

April 4, 2019

Via Email and Certified Mail

Bill Montgomery
Maricopa County Attorney
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Phoenix, AZ 85003

Amanda Steele steelea@mcao.maricopa.gov



Arizona

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Dale Baich
President

Alessandra Soler
Executive Director

Kathy Brody
Legal Director

Re: Prosecution of Qualifying Patients Under the Arizona Medical Marijuana Act

Dear Mr. Montgomery:

It has come to our attention that your office is prosecuting or threatening to prosecute qualifying patients under the Arizona Medical Marijuana Act (AMMA) for possessing cannabis products sold at state-licensed dispensaries. The American Civil Liberties Union of Arizona (ACLU of Arizona) demands that you immediately stop prosecuting or threatening to prosecute these patients, including inducing patients into pre-indictment agreements requiring them to comply with the terms of the TASC Drug Diversion Program.

As you know, the issue of whether AMMA immunizes patients from prosecution for possessing and using marijuana extracts is currently pending before the Arizona Supreme Court in *State v. Jones*.¹ Media reports following the oral argument in that case have noted that the Justices on the Court appeared to favor Mr. Jones' position that such products are covered by AMMA's broad definition of "marijuana."² Should the Court agree with this position, AMMA would protect patients from "arrest, prosecution, or penalty in any manner."³

¹ *State v. Rodney Christopher Jones*, CR-18-0370-PR.

² See e.g. Elizabeth Whitman, *Arizona Supreme Court Justices Appear to Favor Medical-Marijuana Extracts*, PHOENIX NEW TIMES, Mar. 19, 2019, available at: <https://www.phoenixnewtimes.com/news/arizona-supreme-court-justices-appear-to-favor-medical-pot-extracts-11247789>; Dillon Rosenblatt, *Supreme Court questions prosecutor on legality of marijuana extracts as medicine*, ARIZONA CAPITOL TIMES, Mar. 19, 2019, available at: <https://azcapitoltimes.com/news/2019/03/19/supreme-court-questions-prosecutor-on-legality-of-marijuana-extracts-as-medicine/>.

³ A.R.S. §§ 36-2811(B)(1)-(2).



Obviously, no one can know how the Arizona Supreme Court will rule in *Jones*. However, your office has been on notice that “AMMA authorizes qualifying patients to use [marijuana] extracts” since March 2014 when the Maricopa Superior Court issued an order against you and others in the case of Zander Welton, which challenged your policy of prosecuting qualifying patients and their caregivers for possessing and using marijuana extracts.⁴ Along the same lines, Arizona Attorney General Mark Brnovich has expressed concern for patients who use marijuana extracts to treat their debilitating medical conditions. As his spokesperson explained, “The last thing the attorney general wants is to deny medicine to legitimate patients that may be ingesting their marijuana in an extract or a tincture-type of a form.”⁵

Given these concerns, the ACLU of Arizona demands that your office stop prosecuting or threatening to prosecute qualifying patients until the Arizona Supreme Court has issued its opinion in *Jones*. Continued prosecution of qualifying patients undermines the will of the voters who approved AMMA, injects unnecessary confusion into the criminal justice system, and harms vulnerable patients who seek relief through the controlled use of marijuana extracts to treat their debilitating medical condition.

Sincerely,

A handwritten signature in black ink, appearing to read "Jared G. Keenan". The signature is stylized and somewhat cursive.

Jared G. Keenan
Criminal Justice Staff Attorney, ACLU of Arizona

⁴ *Jacob Welton, et al. v. State of Arizona et al.*, CV 2013-014852, Minute Entry (Mar. 21, 2014), available at: <http://www.courtminutes.maricopa.gov/docs/Civil/032014/m6226527.pdf>.

⁵ Howard Fischer, *AG withdraws arguments on legality of hashish for medical marijuana patients*, ARIZONA CAPITOL TIMES, Oct. 28, 2018, available at: <https://azcapitoltimes.com/news/2018/10/23/ag-withdraws-arguments-on-legality-of-hashish-for-medical-marijuana-patients/>.