ARIZONA SUPREME COURT

STATE OF ARIZONA, Appellee, v. ANDRE LEE JUWAUN MAESTAS, Appellant.	))))))))))	Cr-17-0193-PR Court of Appeals No. 1 CA-CR 15-0724 Maricopa County Superior Court No. CR2014-127252-001

BRIEF OF *AMICUS CURIAE* ARIZONA ATTORNEYS FOR CRIMINAL JUSTICE IN SUPPORT OF APPELLANT

David J. Euchner, No. 021768
David.Euchner@pima.gov
Sarah L. Mayhew, No. 029048
Sarah.Mayhew@pima.gov
33 N. Stone Ave., 21st Floor
Tucson, Arizona 85701
(520) 724-6800

Attorneys for **Arizona Attorneys for Criminal Justice**

TABLE OF CONTENTS

Page

TABLE OF CASES AND AUTHORITIES

CASES **PAGES**

ARIZONA REVISED STATUTES

OTHER STATUTES

ARIZONA CONSTITUTION

U.S. CONSTITUTION

LEGISLATIVE HISTORY

OTHER AUTHORITIES

INTRODUCTION

Arizona politicians have never masked their disdain for relaxing criminal penalties for marijuana use, including medical marijuana. The Arizona Medical Marijuana Act ("AMMA") has been vigorously opposed at every turn. County attorneys push an anti-AMMA agenda: "Arizona leaders cannot remain silent while the marijuana advocates push their agenda with propaganda and myths."[1] Although A.R.S. § 15-108 was passed under the guise of the Legislature's supervision of Arizona's public colleges and universities, it is actually a thinly-veiled sabotage of the immunities AMMA grants to medical marijuana patients. Far from protecting patients from any penalty, § 15-108 guts those immunities and creates new penalties for patients who live in campus housing—from search and seizure in one's home, to eviction, school disciplinary action or expulsion, and even criminal liability.

Arizona courts have been filled with cases of government actors subverting AMMA.[2] What sets this case apart is that this involves a legislative enactment that

---

[1] Press release of Maricopa County Attorney, "Top Prosecutors Call on Arizona Leaders to Oppose Legal Marijuana," October 30, 2014 (last visited February 1, 2018); Arguments Filed Against the Regulation and Taxation of Marijuana Act, Proposition 205, General Election 2016, Sheila Polk (last visited February 1, 2018).

[2] *See Reed-Kaliher v. Hoggatt*, 235 Ariz. 361 (App. 2014), *aff'd*, 237 Ariz. 119 (2015); *Polk v. Hancock*, 236 Ariz. 301 (App. 2014), *vacated*, 237 Ariz. 125 (2015); *Darrah v. McClennen*, 236 Ariz. 185 (App. 2014), *vacated*; *Dobson v. McClennen*, 236 Ariz. 203 (App. 2014), *vacated*, 238 Ariz. 389 (2015); *State v. Liwski*, 238 Ariz. 184 (App. 2015); *State v. Matlock*, 237 Ariz. 331 (App. 2015); *State v. Fields*, 232 Ariz. 265 (App. 2013); *State v. Okun*, 231 Ariz. 462 (App. 2013); *State v. Gear*, 236 Ariz. 289 (App. 2014), *vacated*, 239 Ariz. 343 (2016).

directly contravenes the express purpose of AMMA, and thus plainly violates the Voter Protection Act ("VPA"). This cycle will continue until this Court speaks with a clear voice in defense of the voters' right to make laws. *Amicus curiae* Arizona Attorneys for Criminal Justice ("AACJ") asks this Court to hold that any law that appears to restrict medical marijuana patients' immunities violates VPA.

