JASON DERRIS,

Petitioner,

v.

QUICK STOP GROCERIES, INC.,

Respondent.

RECORD ON APPEAL

Released January 22, 2021

The people and events described in this record are fictional.
Any resemblance to actual persons or events is purely coincidental.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MONTIZONA

JASON DERRIS, Plaintiff, v. QUICK STOP GROCERIES, INC., Defendant.	No. 20-2001 JAS-BSB JURY TRIAL DEMANDED

COMPLAINT

INTRODUCTION

1. Plaintiff Jason Derris brings this action pursuant to the Americans with Disabilities Act, 42 U.S.C. § 12112(a), and the Montizona Therapeutic Use of Marijuana Act, 15 Mza. Code § 840, because Defendant Quick Stop Groceries, Inc. ("Quick Stop") discriminated against him in regard to the terms, conditions, and privileges of his employment with Quick Stop by terminating his employment after failing to make a reasonable accommodation for the treatment of his epilepsy.

PARTIES

2. Plaintiff Jason Derris is a citizen of the United States and a resident of the City of Leonardo within the Northern District of Montizona in the Commonwealth of Montizona.

3. Defendant Quick Stop is a corporation established under the laws of the Commonwealth of Montizona and headquartered in Leonardo, Montizona.

LEGAL BACKGROUND

4. On April 19, 2019, Montizona's Therapeutic Use of Marijuana Act (TUMA) went into effect, having been approved by referendum in August 2018 by 73% of Montizona voters.

5. Among its provisions, TUMA permits licensed physicians to authorize the use of marijuana as an approved treatment for various medical conditions, explicitly including epilepsy.

6. TUMA also makes it unlawful for an employer to "discriminate against an employee, with regard to the terms and conditions of employment, on the basis of the employee's use of marijuana in accordance with this Act, unless the employer demonstrates that such use has impaired the employee's ability to perform his ordinary job functions." 15 Mza. Code § 840(j).

FACTUAL ALLEGATIONS

7. Plaintiff Jason Derris was employed by Quick Stop from August 2014 until December 21, 2019, originally as a checking clerk and ultimately as an Automated Checkout Supervisor.

8. Plaintiff has received consistently positive reviews for his work performance throughout the duration of his employment by Quick Stop.

9. Plaintiff was diagnosed with intractable epilepsy in 1998 and continues to be afflicted by the condition.

10. Plaintiff previously informed Quick Stop that he suffered from epilepsy in 2017, when a seizure unexpectedly required Plaintiff to miss work for several days.

11. Plaintiff has utilized various medications to control his condition and to mitigate the risk of seizures, but until April 19, 2019, Plaintiff was not legally authorized under Montizona law to treat his condition with marijuana.

12. Beginning in May 2019, Plaintiff, upon the advice and authorization of a licensed physician, began using marijuana to treat his epilepsy.

13. Since beginning the use of marijuana, Plaintiff has suffered no additional seizures.

14. On December 18, 2019, Plaintiff was requested by Quick Stop to take a drug test, in what it claimed was a random drug screening under its company policies.

15. The "Drug Use Policy" in Quick Stop's Employee Handbook states:

> Quick Stop Associates are expected to live a drug-free lifestyle, on and off the job. As a condition of your employment, Quick Stop may require you to submit to a drug test at any time, and a test result indicating illegal drug use may result in your immediate termination.

16. On that same day, Plaintiff informed his supervisor that he had begun using medical marijuana on the advice of his physician in order to treat his epilepsy, and that he expected the drug test would reveal that he had used marijuana.

17. Plaintiff asked his supervisor to make an exception to Quick Stop's Drug Use Policy to accommodate his need to use marijuana to control his epilepsy.

18. Plaintiff's supervisor indicated she would "look into it."

19. On December 21, 2019, Plaintiff received a telephone call from his supervisor indicating that Plaintiff had failed the drug test and that his employment was being terminated.

20. During that conversation, Plaintiff's supervisor indicated "we can't make any exceptions to company policy."

21. Other than at the commencement of his employment, Plaintiff had never before been requested by Quick Stop to take a drug test.

