

ARIZONA SUPREME COURT

STATE OF ARIZONA,

Plaintiff-Appellee,

v.

RODNEY CHRISTOPHER JONES,

Defendant-Appellant.

Supreme Court
No. CR-18-0370-PR

Court of Appeals
Division One
No. 1 CA-CR 16-0703

Yavapai County
Superior Court
No. P1300CR201400328

**BRIEF OF AMICUS CURIAE,
MPX BIOCEUTICAL CORPORATION**

By: /s/ John H. Pelzer
John H. Pelzer, *pro hac vice pending*
Florida Bar No. 376647
GREENSPOON MARDER LLP
200 E. Broward Boulevard, Suite 1800
Fort Lauderdale, FL 33301
Tel: 954.527.2469
Fax: 954.333.4069
john.pelzer@gmlaw.com
dotti.cassidy@gmlaw.com

By: /s/ Sharon A. Urias
Sharon A. Urias
Arizona Bar No. 016970
GREENSPOON MARDER LLP
8585 E. Hartford Drive, Suite 700
Scottsdale, AZ 85255
Tel: 480.306.5458
Fax: 480.306.5459
sharon.urias@gmlaw.com

Counsel for MPX Biocetical

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iii
STATEMENT OF THE ISSUE	1
STATEMENT IDENTITY OF INTEREST	1
SUMMARY OF ARGUMENT	3
ARGUMENT	5
I. THE BROAD ARRAY OF MEDICINAL CANNABIS PRODUCTS IS INADEQUATELY ADDRESSED IN <i>JONES</i>	5
A. Medicinal Marijuana Products.....	5
B. Extracting Cannabinoids to make Medicinal Marijuana Products.	8
II. ARIZONA VOTERS WERE AWARE OF THE FULL ARRAY OF MEDICINAL CANNABIS PRODUCTS WHEN THEY APPROVED THE AMMA.	12
III. THE <i>JONES</i> COURT'S APPLICATION OF THE DEFINITIONS OF THE AMMA IS CONTRARY TO SOUND STATUTORY CONSTRUCTION.....	16
CONCLUSION	20
CERTIFICATE OF COMPLIANCE WITH RULE 32(A).....	21
CERTIFICATE OF SERVICE	22

TABLE OF AUTHORITIES

Page

Cases

Hayes v. Cont'l Ins. Co.,
178 Ariz. 264, 268 (1994).....13

Reed-Kaliher v. Hoggat,
237 Ariz. 119 (2015).....12

State ex rel Montgomery v. Woodburn ex rel County of Maricopa,
231 Ariz. 215, 216 ¶ 5 (App.2012).....12

State of Arizona v. Reuther,
Navajo County Case No. S0900 CR 2017-00536/738 (March 6, 2018)18

State v. Bollander,
110 Ariz. 84 (1973).....16

State v. Gomez,
212 Ariz. 55, 57 ¶ 11 (2006).....12, 13

State v. Jones,
245 Ariz. 46 (App. 2018).....passim

State v. Pereyra,
199 Ariz. 252, 254 ¶ 6 (App.2001).....12

Wilton v. State of Arizona,
Maricopa County Case No. CV 2013-014852 (March 24, 2014).....18

Statutes

A.R.S. § 13-2901.....16, 18

A.R.S. § 13-3401.....18

A.R.S. § 13-3401(4).....9, 16

A.R.S. § 32-2801(9).....12

A.R.S. § 36-2801.....19

A.R.S. § 36-2801(15).....passim

A.R.S. § 36-2801(3).....17

A.R.S. § 36-2801(8).....10, 11, 12, 17

A.R.S. § 36-2801(9).....17

A.R.S. § 36-2802 B and C.....14

Rules

Fed. R. App. P. 32(a)(7)(B).....21

Fed. R. App. P. 32(a)(7)(B)(iii).....21

Other Authorities

Arizona Medicinal Marijuana Act,
A.R.S. 36-2801 *et. seq.*.....passim

Proposition 20313, 14

STATEMENT OF THE ISSUE

Whether the Arizona Medical Marijuana Act immunizes the possession and use of marijuana extracts, concentrates, or resins by persons who otherwise comply with and qualify under the statute?