INTERESTS OF *AMICUS CURIAE*

AACJ, the Arizona state affiliate of the National Association of Criminal Defense Lawyers, was founded in 1986 to give a voice to the rights of the criminally accused and to those attorneys who defend them. AACJ is a statewide not-for-profit membership organization of criminal defense lawyers, law students, and associated professionals dedicated to protecting the rights of the accused in the courts and in the legislature, promoting excellence in the practice of criminal law through education, training and mutual assistance, and fostering public awareness of citizens' rights, the criminal justice system, and the role of the defense lawyer.

AACJ offers this brief because the issues presented concern the wrongful prosecution and conviction of citizens engaged in activities the voters have decided are legal. Other cases presented before Arizona's courts involve executive or judicial encroachment on AMMA. This case involves the first legislative encroachment, but it is no surprise that more are following. For example, the Legislature is currently considering H.B. 2068, which seeks to legislatively overrule this Court's opinion in

Reed-Kaliher. It acknowledges that such action requires a supermajority of three-fourths in each chamber to pass, but it ignores the requirement that the bill further the purpose of AMMA. This Court must speak clearly on this issue to honor VPA.

ARGUMENTS

I. Federalism allows Arizona to experiment with legalizing marijuana without concern for federal law.

"Americans enjoy the protections of not one constitution but fifty-one. Our federalist system allows us to interpret our state constitution differently than the U.S. Supreme Court interprets the national Constitution, so long as we do not diminish federal constitutional protections or transgress federal laws enacted pursuant to the U.S. Constitution." *State v. Jean*, 243 Ariz. 331, ¶ 92 (2018) (Bolick, J., concurring in part and dissenting in part). The State's argument that Arizona must tread carefully to avoid risk of losing federal education dollars, see Petition at 5, assumes that the federal government may dictate the laws of this State.[3] The State is wrong.

[3] The State's argument that this is a political question, based on legislative concern for policy matters, fundamentally misconstrues the doctrine. Petition for Review at 5-10; State Supp. Brief at 6-13. The State's argument would allow all legislation to avoid judicial scrutiny simply because it is the product of the political branches. Such argument is belied by all of this Court's cases. If this Court can intervene in a dispute between co-equal branches of government and hold that one has exceeded its authority as to another, *see Forty-Seventh Legislature v. Napolitano*, 213 Ariz. 482, 485 ¶ 8 (2006), then it may intervene to restrain the political branches from overruling voter-enacted legislation. In fact, the voters have no other mechanism to protect their enactments but through the courts. Moreover, VPA provides a cause of action when the legislature makes a political decision not to spend money in

"Congress may not simply 'commandee[r] the legislative processes of the States by directly compelling them to enact and enforce a federal regulatory program." *New York v. United States*, 505 U.S. 144, 161 (1992) (quoting *Hodel v. Virginia Surface Mining & Reclamation Assn., Inc*., 452 U.S. 264, 288 (1981)). The Court has "made clear that the Federal Government may not compel the States to implement, by legislation or executive action, federal regulatory programs." *Printz v. United States*, 521 U.S. 898, 925 (1997) (Congress cannot circumvent *New York*'s prohibition against commandeering by conscripting State officers directly). Congressional "commands [to the States] are fundamentally incompatible with our constitutional system of dual sovereignty." *Id*. at 935.

Congressional mandates may violate the Tenth Amendment and the Spending Clause of the federal constitution. "Incident to [Congress' spending] power, Congress may attach conditions on the receipt of federal funds," though "[t]he spending power is of course not unlimited." *South Dakota v. Dole*, 483 U.S. 203, 206-07 (1987). The Court has "suggested … that conditions on federal grants might be illegitimate if they are unrelated 'to the federal interest in particular national projects or programs.'" *Id*. at 207-08 (quoting *Massachusetts v. United States*, 435 U.S. 444, 461 (1978)). Indeed, Congressional mandates regarding how states handle

---

contravention of voter-enacted laws. *See Cave Creek Unified School Dist. v. Ducey*, 233 Ariz. 1, 5 ¶¶ 12-13 (2013).

their police powers are generally viewed with suspicion:

> "State sovereignty is not just an end in itself: Rather, federalism secures to citizens the liberties that derive from the diffusion of sovereign power." *New York v. United States*, 505 U.S. 144, 181 (1992) (internal quotation marks omitted). Because the police power is controlled by 50 different States instead of one national sovereign, the facets of governing that touch on citizens' daily lives are normally administered by smaller governments closer to the governed.

