

Local News

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Wenatchee lawsuit could make or break state's pot law

A lawsuit against the city of Wenatchee could invalidate Washington state's regulations and emerging pot industry, or could uphold it. Either outcome could influence legalization campaigns planned in other states.

By Bob Young

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A lawsuit against the city of Wenatchee could have sweeping implications for legal pot's future in Washington and other states.

The lawsuit was filed Tuesday afternoon in Chelan County Superior Court by Shaun Preder, who is seeking a state license for a retail marijuana store in Wenatchee. But Preder's SMP Retail can't open a store, Wenatchee officials say, because city officials adopted a policy that says to get a city business license, entrepreneurs must comply with federal law.

Marijuana remains illegal under federal law, even though Washington state voters legalized possession, production and regulation of the drug via Initiative 502 in 2012.

The case could open the door to a court ruling on whether the federal government can trump or pre-empt Washington's pot law. Such a ruling could invalidate Washington's regulations and emerging pot industry, or uphold it. Either outcome could influence legalization campaigns planned in states such as California.

For that to happen, Wenatchee would have to respond to Preder's lawsuit by invoking its business-license policy and the federal prohibition of marijuana.

If the city did raise the federal issue — instead of choosing not to fight, or just relying on state law in its arguments — then the ACLU (American Civil Liberties Union) of Washington would intervene on the side of I-502, said Alison Holcomb, chief author of the initiative and criminal-justice director for the state ACLU.

Wenatchee has 20 days to respond to the lawsuit, said Hilary Bricken, Preder's attorney. Preder, 34, is president of an office-furniture company in Woodinville. He said he isn't seeking notoriety. "I'm just trying to move forward with my business. I think they should obey state law," he said.

Lawyers and judges would be eager to take on the case because of the high stakes involved. "It will be the kind of case I think the U.S. Supreme Court lives for," said King County Prosecuting Attorney Dan Satterberg in the documentary "Evergreen: the Road

to Legalization,” which begins a theatrical run in New York City this month.

The initiative was written with this scenario in mind, and Holcomb said the ACLU, assisted by local law firms Gordon Thomas Honeywell and Garvey Schubert Barer, is prepared to make its case.

Bricken said Wenatchee made itself a “perfect target for this kind of lawsuit.” She said she is not worried about setting back legal marijuana with the lawsuit.

“The question on the table is whether cities can rely simply on federal prohibition to deny these businesses in their jurisdictions. We were careful to not call into question the validity of I-502 itself,” Bricken said.

Mayor Frank Kuntz said it’s too early to know what Wenatchee’s response would be until the City Council discusses the case with its lawyer at its next scheduled meeting June 12. City Attorney Steve Smith said Tuesday of the lawsuit, “I haven’t seen it yet. I’m not aware we’ve been sued.”

The mayor had recommended that Wenatchee simply drop the federal requirement from its business-license process, to avoid such a fight. But the City Council voted 4-3 earlier this year to maintain the federal compliance provision.

If a legal battle looks like it will cost the city a lot, Kuntz said, he’d advise the council not to litigate. But that decision is up to the council, he said. “They control the checkbook,” he said. “I manage it for them.”

Bricken said earlier this month that the ACLU was “plaintiff-shopping,” looking for a case featuring a pot entrepreneur whose license was jeopardized by federal prohibition. “I’m confident the authors of 502 were smart enough to know we would get in this battle,” she said.

Holcomb laid out the arguments against federal pre-emption of I-502 in a presentation last year at the Seattle University School of Law. She starts from the legal viewpoint that the federal government can’t force a state to criminalize a particular activity. So Congress can prohibit marijuana growing, sales and possession but can’t make state officials enforce federal law against pot.

That would seemingly leave the federal Department of Justice the choice of enforcing federal law against Washington adults possessing marijuana, or against the state’s scheme of licensing and regulating production and sale of the drug.

The former would be impractical because the DOJ doesn’t have enough agents for the task. Clamping down on the state’s system would be more plausible. But it carries its own risks.

U.S. Deputy Attorney General James Cole laid those risks out last year in a key exchange with U.S. Sen. Patrick Leahy, D-Vt.

“It would be a very challenging lawsuit to bring to pre-empt the state’s decriminalization law,” Cole said. DOJ might have an easier time pre-empting the state’s regulatory scheme, he said, “but then what you’d have is legalized marijuana and no enforcement mechanism with the state to try and regulate it.”

Leahy’s response? “Kind of an incentive for a black market,” said the chairman of the U.S. Senate Judiciary Committee, “isn’t it?”

Very much so, Cole replied, with “money going into organized criminal enterprises instead of going into state tax coffers and having the state regulate from a seed-to-sale basis what happens to it.”

A legal battle, in Holcomb’s analysis, would revolve around what Congress intended with the Controlled Substances Act (CSA), which makes marijuana federally illegal.

If the purpose of the CSA is to reduce harm to society, then she argues that I-502 does more good than harm because it strictly regulates marijuana production and sales rather than leaving that to the illicit market.

State regulations don’t stifle federal enforcement, she said. The DOJ can always hire more agents to enforce federal law.

“The crux of the argument is whether I-502 is hindering or helping congressional goals,” she said. “That’s the critical question.”

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