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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

GORDON WARREN EPPERLY, Petitioner, v. STATE OF ALASKA, UNITED STATES OF AMERICA Respondents.	Case No. 1:15-cv-00002-SLG **STATE'S REPLY TO OPPOSITION TO MOTION TO DISMISS, AND OPPOSITION TO MOTION FOR SUMMARY JUDGMENT**

The State of Alaska hereby responds to Plaintiff Gordon Epperly's Opposition to State of Alaska's Motion to Dismiss, and opposes his Motion for Summary Judgment. Epperly's opposition is not responsive. First, Epperly's arguments related to defects in the State's Motion are frivolous. Second, Epperly does not address the issues related to the three elements of standing raised by the State's motion. Finally, Epperly's arguments related to "federalism" do not address the State's arguments related to the Supremacy

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Clause or the anti-commandeering principle of the 10th Amendment. Therefore, the State's motion should be granted.

Epperly's Motion for Summary Judgment does not meet the standard required by Federal Civil Rule 56. Epperly's motion does not establish either of the two requirements for summary judgment. It fails to establish that there are no material facts at issue, nor does it establish that he is entitled to judgment by law. Therefore, the motion should be denied.

EPPERLY'S OPPOSITION TO STATE'S MOTION TO DISMISS

Epperly makes several arguments related to purported "defects" to the State's Motion to Dismiss.[1] First, Epperly frivolously argues that his "Petition for Redress of Grievance" is a "Petition" and not a "Complaint." This is sheer semantics. Whether Epperly wants to be called a Petitioner or a Complainant has no bearing on whether he has standing to pursue this claim in federal court, which, for the reasons presented in the State's Motion to Dismiss, he does not.[2] Epperly also frivolously argues that the header to the State's Motion to Dismiss writes his name in all capital letters. Use of all caps is the standard format for federal pleadings. In a number of other cases, defendants have unsuccessfully argued that service of process was not perfected because

[1] Opposition to State of Alaska's Motion to Dismiss and Petitioner's Motion for Summary Judgment, at 8-9, 10-11, 14-16 (*hereinafter* "Opposition").

[2] Motion to Dismiss, at 7-13.

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the defendant's name was listed in all capital letters.[3] Even if this were a valid argument for rejecting service of process (which it is not), Epperly cannot use it in this case, since it was Epperly himself who filed the complaint in the first place and service of process is not an issue. Clearly, the State's Motion to Dismiss refers to Epperly's "Petition for a Redress of Grievance Involving Constitutional Controversies of Conflicting Laws," regardless of how Epperly wishes to spell his name.

Epperly also seeks to quash the State's Motion to Dismiss based on Federal Rule of Civil Procedure 54(c)(4), which requires that affidavits or declarations used to support a motion must be made on personal knowledge.[4] This is again a frivolous objection. The State's Motion to Dismiss does not contain any affidavits. Therefore, Rule 54(c)(4) is not applicable.

Epperly argues that he has standing to pursue this claim by reiterating, without any documentary evidence, that he has a medical condition that requires treatment with marijuana.[5] However, as stated in the State's Motion to Dismiss, this claim, even if true, would not be enough to establish standing in this court. Epperly cannot establish that Alaska's statutory marijuana regime has caused or will cause him to suffer the invasion of any legally protected interest; does not demonstrate that his purported injury was

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[3] *See, e.g. Russell v. U.S.*, 696 F.Supp. 24, 25 (E.D. Mich. 1997).

[4] Opposition, at 9-10; Fed. R. Civ. P. 54(c)(4).

[5] Opposition, at 12-14.

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caused by Alaska's recently enacted marijuana laws; and cannot show that his claimed injury would even be remedied by the redress he seeks, he therefore fails to establish Article III standing.[6]

Epperly argues that he has standing because he is seeking a declaratory judgment, and therefore does not have to show actual harm has already occurred.[7] However, the State's argument did no depend on whether or not Epperly had already been prosecuted for possession of marijuana under federal law. Therefore, Epperly's arguments regarding a declaratory judgment are not responsive to the State's motion.