Nat'l Fed'n of Indep. Bus. v. Sebelius, 567 U.S. 519, 536 (2012). *See also U.S. v. Lopez*, 514 U.S. 549, 566 (1995) ("The Constitution … withhold[s] from Congress a plenary police power…"). Here, the connection between a patient's use of medical marijuana in his dorm room (when patients are not similarly prohibited from using other prescription medication) and federal education policy is not merely tenuous; it is nonexistent.

The Ninth Circuit was confronted with the collision between the federal government's power to regulate marijuana and the anti-commandeering doctrine in the context of state medical marijuana laws in *Conant v. Walters*, 309 F.3d 629 (9th Cir. 2002). The case involved a request by California doctors for injunction against being investigated for violations of federal law for recommending medical marijuana. Although decided on First Amendment grounds, Judge Kozinski's concurrence addressed the issue of conflict of law:

> *New York* and *Printz* stand for the proposition that "[t]he Federal Government may neither issue directives requiring the States to address particular problems, nor command the States' officers, or those of their political subdivisions, to administer or enforce a federal regulatory

> program." *Printz*, 521 U.S. at 935, 117 S. Ct. 2365. Applied to our situation, this means that, much as the federal government may prefer that California keep medical marijuana illegal, it cannot force the state to do so. Yet, the effect of the federal government's policy is precisely that: By precluding doctors, on pain of losing their DEA registration, from making a recommendation that would legalize the patients' conduct under state law, the federal policy makes it impossible for the state to exempt the use of medical marijuana from the operation of its drug laws. In effect, the federal government is forcing the state to keep medical marijuana illegal. But preventing the state from repealing an existing law is no different from forcing it to pass a new one; in either case, the state is being forced to regulate conduct that it prefers to leave unregulated.
>
> …
>
> The commandeering problem is even more acute where Congress legislates at the periphery of its powers. The Constitution authorizes Congress to regulate activities that affect interstate commerce. But that authority is not boundless. . . . These checks work in tandem to ensure that the federal government legislates in areas of truly national concern, while the states retain independent power to regulate areas better suited to local governance.

Id. at 645-47 (Kozinski, J., concurring). The federal government's attempt to commandeer educational institutions is no different. It is no less unconscionable to demand a person choose between education and personal health, when there need be no conflict between the two.

The State's concerns for avoiding conflict with federal regulation in order to protect funding are further undermined by the 2014 passage of Proposition 122, an amendment to the Supremacy Clause of the Arizona Constitution. Previously, Ariz. Const. art. II, § 3 simply read: "The Constitution of the United States is the supreme law of the land." Now it reads:

> Section 3. A. The Constitution of the United States is the supreme law of the land to which all government, state and federal, is subject.
>
> B. To protect the people's freedom and to preserve the checks and balances of the United States constitution, this state may exercise its sovereign authority to restrict the actions of its personnel and the use of its financial resources to purposes that are consistent with the constitution by doing any of the following:
> 1. Passing an initiative or referendum pursuant to article IV, part 1, section 1.
> 2. Passing a bill pursuant to article IV, part 2 and article V, section 7.
> 3. Pursuing any other available legal remedy.
>
> C. If the people or their representatives exercise their authority pursuant to this section, this state and all political subdivisions of this state are prohibited from using any personnel or financial resources to enforce, administer or cooperate with the designated federal action or program.