STATEMENT IDENTITY OF INTEREST

MPX BIOCEUTICAL CORPORATION ("MPX") is a leader in all facets of the emerging medicinal cannabis industry. MPX is a Toronto based corporation that, through its wholly owned subsidiaries in the U.S., provides substantial management, staffing, procurement, advisory, financial, real estate rental, logistics and administrative services to medicinal cannabis enterprises, including four operating in Arizona. MPX has considerable expertise regarding the medicinal cannabis industry in general. Also, due to its extensive involvement in the medicinal cannabis industry in Arizona, MPX has a substantial interest in the outcome of this case.

Because marijuana has been both illicit and ubiquitous for decades, it has acquired associations that obscure understanding of its medicinal use. Scientific information can dispel these misconceptions.

The Opinion of the Court of Appeals in *State v. Jones*, 245 Ariz. 46 (App. 2018) ("*Jones*") and its interpretation of the Arizona Medicinal Marijuana Act ("AMMA"), Chapter 28.1, A.R.S. reflect a lack of understanding both of the medicinal cannabis

industry and the science of medicinal cannabis. MPX hopes to provide clarity to this Court on these topics in addition to providing its perspective on the intent of Arizona voters in adopting the AMMA and on the legal arguments pertinent to the resolution of this case.

SUMMARY OF ARGUMENT

Medicinal marijuana is available in a wide variety of products – pills, capsules, patches, tinctures, ointments, oils, creams, candies, baked goods and beverages is a non-exclusive list. These products have significant advantages over smoked marijuana, including for the use by children and the elderly, because they can provide measured dosages of specific marijuana cannabinoids. Medical marijuana patients use these products to avoid the smoke, smell, and associations of smoked marijuana. All of these products require separation of the resin from the plant material, and processing that resin in preparations for medical use. The Court of Appeals decision in *Jones* deprives patients under the AMMA of the ability to use these superior delivery methods for their medicine.

This result is not consistent with the intent of Arizona voters in adopting the AMMA. Contemporaneous with articles, editorials and opinion pieces reflect that the voters were aware non-smoked marijuana products were within the scope of the AMMA. This Court should interpret the AMMA in accordance with that voter expectation and intent.

The Court of Appeals' opinion in *Jones* creates ambiguity where there is none by misapplying definitions from the Criminal Code to the AMMA, notwithstanding the fact that the definitions in the AMMA are complete and plain and each of the statutes limit their glossary of definitions to the respective statute. The only reason the

Criminal Code distinguishes among different types of marijuana product is to specify different levels of offense if possessed illicitly. The AMMA's immunity does not depend on the type of marijuana product but instead depends on the medicinal use of the marijuana product. Because the AMMA grants immunity without regard to the level of offense, the distinction among marijuana products is not relevant, and the AMMA's broad definition of marijuana should be applied.

ARGUMENT

I. THE BROAD ARRAY OF MEDICINAL CANNABIS PRODUCTS IS INADEQUATELY ADDRESSED IN *JONES*.

The Court of Appeals in *Jones* addressed only three forms of product related to plants of the genus cannabis. The court refers to "the green leafy substance commonly referred to as marijuana." *Jones*, ¶ 6. The court then refers to hashish as "the resin extracted from the marijuana plant." *Id.*, fn.2 (internal quotations and citation omitted); *Jones*, ¶ 10. Finally, the *Jones* court makes reference to combining the "green leafy substance," with other "elements to make 'consumables' such as brownies and the like," *Jones*, ¶ 12. The *Jones*' court's description of medicinal cannabis products reflects a lack of understanding of the array of products available and how they are prepared. This Court should exercise jurisdiction and reverse *Jones* in order to provide clarity and allow the AMMA to have its intended effect.

A. Medicinal Marijuana Products.

Smoking marijuana is only one way for patients to receive medicinal benefits. As the medicinal marijuana industry continues to grow and mature, new and better methods of obtaining these medicinal benefits have emerged, and continue to emerge.¹ Most of these take physical forms that have been familiar in pharmacies for centuries and have none of the associations commonly made with illicit marijuana use. Medicinal marijuana can take the form of pills or capsules, transdermal patches,

¹ <https://www.medicaljane.com/2014/13/15/cannabis-extract-medicine-begins-to-take-hold-worldwide>

tinctures (liquids to be ingested or applied by dropper, usually under the tongue), topical ointments or creams (for application directly to affected body parts), and oils (either for oral ingestion or topical application). In addition, a wide variety of food products, including various types of candies, snacks, baked goods or sodas and teas, can be used as a means of delivery of medicinal marijuana.^{2 3} Each of these is available in a wide variety of flavorings and dosage concentrations to address issues of palatability and individual ease of administration to patients, just as pharmaceutical medicines are available in the same forms for use depending on patient tolerance and preference.