22. Plaintiff has never been under the influence of marijuana while at work at Quick Stop.

JURISDICTION AND VENUE

23. This Court has jurisdiction pursuant to 28 U.S.C. § 1331.

24. Pursuant to 28 U.S.C. § 1391, venue is appropriate in this district because Defendant Quick Stop is incorporated and has its principal place of business therein.

25. Plaintiff filed a charge of discrimination with the Equal Employment Opportunity Commission on or about January 20, 2020, and received a right-to-sue letter on June 30, 2020.

CLAIMS FOR RELIEF

Count I
(Disability Discrimination Under 42 U.S.C. § 12112(a))

26. Each of the foregoing allegations is hereby incorporated herein by this reference.

27. Quick Stop is a "covered entity" within the meaning of 42 U.S.C. § 12112(a) because it employs 15 or more individuals.

28. Plaintiff was qualified for the position of Automated Checkout Supervisor, as evidenced by his satisfactory performance of the job functions during his employment.

29. Plaintiff's epilepsy is a disability within the meaning of 42 U.S.C. § 12112(a) because it is a physical or mental impairment that substantially limits one or more of his major life activities, including the major biological functions of his neurological and nervous systems.

30. Quick Stop discriminated against Plaintiff in the terms, conditions, and privileges of Plaintiff's employment by, among other things, not making a reasonable accommodation for Plaintiff's physical and mental limitations, known to Quick Stop, that would impose no undue hardship on Quick Stop, by failing to grant him an exception for medical use of marijuana under its Drug Use Policy, in violation of 42 U.S.C. § 12112(b)(5)(A).

WHEREFORE Plaintiff Jason Derris requests reinstatement to his position as an Automated Checkout Supervisor, back pay, and such other and further relief as the Court deems just and proper.

Count II
(Discrimination Under 15 Mza. Code § 840(j))

31. Each of the foregoing allegations is hereby incorporated herein by this reference.

32. Plaintiff's use of marijuana has complied in all respects with TUMA, including its requirement that his use be authorized and approved by a licensed physician.

33. Defendant discriminated against Plaintiff with regard to the terms and conditions of his employment on the basis of Plaintiff's use of marijuana in accordance with TUMA, by terminating his employment.

WHEREFORE Plaintiff Jason Derris requests reinstatement to his position as an Automated Checkout Supervisor, back pay, and such other and further relief as the Court deems just and proper.

Dated: July 10, 2020

Respectfully submitted,

/s/ *Dante Hicks*
Hicks & Justice LLP
1500 Chaka King Drive
Leonardo, Montizona 50065

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MONTIZONA

JASON DERRIS, Plaintiff, v. QUICK STOP GROCERIES, INC., Defendant.	No. 20-2001 JAS-BSB

MEMORANDUM AND ORDER

This matter comes before the Court on Defendant's motion to dismiss the Complaint in this matter pursuant to Federal Rule of Civil Procedure 12(b)(6). The Complaint alleges that Defendant unlawfully terminated Plaintiff's employment on account of (1) his disability, in violation of 42 U.S.C. § 12112, and (2) his use of marijuana for medical reasons, in violation of 15 Mza. Code § 840. Defendant argues that neither claim can move forward because federal law does not require any reasonable accommodation for medical marijuana use and supersedes any contrary state law.

For the purpose of assessing Defendant's motion to dismiss, this Court assumes the truth of Plaintiff's allegations, granting the motion only if the facts alleged, together with all reasonable inferences in Plaintiff's favor, fail to plausibly state a claim upon which relief could be granted. *Iqbal v. Ashcroft*, 556 U.S. 662, 678 (2009). Because the Court concludes Plaintiff has successfully stated a claim under both Counts I and II, Defendant's motion to dismiss is denied.

I. Reasonable Accommodation Under the ADA (Count I)

Defendant Quick Stop Groceries, Inc. ("Quick Stop") first moves to dismiss Count I of the Complaint, which purports to state a claim for disability discrimination under the Americans with Disabilities Act (the "ADA"). The ADA provides:

> No covered entity shall discriminate against ***a qualified individual on the basis of disability*** in regard to . . . discharge of employees . . . and other terms, conditions, and privileges of employment.