The new language of section 3 does not interfere with the federal government's supremacy, only with the federal government's ability to obtain support from an unwilling state government in financing the bidding of the federal government. The Arizona oath of office does not require state officeholders to enforce federal laws related to prohibiting marijuana on college campuses, *see Reed-Kaliher*, 237 Ariz. at 125 ¶ 24 (citing A.R.S. § 38-231), and the state supremacy clause serves as a barrier to our elected officials deputizing themselves as federal drug police officers.

To the extent that it perceives a conflict between voter-enacted legislation and federal law, Arizona must defend the state law in good faith. Instead of defending these principles of federalism, however, the Legislature is currently considering House Concurrent Resolution 2008 to amend the Arizona Constitution by adding

article IV, part 1, § 1(10).[4] If passed, H.C.R. 2008 would give the Attorney General sole power to determine whether a voter initiative contains language that violates federal law and to unilaterally order the initiative stricken from the ballot without even seeking a court ruling. Such can only be characterized as "fair weather federalism"; it is permissible when passed by elected officials, but not when passed by the voters. Had the Attorney General possessed this exceptional power in 2010, AMMA could have been stopped in its tracks before the ballots were even printed, even though *Reed-Kaliher* proves the falsity of the claim.

II. Arizona's public policy on medical marijuana was set by voter-passed initiative; courts must liberally construe AMMA and the voters' intent.

"Public policy is that principle of the law which holds that no subject can lawfully do that which has a tendency to be injurious to the public, or against the public good, which may be termed, as it sometimes has been, the policy of the law, or public policy in relation to the administration of the law." *Wagenseller v. Scottsdale Mem'l Hosp*., 147 Ariz. 370, 379 (1985) (internal quotes omitted). "[O]ur state's constitution and statutes embody the public conscience of the people of this state." *Id*. at 378. Control of the sovereignty of the State rests with the people, not with the government. Ariz. Const. art. II, § 2.

[4] *See* https://apps.azleg.gov/BillStatus/GetDocumentPdf/454899 (last accessed February 2, 2018).

Courts liberally construe legislation passed by initiative and may not interfere with the people's right to initiate laws. *Pedersen v. Bennett*, 230 Ariz. 556, ¶ 7 (2012) (quoting *Kromko v. Superior Court*, 168 Ariz. 51, 58 (1991)) (liberal interpretation of initiatives avoids "destroy[ing] the presumption of validity"). The judiciary's "primary objective in construing statutes adopted by initiative is to give effect to the intent of the electorate." *State v. Gomez*, 212 Ariz. 55, ¶ 11 (2006). When courts are tasked with "determining the purpose of an initiative, we consider such materials as statements of findings passed with the measure as well as other materials in the Secretary of State's publicity pamphlet available to all voters before a general election." *Id.* ¶ 14. "Courts also consider 'the policy behind the statute and the evil it was designed to remedy.'" *State v. Harris*, 234 Ariz. 343, ¶¶ 13-14 (2014) (quoting *State v. Korzep*, 165 Ariz. 490, 493 (1990)).

A. VPA prohibits amendments to voter initiatives that do not "further the purpose" of the voters.

Our state constitution recognizes that government tends to promote its own interests rather than those of the people. For that reason, Arizona's declaration of rights, article II, § 1, states: "a frequent recurrence to fundamental principles is essential to the security of individual rights and the perpetuity of free government." The legislative authority resides equally in the Legislature and the people through the initiative and referendum processes. Ariz. Const. art. IV, pt. 1 § 1; A.R.S. § 19-102. Historically, "[t]he legislature and electorate [have] share[d] lawmaking power

under Arizona's system of government." *Cave Creek Unified Sch. Dist.*, 233 Ariz. 1, ¶ 8 (internal quotes omitted).