Epperly presents an argument related to the concept of "federalism" and cites the Interstate Commerce Clause[8] However, as explained in the State's Motion to Dismiss, Epperly does not have standing to bring a claim on behalf of the federal government.[9] Even if Epperly did have such authority, his claim still fails because no plaintiff can bring a claim directly under the Supremacy Clause, and Epperly's claim, if granted, would represent violation of the anti-commandeering principle of the 10th Amendment. Epperly's Opposition does not attempt to refute the State's position in regards to any of these points.

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6 *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992).

7 Opposition, at 5-8.

8 Opposition, at 17-21.

9 Motion to Dismiss, at 16-18.

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Finally, Epperly does not present any argument in opposition to the State's motion to dismiss under Federal Civil Rule 12(b), failure to state a claim.[10]

MOTION FOR SUMMARY JUDGMENT

Epperly also makes a Motion for Summary Judgment.[11] Epperly has not established standing to bring a claim, and so it is premature for him to file a Motion for Summary Judgment. But, even if Epperly had standing, his motion should still be denied. Issuance of summary judgment can be based only upon the court's finding that 1) there are no disputed issues of material fact requiring a trial court to resolve, and 2) in applying the law to the undisputed facts, one party is clearly entitled to judgment.[12]

Epperly's motion fails on both counts. First, in order to prevail, Epperly would have to establish the factual claim that he has a medical need for marijuana. This claim is unsubstantiated and has been asserted with no evidence whatsoever. It may turn out that Epperly does have a medical condition. However, nothing in the pleadings thus far presented would allow this court to find that this fact is indisputable. The extent of Epperly's medical condition and treatment options could only be decided by a factfinder and only after evidence is presented. Therefore, there is at least one disputed fact at issue in Epperly's complaint, and so summary judgment is not appropriate.

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[10] Motion to Dismiss, at 13-15.

[11] Opposition, at 21-22.

[12] *E.g. Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-248 (1986).

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Second, Epperly cites to an amicus brief submitted in a dispute between Nebraska, Oklahoma, and Colorado to support his claim.[13] Amicus briefs are not rulings by a court and have no force of law. Therefore it is inappropriate to cite them as a controlling authority. In addition, the brief that Epperly cites to is distinguishable from the case before this court. The State asserts that Epperly does not have standing to bring a claim because he has not established that he was personally affected by Alaska's recreational marijuana statute. The brief Epperly cites is related to a claim by the states of Nebraska and Oklahoma against Colorado.[14] The essence of that claim is that Colorado's permissive laws are creating law enforcement issues in neighboring states. Whether or not Nebraska and Oklahoma have a valid argument, it is clear that they do have standing to bring this claim. Nebraska and Oklahoma are sovereigns that have the authority to enforce the laws of their respective states, and Nebraska and Oklahoma can probably establish that they are negatively affected by Colorado's permissive drug laws. Epperly is not a sovereign and does not have the authority to enforce federal law or bring a claim on behalf of any state or federal government, nor does Epperly's complaint argue that Alaska's permissive drug laws are affecting neighboring states. Therefore, the case Epperly cites is distinguishable. Epperly's motion does not address the State's arguments

[13] Opposition, at 22, Exhibit A.

[14] *Id.*

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related to the Supremacy Clause and the 10th Amendment, and Epperly does not clearly establish that he is entitled to judgment as a matter of law.

Since Epperly has not established that there are no disputed issues of material fact, and had not established that any controlling case law clearly entitles him to judgment, Epperly's Motion for Summary Judgment should be denied.

CONCLUSION

As stated in the State's Motion to Dismiss, Epperly lacks the necessary standing to bring this complaint, and Epperly does not present a claim for which relief can be granted by this Court. Furthermore, Epperly has not established that he is entitled to summary judgment. Therefore, the State of Alaska asks the Court to deny Epperly's Motion for Summary Judgment and to dismiss this case with prejudice.

DATED: June 23, 2015

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 23rd day of June, 2015,true and correct copies of the foregoing documents, **STATE'S REPLY TO OPPOSITION TO MOTION TO DISMISS AND OPPOSITION TO MOTION FOR SUMMARY JUDGMENT** was served on the following parties of record via USPS, and electronically, pursuant to the court's electronic filing procedures:

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