42 U.S.C. § 12112(a) (emphasis added). The Complaint alleges that Plaintiff suffers from "intractable epilepsy," which is unquestionably a disability under the ADA. *See id.* § 12102(1)(A) (defining disability as "a physical or mental impairment that substantially limits one or more major life activities"). Plaintiff likewise meets the basic definition of a "qualified individual," as evidenced by his prior job performance, which, according to the Complaint, yielded uniformly positive reviews from Quick Stop. *See id.* § 12111(8) ("The term

'qualified individual' means an individual who . . . can perform the essential functions of the employment position . . . .").

When an employer knows that a qualified individual has a disability, the ADA requires the employer to make a "reasonable accommodation" for the disability. *Id.* § 12112(b)(5)(A). "Reasonable accommodations" are defined by the ADA to include "appropriate adjustment or modification of . . . policies . . . and other similar accommodations for individuals with disabilities." *Id.* § 12111(9)(B). Plaintiff claims that Quick Stop's failure to make an exception to its Drug Use Policy to permit his use of marijuana to treat his disability violates these provisions and thus constitutes discrimination under the ADA.

Plaintiff's argument would seem to follow readily from the provisions described above, but as Quick Stop points out, the ADA contains an explicit carve-out for "illegal" drug use. Section 12114 expressly excludes from the definition of a "qualified individual" any employee "who is currently engaging in the illegal use of drugs." *Id.* § 12114(a). Users of illegal drugs are therefore not covered by the ADA, and no reasonable accommodation can be required of their employers. *Mauerhan v. Wagner Corp.*, 649 F.3d 1180, 1185 (10th Cir. 2011). The relevant question, therefore, is whether Plaintiff's use of marijuana for medical purposes should be considered "illegal" under Section 12114. The Court finds that it should not.

The definition section of the ADA sheds some light on whether drug use qualifies as "illegal" under the ADA's drug-use carve-out:

> The term "illegal use of drugs" means the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act. Such term ***does not include*** the use of a drug taken ***under supervision by a licensed health care professional***, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

42 U.S.C. § 12111(6)(A) (emphasis added). Montizona state law notwithstanding, marijuana remains unlawful to possess under the Controlled Substances Act, 21 U.S.C. § 812, and thus its use would ordinarily qualify as "illegal use of drugs" under the ADA. *See Collings v. Longview Fibre Co.*, 63 F.3d 828, 833 (9th Cir. 1995). But the ADA's definition of "illegal use of drugs" expressly excludes "a drug taken under supervision by a licensed health care professional." *See* 42 U.S.C. § 12111(6)(A). This carve-out from the carve-out means that Plaintiff *does* meet the definition of a "qualified individual with a disability," and Quick Stop must therefore establish that making an exception to its drug policy for Plaintiff's medical marijuana use would constitute an "undue hardship" to avoid liability for discrimination. 42 U.S.C. § 12112(b)(5)(A).

The Complaint expressly alleges that Plaintiff's use of marijuana is being conducted pursuant to the authorization of his licensed physician as a treatment for his epilepsy. As such, Plaintiff's use of marijuana is not "illegal" under the ADA; he meets the definition of a "qualified individual with a disability"; and he may therefore maintain a claim on the basis of Quick Stop's failure to grant him an accommodation to its Drug Use Policy. Whether such an accommodation would be reasonable or would impose an undue hardship on Quick Stop remains to be determined, but Plaintiff has plausibly alleged a claim for disability discrimination under the ADA.

II. Preemption of Montizona Medical Marijuana Law

Defendant also moves to dismiss Count II of the Complaint, which raises a claim under Montizona's Therapeutic Use of Marijuana Act (TUMA). TUMA's antidiscrimination provision, 15 Mza. Code § 840(j), provides that:

> [i]t is unlawful to discriminate against an employee, on the basis of the employee's use of marijuana in accordance with this Act, with regard to the terms and conditions of employment, unless the employer demonstrates that such use has impaired the employee's ability to perform her ordinary job functions.