VPA resulted from government's undermining public policy established by the voters and the intent of the voters to protect initiatives from government interference—specifically the provisions of Proposition 200 that legalized medical marijuana.[5] "Backers of the [VPA] measure were concerned that the legislature was abusing its power to amend and repeal voter-endorsed measures." *Ariz. Early Childhood Dev. & Health Bd. v. Brewer* , 221 Ariz. 467, ¶ 7 (2009) (citing publicity pamphlet statement of Richard Mahoney, campaign chairman). "The measure, proponents wrote, would prohibit such legislative action with a minor exception for '[t]echnical amendments,' which would themselves be permitted only with a supermajority vote and in furtherance of the purpose of the measure." *Id.* The VPA "altered the balance of power between the electorate and the legislature." *Id*.

The electorate was concerned that its government would continue to thwart voters' intent to legalize medical marijuana. VPA therefore prohibits legislative amendments to voter initiatives "unless the amending legislation furthers the purposes of such measure and at least three-fourths of the members of each house of the legislature, by a roll call of ayes and nays, vote to amend such measure." Ariz.

5 Ariz. Sec'y of State, Ariz. Ballot Prop. Guide, Gen. Election – Nov. 3, 1998 (last visited February 2, 1998).

Const. art. IV, pt. 1 § 1(6)(C). *See also Cave Creek Unified Sch. Dist.*, 233 Ariz. 1, ¶ 19 ("But when, as here, the legislature deviates from a voter-approved law, the VPA's constitutional limitations apply and qualify the legislature's otherwise plenary authority."); *Caldwell v. Bd. of Regents*, 54 Ariz. 404, 410 (1939) ("the legislature may not do indirectly what it is prohibited from doing directly."). It is irrelevant whether a legislative amendment furthers some other government interest or purpose; the courts' only inquiry when construing legislative amendments to voter initiatives is whether the amendment furthers or undermines the purpose of that voter initiative.

B. AMMA's express purpose is to immunize patients and caregivers from prosecution and other penalties for use or possession of medical marijuana; A.R.S. § 15-108 runs afoul of those goals.

§§ 2(D) and 2(G) of Proposition 203, as well the analysis by the Arizona Legislative Council, clearly stated the purposes of AMMA: to treat medical marijuana differently from recreation use and to end the prosecution of patients. Ariz. Sec'y of State, Ariz. Ballot Prop. Guide, Gen. Election – Nov. 7, 2010 (last visited February 1, 2018) at 73, 83. The plain language of A.R.S. § 36-2811(B) creates immunity for qualifying patients from criminal prosecution who comply with its express terms. *See Reed-Kaliher*, 237 Ariz. 119, ¶¶ 8, 17; *Hancock*, 237 Ariz. 125, ¶ 9. "Arizona voters decided that a qualified patient does not commit a criminal offense by possessing an allowable amount of marijuana." *Okun*, 231 Ariz. 462, ¶ 9.

By recriminalizing possession of medical marijuana on college campuses, however, the Legislature subverted AMMA's purpose.

The State urges a miserly interpretation of AMMA by misconstruing a single sentence of one exception, divorced from AMMA's express, overarching purpose, to argue that AMMA "left open the opportunity for the Legislature to impose restrictions on medical marijuana on college campuses." State Supp. Brief at 2. The State's approach violates basic rules of statutory construction. As the Supreme Court has repeatedly admonished, "it is a fundamental principle of statutory construction (and, indeed, of language itself) that the meaning of a word cannot be determined in isolation, but must be drawn from the context in which it is used." *Yates v. United States*, 135 S. Ct. 1074, 1082 (2015) (internal quotes omitted).[6]

According to its sponsor, H.B. 2349's purpose was to protect federal funding directed at schools. Hearing on H.B. 2349 Before the H. Comm. on Educ., 50th Leg., 2nd Sess. 6 (Ariz. February 6, 2012). Rep. Amanda Reeve cited the federal Drug-Free Workplace Act, which is directed at any entity that receives federal grant funding. *See* 41 U.S.C. §§ 8101-8106.[7] In the name of protecting federal grant funds,

[6] The State also misrepresents AMMA as providing a defense at trial rather than the sweeping immunities that AMMA expressly provides. State Supp. Brief at 5. Cf. *Reed-Kaliher*, 237 Ariz. 119, ¶ 16 (AMMA "provides immunity for charges of violation § 13-3405, which would otherwise subject a person to criminal prosecution for marijuana use.").

