their members are directly affected by the continuing validity of California's medical marijuana laws. See Southwest Center for Biological Diversity v. Berg, 268 F.2d 810, 822 (9th Cir. 2001).

Moreover, the ACLU, ASA, DPA, and WAMM have been vigorous advocates of the Compassionate Use Act and have defended it from frequent political and legal challenges. See Hopper Decl. at ¶ 3; Elford Decl at ¶ 3; Abrahamson Decl. at ¶ 5; Corral Decl at ¶¶ 26-27. Especially pertinent to this motion, the ACLU and DPA threatened to sue the very defendants named in this litigation, the State and the Director, when they unilaterally and improperly halted the state's Medical Marijuana Program and prohibited the issuance of state patient identification cards to medical marijuana patients on July 8, 2005. See Ltr. from Allen Hopper and Daniel Abrahamson to Governor Arnold

Schwarzenegger and Sandra Shewry (July 12, 2005), attached hereto as Ex. 5. Only after receiving the threat-to-sue letter did the State and the Director resume implementation of the program. For this reason also, the Applicant organizations should be allowed to intervene as a matter of right. See Idaho Farm Bureau Federation v. Babbitt, 58 F.3d 1392, 1397 (9th Cir. 1995) (recognizing that a public interest group is entitled as a matter of right to intervene in an action challenging the legality of a measure it has supported) (citing cases); Sagebrush Rebellion, Inc. v. Watt, 713 F.2d 525, 527 (9th Cir. 1983) (same).

C. Applicants' ability to protect their interests will be impaired if they are not permitted to intervene.

To satisfy this element of the intervention test, Applicants need only show that they "'would be substantially affected in a practical sense by the determination made in an action.'" Southwest Center, 268 F.3d at 822 (quoting Fed.R.Civ.P. 24 advisory committee's notes). The relief requested by plaintiff—that is, an injunction prohibiting the State from enforcing the Compassionate Use Act and its implementing legislation—would substantially affect Applicants' interests here both legally and practically. There is little doubt that if the state were enjoined from enforcing its medical marijuana laws, access to medical marijuana for seriously and terminally ill patients and treatment options available to prescribing physicians will be severely impaired, if not completely eliminated. This is more than sufficient to meet the minimal requirements of the impairment requirement. See id. Moreover, an adverse decision in this lawsuit would significantly impair the Applicant organizations' interests in protecting the statutes making medical marijuana legal. See Idaho Farm Bureau Federation, 58 F.3d at 1398

(finding impairment where organization's interest was in protecting the Springs Snail and the lawsuit could remove that snail from the list of endangered species); Sagebrush, 713 F.2d at 527-28 (noting that Ninth Circuit precedent supported a finding of impairment of interest for an organization whose interests were the subject of the lawsuit) (citing cases).

D. The State and the Director cannot adequately protect Applicants' interests, which are more direct, substantial and urgent than those of the State, and possibly adverse to them.

The inadequate representation prong of the test, like the impairment prong, requires only a minimal and hypothetical showing. Southwest Center, 268 F.3d at 822. The requirement of Rule 24 is satisfied if the applicant merely shows "that representation of its interests by existing parties 'may be' inadequate." Id. (quoting Trbovich v. United Mine Workers of America, 404 U.S. 528, 538 n.10 (1972). Here, Applicants can show not only that the State's representation of the interests of Proposed Defendant Intervenors may be inadequate but that it is demonstrably so.

This litigation, which directly involves the availability of medicine to seriously and terminally ill patients, must of necessity result in factual and legal determinations concerning the nature of that access and use. Such determinations when upheld by an appellate ruling will have a persuasive *stare decisis* effect in any parallel or subsequent litigation. Thus, it is extremely important that the entire spectrum of Applicant's interests be represented in this litigation. Indeed, the Ninth Circuit has recognized that "[s]uch a *stare decisis* effect is an important consideration in determining the extent to which an applicant's interest may be impaired." United States v. Oregon, 839 F.2d 635, 638 (9th Cir. 1987).

While Applicants acknowledge that the named defendants, the State and the Director have some stake in defending against this lawsuit, these named defendants are accountable to the general public, including those minority of voters and government officials who do not support the use of medical marijuana. Given the named defendants' positions as public entities, the State and the Director cannot advance the Applicants' interests as beneficiaries and supporters of California's medical marijuana laws without balancing them against the countervailing political pressures both within and outside of the current administration. See Sagebrush, 713 F.2d at 527 (in assessing the adequacy of the defendants' representation, court must consider whether current parties are capable of and willing to make arguments that intervenor would make); See Southwest Center, 268 F.3d at 824 (Applicants need not identify specific differences in trial strategy; it is sufficient to show that, because of difference in interests, it is likely defendants will not advance the same arguments as applicants.). As demonstrated by the Director's previous decision to suspend the State's medical marijuana program, the priorities of the State and the Director are likely to differ in significant respects from Applicants' interests in the continued enforcement of California's medical marijuana laws. These differences alone militate in favor of granting Applicants the right to intervene. See Southwest Center, 268 F.3d at 824.

Further, the State and the Director cannot be expected to raise all available defenses, or to raise them in the same manner as Applicants will. See id. (court must also consider whether parties "will undoubtedly make all of the intervenor's arguments"). For example, Applicants may propose a medical necessity claim in defending against Plaintiff's assertions. This claim is entirely dependent on the personal circumstances of

individual patients and which cannot be raised by the State or any of its employees in their official capacity. Indeed, intervention must be granted because only Applicants will be able "to express their own unique private perspectives and in essence carry forward their own interests." Southwest Center, 268 F.3d at 823-24.

The State's interests not only diverge from those of Applicants but are in fact likely to conflict with those of the Proposed Defendant Intervenors. As noted above, just months ago the Director and the State improperly halted the state's Medical Marijuana Program and prohibited the issuance of state patient identification cards to medical marijuana patients. The State and the Director resumed the program only after concerted public pressure and threats of legal action by the ACLU and the DPA. The Director's public statements and actions in shutting down the program provide troubling evidence of the Director's and the State's hostility to its own medical marijuana laws and indicate that it may not in fact vigorously defend those laws in this litigation. See Sagebrush, 713 F.2d at 528 (finding that the fact that the defendant in lawsuit was once aligned with the plaintiff militated in favor of allowing intervention).

Finally, Applicants' interests are much more urgent than the State's or the Director's. Each of the individual applicants and the Applicant organizations will be personally, permanently and profoundly affected by the outcome of this lawsuit. This litigation will decide what they can do and how they can do it. It will decide how well they can manage their pain and regulate their health. For some, it will in fact decide whether they live or die.

II. PERMISSIVE INTERVENTION IS ALSO APPROPRIATE.

In addition to meeting the requirements for intervention as of right, Applicants have met those requirements establishing a basis for discretionary grant of permissive intervention. Rule 24(b) provides that a court may grant intervention if "the applicant's claim or defense and the main action have a question of law or fact in common." Fed.R.Civ.P. 24(b)(2). In addition, a court should consider the timeliness of the application and whether intervention will "unduly delay or prejudice the adjudication of the rights of the original parties." Id.

As demonstrated in this Motion, Memorandum of Points and Authorities, attached exhibits and the Proposed Answer, Applicants will raise defenses that have numerous questions of law or fact in common with the main action. Their application is clearly timely. Finally, their intervention will not unduly delay or prejudice the adjudication of the rights of the original parties. Therefore, if intervention as of right is not granted, permissive intervention is appropriate.

CONCLUSION

For all the reasons set forth in this memorandum, Applicants respectfully request this Court grant the accompanying Motion to Intervene.

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