Quick Stop acknowledges that the Complaint pleads all of the elements required under § 840(j). The Complaint asserts that Plaintiff complied with TUMA by receiving the authorization of a licensed physician before using marijuana to treat his epilepsy. It even states that Plaintiff has received consistently positive job reviews and that he has never been under the influence of marijuana while at work. Thus, if the antidiscrimination provision of TUMA is enforceable, Plaintiff's Complaint would survive Quick Stop's motion to dismiss. Quick Stop, however, argues that TUMA's antidiscrimination provision is unenforceable because it is preempted by federal law, namely the Controlled Substances Act, 21 U.S.C. § 801 *et seq*. (the "CSA").

The CSA makes it a crime to possess or distribute marijuana, which it classifies as a "Schedule I" drug. *See Coats v. Dish Network*, LLC, 350 P.3d 849, 852 n.2 (Colo. 2015). In 2009, the U.S. Department of Justice issued the so-called "Ogden Memo," announcing that it would not enforce the CSA against licensed sellers and purchasers of marijuana in states like Montizona whose state laws permit the use and possession of marijuana for medical purposes. Memorandum from David W. Ogden, Deputy Attorney General, U.S. Department of Justice, to Selected United States Attorneys (Oct. 19, 2009) (the "Ogden Memo"). Congress, however, has not reclassified marijuana onto a lower schedule, so it remains illegal to possess or distribute as a matter of federal law. *See United States v. Canori*, 737 F.3d 181, 188 (2d Cir. 2013) (rejecting the argument that the federal nonenforcement policy amounts to a *de facto* rescheduling of marijuana).

Ordinarily, where Congress seeks to displace state regulation, it does so through an express pronouncement. But Congress has done the opposite here, by expressly disclaiming any such intention in the CSA:

> No provision of this subchapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which that provision operates . . . unless there is a positive conflict between that provision . . . and . . . State law so that the two cannot consistently stand together.

21 U.S.C. § 903. "The courts should not assume the role which our system assigns to Congress" of finding preemption in fields where Congress has explicitly left room for the states to regulate. *Pac. Gas & Elec. Co. v. State Energy Res. Conservation & Dev. Comm'n*, 461 U.S. 190, 222 (1983). Where Congress has "left sufficient authority in the states" to regulate, "it is for Congress," not the courts, "to rethink the division of regulatory authority in light of its possible exercise by the states to undercut a federal objective." *Id.*

Applying these standards here, the antidiscrimination provision of TUMA does not create a "positive conflict" with federal policy, either as stated in the Ogden Memo or inferred from the CSA itself. The CSA is not an employment statute, and it makes no attempt to constrain a state's ability to regulate the employment of drug users, regardless of whether that use is legal or not. *See Noffsinger v. SSC Niantic Operating Co.*, 273 F. Supp. 3d 326, 334 (D. Conn. 2017) ("The CSA . . . does not make it illegal to employ a marijuana user. Nor does it purport to regulate employment practices in any manner.").

Even if the Department of Justice were to reverse its position and begin enforcing the CSA's criminal provisions against medical marijuana users like the Plaintiff, it would be in no way impaired from doing so by TUMA's antidiscrimination provision. *See Fla. Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142–43 (1963) (finding preemption "where compliance with both federal and state regulations is a physical impossibility"). It is therefore possible for TUMA and the CSA to peacefully coexist alongside each other as part of our Constitution's system of dual sovereignty. If that balance is to be reassessed, it is for Congress, not courts, to do so. *See Pac. Gas*, 461 U.S. at 222.

Even assuming that the federal policy underlying the CSA could be read so broadly as to potentially preempt state employment law, Congress cannot require a state to enforce federal law. *See Printz v. United States*, 521 U.S. 898, 925 (1997); *New York v. United States*, 505 U.S. 144, 162 (1992) (stating that "the Constitution has never been understood to confer upon Congress the ability to require the States to govern according to Congress's instructions"). No matter how insistent the federal government may be upon enforcing the CSA against medical marijuana users in Montizona, it cannot insist on Montizona's assistance.