[7] In 2013, the Legislature amended § 15-108 to allow medical research projects involving marijuana to be conducted on campus. According to the sponsor of S.B.

the State now relies on the Drug and Alcohol Abuse Prevention Act, 20 U.S.C. § 1011i. State Supp. Brief at 5. But § 1011i only requires that colleges have in place "standards of conduct that clearly prohibit, at a minimum, the unlawful possession, use, or distribution of illicit drugs and alcohol by students and employees on the institution's property or as part of any of the institution's activities."

With AMMA, Arizona chose to diverge from federal law in its definition of what constitutes illegal marijuana. Arizona has said that for a specific subset of the population for whom marijuana is medicinal, marijuana is no longer "illicit," just as alcohol is legal to serve to adults. Because § 1011i also mandates that universities' codes of conduct prohibit alcohol, homecoming events and tailgate parties at college sports games would look very different if this Court accepted the State's position. The universities also would have to prohibit wine and cheese events for faculty and donors as well as cash bars at theater performances.

The State cites § 36-2813(A) for the proposition that AMMA authorizes the Legislature to ban medical marijuana on college campuses, State Supp. Brief at 3-4, but § 36-2813(A) does not authorize the Legislature to do anything. Rather, this section, titled "Discrimination prohibited," is intended to prevent a university or college from discriminating against a medical marijuana patient based solely on his

---

1443, Sen. Kimberly Yee, § 15-108 jeopardized federal grant money for medical research programs involving marijuana at the University of Arizona. Hearing on S.B. 1443 Before the H. Comm. on Educ., 51st Leg., 1st Sess. (Ariz. March 6, 2013).

status as a cardholder. Arizona's Constitution requires, "Every act shall embrace but one subject and matters properly connected therewith, which subject shall be expressed in the title." Ariz. Const. art. IV, pt. 2, § 13. As the title indicates, § 36-2813(A) is a limitation on colleges' ability to discriminate against cardholders based solely on their status: "No school or landlord may refuse to enroll or lease to and may not otherwise penalize a person solely for his status as a cardholder…" *Id.* At most, a landlord or school is permitted, but not required, to deny access based on a person's status if—and only if—the cardholder would "cause the school or landlord to lose a monetary or licensing related benefit under federal law or regulations." *Id.*

Neither does VPA permit legislative narrowing of voter initiatives. The plain purpose of AMMA was to protect patients from "any penalty for AMMA-compliant marijuana use." *Reed-Kaliher,* 237 Ariz. 119, ¶ 11. § 15-108 is simply an impermissible legislative amendment imposing restrictions on medical marijuana that violate AMMA. "[A] statute can be implicitly repealed or amended through 'repugnancy' or 'inconsistency.'" *Cave Creek Unified Sch. Dist.,* 233 Ariz. 1, ¶ 24 (internal citations omitted). While it is true that a finding of an implied repeal or amendment is "generally disfavored," it is required when, as here, conflicting statutes cannot be harmonized to give each effect and meaning. *Id*. The electorate is constitutionally vested with the power to make laws the Legislature believes are not in the people's best interest, but that does not invalidate their power to do so. The

VPA plainly precludes the Legislature from interfering with the voters' legislative actions. *Cf. Reed-Kaliher*, 237 Ariz. 119, ¶ 12 ("Our job here, however, is not to determine the appropriateness of the term, but rather to determine its legality.").

C. AMMA enumerated narrow time, place, and manner exclusions; AMMA is silent as to college campuses and college dormitories.

AMMA's purpose is to protect patients from any penalty for their use or possession of medical marijuana, except in narrow, enumerated places or circumstances. AMMA's drafters and voters were aware of concerns from certain members of the public and from government actors that marijuana would be foisted upon children. In 2002, a medical marijuana initiative failed because it put sheriffs and wardens in the position of dispensing marijuana in Arizona's jails and prisons. AMMA included conciliatory language restricting medical marijuana use and possession in a narrow, enumerated list: 1) "On a school bus;" 2. "On the grounds of any preschool or primary or secondary school;" and 3) "In any correctional facility." A.R.S. § 36-2802(B). The statute also prohibits driving while under the influence of marijuana. *Dobson*, 238 Ariz. 389, ¶ 9. These enumerated exceptions are built into AMMA's broad immunities established in § 36-2811(B)(1).

Unlike preschools, primary, and secondary schools, college campuses contain both public and private spaces, including the homes of approximately 28,000 adult

college students.[8] § 36-2802(C)(2) already prohibits "smoking" marijuana in a "public place." This restriction would apply to the public places on a college campus. Under the Federal Fair Housing Act, a college dormitory is a residence. *U.S. v. University of Nebraska at Kearney*, 940 F.Supp.2d 974, 977-78 (D. Neb. 2013) (quoting *Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1214 (11th Cir. 2008)).

§ 36-2805 sets forth which "residential facilities" may adopt medical marijuana restrictions: "any nursing care institution, hospice, assisted living center, assisted living facility, assisted living home, residential care institution, adult day health care facility or adult foster care home licensed under Title 36, Chapter 4 …" These facilities are permitted, but not required, to adopt "reasonable" restrictions: not storing or maintaining the medicine; employees are not responsible for providing marijuana; requiring marijuana to be consumed other than by smoking; and limiting consumption to a specified location at the facility. § 36-2805(A)(1)-(4).

A dormitory is neither enumerated in the list of "residential facilities," nor is it of the same type. The well-established rule of construction *expressio unius est exclusio alterius* states that where items "are expressly listed in series in a statute, we presume the legislature intended to exclude items of the same class that are not

[8] *See* https://housing.arizona.edu/ (last visited Feb. 2, 2018) (7,000 at UA); http://colleges.usnews.rankingsandreviews.com/best-colleges/asu-1081/student-life (last visited Feb. 2, 2018) (11,000 at ASU); https://nau.edu/Residence-Life/Housing-Options/Residence-Halls/ (last visited Feb. 2, 2018) (10,000 at NAU).

listed." *Powers v. Carpenter*, 203 Ariz. 116, ¶ 10 (2002). AMMA, moreover, does not include general catch-all language following the enumerated list in either § 36-2802(B); therefore, the *ejusdem generis* rule does not apply. *See, e.g.*, *Bilke v. State*, 206 Ariz. 462, ¶ 13 (2003) ("the *ejusdem generis* rule applies 'where general words follow the enumeration of particular classes of things.'") (quoting Black's Law Dictionary 517 (6th ed. 1990)). Had AMMA's drafters intended to provide restrictions on medical marijuana in university housing, they clearly knew how to draft such language. AMMA's silence as to college and university housing in light of the narrow, enumerated list of residential facilities where restrictions are permitted indicates the voters' intent not to place any such restrictions.

D. Rational bases exist for permitting medical marijuana possession and use on college and university campuses.

Rational bases plainly exist for permitting medical marijuana possession on college campuses and use in college dormitory rooms. Unlike preschoolers and students attending primary and secondary schools, college students are adults and use many medications, unsupervised by their parents and unrestricted by campus rules. In contrast, AMMA restricts medical marijuana use among children and in schools where children spend a significant portion of their days. A parent or guardian must not only authorize medical marijuana use by a child but also must agree to be the child/patient's designated caregiver and control the acquisition, dosage, and use and delivery of marijuana. § 36-2804.03(B). Not coincidentally, most people in

Arizona graduate secondary school at age eighteen. Under AMMA's clear language, an eighteen-year-old high-school student could possess and use his or her own marijuana at home, but could not bring it to high school. A seventeen-year-old college student, however, would need a parent or guardian to manage his or her marijuana possession and use, but the caregiver is not forbidden from coming to the college campus where the child lives to administer the marijuana.