Absent some more express indication from Congress that it wishes to preempt TUMA, this Court should not take the drastic step of declaring a state law, enacted by popular referendum, to be preempted by federal law. The case is even stronger for the Plaintiff here, insofar as the Department of Justice has indicated it will not enforce the CSA against medical marijuana users like the Plaintiff, and there is therefore little opportunity for an unseemly clash between federal law and state sovereignty.

III. Conclusion

For the foregoing reasons, Defendant's motion is DENIED. Recognizing that my decision involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from this order may materially advance the ultimate termination of this litigation, I certify this order for interlocutory appeal pursuant to 28 U.S.C. § 1292.

SO ORDERED this 18th day of August, 2020.

Randal Graves

THE HONORABLE RANDAL GRAVES
UNITED STATES DISTRICT COURT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MONTIZONA

JASON DERRIS, Plaintiff, v. QUICK STOP GROCERIES, INC., Defendant.	No. 20-2001 JAS-BSB NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that QUICK STOP GROCERIES, INC., Defendant in the above-captioned action, appeals to the United States Court of Appeals for the Twentieth Circuit from the order of the United States District Court for the Northern District of Montizona, entered on August 18, 2020.

/s/ *Marshall Willenholly*
Marshall Willenholly, Esq.
Attorney for Defendant
4200 Main Street
Los Angeles, California 90028

Dated: August 21, 2020

United States Court of Appeals
for the Twentieth Circuit

No. 20-H52416

Jason Derris

Plaintiff-Appellee

v.

Quick Stop Groceries, Inc.

Defendant-Appellant

Submitted: October 8, 2020
Filed: November 18, 2020

Before HOLDEN, McNEIL, and HARTNER, Circuit Judges.

McNEIL, Circuit Judge.

Appellant Quick Stop Groceries, Inc. ("Quick Stop") brings this interlocutory appeal from the district court's order denying its motion to dismiss Appellee Jason Derris's complaint alleging discrimination in the terms and conditions of his employment under the Americans with Disabilities Act (the "ADA") and the Montizona Therapeutic Use of Marijuana Act ("TUMA"). The complaint alleges that Quick Stop violated both statutes when it fired him for his admitted use of marijuana, in violation of Quick Stop's company-wide drug use policy, which prohibits the use of illegal drugs by employees both while on- and off-duty. Derris, who suffers from epilepsy and had been engaging in the use of marijuana to treat his condition, claims that TUMA's authorization of marijuana use under the supervision of a physician protects him from being fired for such use, under both the ADA and TUMA itself.

The district court below denied the motion to dismiss based upon its view that the ADA requires an employer to make a reasonable accommodation from its drug use policy for users of medical marijuana, and its holding that TUMA's antidiscrimination provision is not preempted by the Controlled Substances Act, 21 U.S.C. § 812 (the "CSA"). Because we find that the Court erred in both respects, we reverse the order of the district court and remand with instructions to dismiss the complaint.

We review a district court's decision regarding a motion to dismiss the complaint *de novo*. In reviewing the denial of a motion to dismiss, we employ the same standard employed by the district court, asking whether the facts alleged, if true, plausibly state a claim upon which relief could be granted. *Swerkiewicz v. Sorema, N.A.*, 534 U.S. 506, 511 (2002).

DISCUSSION

I. The Americans with Disabilities Act

The ADA requires employers to provide reasonable accommodations for "a qualified employee with a disability" unless doing so would place an undue hardship on the employer's conduct of its business. 42 U.S.C. § 12112(a). "Qualified employee" is defined by the ADA, however, to expressly exclude any individual who is terminated on account of illegal drug use. *Id.* § 12114(a).

Although states such as Montizona have decriminalized marijuana use as a matter of their own state law, marijuana remains a controlled substance under federal law, and federal law prohibits doctors from prescribing marijuana to their patients. *See* 21 U.S.C. § 812 (provision in the CSA establishing scheduling scheme for legal and illegal drugs, including marijuana); 42 U.S.C. § 12111(6)(A) (defining "illegal use of drugs" to include "the use of drugs, the possession or distribution of which is unlawful under the [CSA]"). A plain reading of the term "illegal use of drugs" in the ADA would therefore compel the conclusion that Derris's drug use may serve as a basis for termination without offending the ADA. *Cf.* 29 C.F.R. § 1630.3 App. (1996) (EEOC guidance indicating that employers "may discharge or deny employment to persons who illegally use drugs, on the basis of such use, without fear of being held liable for discrimination").