The government's attempt to bootstrap college campuses to the narrow exception carved out for preschools, primary and secondary schools threatens registered patients' constitutional rights to privacy in their homes. *State v. Peoples*, 240 Ariz. 244, ¶ 18 (2016) ("Article 2, section 8 of the Arizona Constitution, as well, protects the right to privacy in temporary residences.") (quoting *State v. Davolt*, 207 Ariz. 191, ¶ 24 (2004)). Such a result is anathema to the purpose of AMMA to protect patients from government interference with "any right or privilege."

III. A.R.S. § 15-108 discriminates against disabled medical marijuana patients attending the State's universities.

By prohibiting possession or use of medical marijuana by patients on college and university campuses, the State runs the risk of violating the Americans with Disabilities Act, the Arizonans with Disabilities Act, and both state and federal Fair Housing Acts. AMMA protected assisted-living facilities by permitting reasonable restrictions so long as accommodations are made to allow residents to take their medical marijuana. But § 15-108 makes no reasonable accommodations for patients

who live on campus and use medical marijuana lawfully to treat conditions related to a disability. Thus, § 15-108 forces upon medical marijuana patients a Hobson's choice: lose access to on-campus housing or lose medicine in the home.

According to the National Survey of Student Engagement database, college students who live on campus are significantly more likely to graduate, are more likely to take advantage of educational resources, have more interactions with faculty and mentors, are more likely to bond with other students, and overall are more successful in their college life.[9] Arizona State University expects all incoming freshman to live in campus housing.[10] This raises the specter of State liability under state and federal civil rights laws. "Congress intended the FHAA to protect the right of handicapped persons to live in the residence of their choice in the community." *City of Edmonds v. Washington State Bldg. Code Council*, 18 F.3d 802, 806 (9th Cir. 1994), *aff'd*, *City of Edmonds v. Oxford House, Inc.*, 514 U.S. 725 (1995). The ADA and FHA create "a broad mandate to eliminate discrimination against and equalize housing opportunities for disabled individuals." *Bronk v. Ineichen*, 54 F.3d 425, 428 (7th Cir. 1995). "To prove that an accommodation is necessary, '[p]laintiffs must show that, but for the accommodation, they likely will be denied an equal

[9] Bob Gonyea, Polly Graham, & Sarah Fernandez, "The Relationship of On-Campus Living with Student Engagement," Center for Postsecondary Research, Indiana University School of Education (last visited February 2, 2018).
[10] *See* https://housing.asu.edu/freshman-housing (last visited February 2, 2018).

opportunity to enjoy the housing of their choice.'" *Cimarron Foothills Cmty. Ass'n v. Kippen*, 206 Ariz. 455, ¶ 10 (App. 2003) (internal quotations omitted). Arizona's universities promote on-campus residences as providing significant benefits compared to students who live off campus. By permitting the Legislature to ban students from possessing or taking their legal medications in their on-campus homes, Arizona is forcing disabled students with medical marijuana to live off campus, thereby denying these students the full benefit of the education their able-bodied peers receive.

CONCLUSION

AACJ asks this Court to find AMMA purposefully constrained government from such attempts to reduce the use of medical marijuana, and to hold that A.R.S. § 15-108, and any future similar legislation, is unconstitutional for violating VPA.

RESPECTFULLY SUBMITTED this 5th day of February, 2018.

ARIZONA ATTORNEYS FOR
CRIMINAL JUSTICE

By /s/ David J. Euchner & Sarah L. Mayhew

David J. Euchner
Sarah L. Mayhew
33 N. Stone Ave. 21st Floor
Tucson, AZ 85701

Attorneys for *amicus curiae*
Arizona Attorneys for Criminal Justice