The district court avoided this conclusion by parsing the definition of "illegal use of drugs" in the ADA to exclude the use of medical marijuana under the supervision of a physician. The key statutory text relied upon by the district court appears in the definition section of the ADA:

> [The] term ["illegal use of drugs"] ***does not include*** the use of a drug taken under supervision by a licensed health care professional, or ***other*** uses authorized by the Controlled Substances Act or other provisions of Federal law.

42 U.S.C. § 12111(6)(A) (emphasis added). The district court read the phrase "taken under supervision by a licensed health care professional" as being independent of the remainder of § 12111(6)(A), rendering that language a free-standing exception for any use of drugs under medical supervision, regardless of whether such use is authorized under federal law. We do not believe that Congress intended so capacious a reading, which would create a broad exception to the ADA for any medically recommended use of a controlled substance.

Although statutory clauses separated by "or" are ordinarily read disjunctively, such a reading here is not natural due to the presence of the word "other" immediately following the word "or." By referring to "*other* uses authorized by . . . Federal law," Congress plainly intended to limit the supervised-use provision to cases where such use was likewise "authorized by . . . Federal law." Had it wished to create a separate, distinct exception for supervised use, it would have said "*any* uses authorized by the [CSA]," not "*other* uses." *See James v. City of Costa Mesa*, 700 F.3d 394,

399 (9th Cir. 2012) ("[I]f Congress had really intended that the language excepting 'other uses authorized by the Controlled Substances Act or other provisions of Federal law' be entirely independent of the preceding supervised use language, it could have omitted the word 'other' . . . .").

While we consider this construction to be plain from the statute's text, our reading is bolstered by the legislative history attending § 12111(6). The language of that subsection was enacted in 1990 as an original part of the Americans with Disabilities Act, before any state had decriminalized the use of marijuana for either medical or recreational purposes, and it has not been amended since. *See* Pub. L. No. 101-336 (1990). It is unlikely that Congress contemplated a scheme of state regulation akin to Montizona's at the time that it enacted the ADA, and we should not therefore strain our reading of § 12111(6) to accommodate a purpose Congress could not have plausibly had in mind when the ADA was originally passed.

We hold that the ADA's definition of "illegal use of drugs" includes the use of marijuana, even when its use is authorized under state law for medical purposes, and that Derris's admitted use of marijuana therefore exempts him from the ADA's definition of a "qualified individual with a disability." As a result, Quick Stop cannot be required under the ADA to provide a reasonable accommodation to Derris by making an exception to its drug use policy.

II. The Montizona Therapeutic Use of Marijuana Act

The district court separately held that the Montizona Therapeutic Use of Marijuana Act (TUMA) was not preempted by federal law. TUMA makes it unlawful for an employer to discipline or fire an employee who uses marijuana under the supervision of a physician, "unless the employer demonstrates that such use has impaired the employee's ability to perform her ordinary job functions." 15 Mza. Code § 840(j). The district court was correct to observe that Derris's complaint plausibly alleges all the required elements for a cause of action under TUMA. But we believe that the district court too narrowly construed Congress's purpose under the CSA when it found that TUMA's antidiscrimination provision was not preempted by federal law.

The preemption doctrine is rooted in the Supremacy Clause of the Constitution, which states that "the Laws of the United States . . . shall be the supreme Law of the Land." U.S. Const. art. VI, § 2. As far back as *Marbury v. Madison*, 5 U.S. 137 (1803), the Supreme Court has held that state laws that interfere with the full achievement of federal policies are preempted by operation of the Supremacy Clause, so long as the federal laws at issue are within Congress's power to enact. *See Gonzales v. Raich*, 545 U.S. 1, 17 (2005) (holding that the CSA was within Congress's power to enact under the Commerce Clause).

As the district court noted, one way that Congress may preempt a state law is to expressly do so. But as the Supreme Court has recently reminded us, "[s]tate law must also give way to federal law in at least two other circumstances." *Arizona v. United States*, 567 U.S. 387, 399 (2012). The first of these is through field preemption, whereby Congress enacts a scheme "so pervasive . . . that Congress left no room for the States to supplement it." *Id.* (quoting *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947)). As the district court rightly observed, Congress has expressly disclaimed field preemption in the CSA. *See* 21 U.S.C. § 903.

But Congress did not disclaim—and indeed expressly incorporated in § 903 of the CSA—the principle that state laws can also be preempted "when they conflict with federal law." *Arizona*, 567 at 399. As the Supreme Court explained in *Arizona*, conflict preemption arises not only "where compliance with both federal and state regulations is a physical impossibility," but also "where the challenged state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Id.* (internal quotations omitted). Indeed, as *Marbury* itself demonstrates, a direct conflict is not necessary for a state law to be preempted; federal law also preempts state laws that undermine important federal policies.

TUMA's antidiscrimination provision is just such a state law. The Supreme Court has aptly summarized Congress's purposes in enacting the CSA as follows:

> The main objectives of the CSA were to conquer drug abuse and to control the legitimate and illegitimate traffic in controlled substances. Congress was particularly concerned with the need to prevent the diversion of drugs from legitimate to illicit channels. To effectuate these goals, Congress devised a closed regulatory system making it unlawful to manufacture, distribute, dispense, or possess any controlled substance except in a manner authorized by the CSA.

Raich, 545 U.S. at 12. By providing a cause of action for discrimination to users of marijuana, Montizona has undermined the purposes and objectives of Congress as recognized in *Raich*.

It is one thing for a state to decriminalize marijuana under its own law—after all, as the district court here noted, Congress cannot compel a state to adopt its preferred scheme of criminal enforcement. *See Safe Streets Alliance v. Hickenlooper*, 859 F.3d 865, 918 (10th Cir. 2017) (Hartz, J., concurring) ("[T]he anticommandeering principle the federal government cannot compel a State to enforce the CSA, much less to pass laws prohibiting the same conduct prohibited by the CSA."). But it is quite another thing for a state to prohibit private employers from disciplining employees for violating criminal laws that Congress has duly enacted, as Montizona has done in this case. In effectively requiring private employers to work in opposition to Congressional policy on illegal drug use, TUMA has created "an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941). It is therefore preempted by federal law and cannot form a basis for Derris to obtain relief. *Accord Emerald Steel Fabricators, Inc. v. Bureau of Labor & Indus.*, 230 P.3d 518, 529 (Or. 2010).[1]

CONCLUSION

For the aforementioned reasons, the judgment of the District Court is REVERSED and the case is remanded for further proceedings consistent with this opinion.

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[1] The court in *Emerald Steel* found that the entirety of Oregon's medical marijuana law, which authorized the distribution of marijuana for medical purposes, was preempted by federal law. We have not been asked by the parties in this case to strike down TUMA in its entirety, nor need we decide whether TUMA's antidiscrimination provision is severable from the remainder of the act in order to dispose of this case. We therefore express no opinion on these questions.

THE SUPREME COURT
OF THE UNITED STATES

JASON DERRIS, Petitioner, -against- QUICK STOP GROCERIES, INC., Respondent.	ORDER GRANTING CERTIORARI Case No. 20-186165

JONES, C.J.

An application having been made for certiorari from the judgment entered by the Twentieth Circuit Court of Appeals, dated November 18, 2020,

ORDERED, that said application for certiorari is GRANTED and that the following issues are certified for argument in this Court:

(1) Whether the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq., requires an employer to make reasonable accommodations for an employee who engages in the use of marijuana under the supervision of a licensed health care professional.

(2) Whether the Controlled Substances Act, 21 U.S.C. § 801 et seq., preempts the provision of Montizona's Therapeutic Use of Marijuana Act that provides an employee with a cause of action against an employer for termination on account of marijuana usage in accordance with that Act.

Alyssa Jones

Hon. Alyssa Jones
Chief Justice of the Supreme Court
of the United States

Dated: January 21, 2021