Greater refinement of parts of the marijuana plant create medicines that can be introduced into the body by "dabbing" or "vaping" (heating a dab of material to the boiling point, releasing vapors that can be inhaled without smoke or other products of combustion). *Id.* These products go by a variety of names based on their physical appearance and characteristics, such as "shatter," which breaks like peanut brittle or hard candy; "wax," "budder," or "crumble," which is a semi-solid material; "sap," which has the consistency of thick tree sap; and others.^{4 5}

2 <https://keytocannabis.com/blogs/cannabis/choosing-the-right-cannabis-consumption-method-for-you>

3 <https://www.medicaljane.com/category/cannabis-classroom/consuming-cannabis/>

4 <https://keytocannabis.com/blogs/cannabis/how-to-use-bho-concentrates-tips-for-shatter-budder-oil-wax-live-resin>

5 <https://www.meltingpointextracts.com/news/2018/7/4/4-ways-to-consume->

All of these products and medicines depend on preparing the marijuana flower to produce an extract that may then be used to create these products. Baked goods, as the *Jones* court somewhat quaintly acknowledged, used to be and still could be made simply by adding ground flowers of marijuana to a favorite recipe, *Jones* at ¶ 12, (but the heat of baking itself separates the resin, creating "cannabis" within the reasoning of the *Jones* court). However, more consistent dosing of the medicine and improved appearance and taste of the product is achieved by using a marijuana extract in lieu of the ground plant. Commonly used extracts for baked goods and other food items are cannabis infused butter and cooking oil, which can even be made at home.^{6 7} These marijuana extracts can be substituted for butter or oil whenever used as an ingredient in commercially or home-made baked goods, sauces, meat marinades, salad dressings or dips.⁸

[cannabis-concentrates](#)

6 <https://www.medicaljane.com/2016/05/13cannabis-infused-butter-cannabutter/>;

7 <https://www.medicaljane.com/2016/05/13/cannabis-infused-cooking-oil/>

8 *Id.*

B. Extracting Cannabinoids to make Medicinal Marijuana Products.

The medicinal properties of the marijuana plant are derived from the cannabinoids.⁹ These cannabinoids are located in the trichomes or resin glands of the plant.¹⁰ The trichomes are hair-like, single-cell glands primarily on the leaf of the plant, giving the plant its fuzzy appearance.¹¹ While there are many cannabinoids, the principal cannabinoids used for making medicines are tetrahydrocannabinol ("THC"), tetrahydrocannabinolic acid ("THCa"), cannabidiol ("CBD") and cannabinol ("CBN").¹² Of these, only THC is psychoactive, or capable of making a user "high."¹³ Indeed, CBD may tend to counter-act the psychoactive effects of THC.¹⁴ ¹⁵ The various concentrations of cannabinoids in marijuana plants vary during the life cycle of the plant, and among strains of the plant that are bred to bring out specific cannabinoids.¹⁶ For example, the well-publicized strain called "Charlotte's Web" contains virtually no THC but is high in CBD, making it ideal for treating children who

9 <https://keytocannabis.com/blogs/cannabis/the-medical-benefits-of-cannabis-compounds>

10 *Id.*

11 *Id.*

12 *Id.*

13 *Id.*

14 *Id.*

15 <https://www.meltingpointextracts.com/news/2018/7/4/cbd-vs-thc-whats-the-difference>

16 *Id.*

suffer epileptic seizures.¹⁷ Various cannabinoid levels can also be manipulated by time, temperature and separation method in preparation.

There are many simple means to prepare the marijuana plant by removing the trichomes and their cannabinoid-containing resin from the leaf. Indeed, this can be accomplished simply by shaking the plant. This separates the trichomes and their resin from the plant, creating what the Court of Appeals in *Jones* referred to as "hashish" and what the Criminal Code, A.R.S. § 13-3401(4) accurately but misleadingly calls "cannabis."¹⁸ As previously discussed, extraction can also be done at home simply by cooking the dried marijuana flower in butter (cannabinoids are very lipid soluble) to make cannabis infused butter.

Preparation of marijuana to make medicine on a commercial scale requires more efficient extraction methods. In addition to agitation and sieving of the flower, the trichomes can be removed by the use of solvents (such as butane, ethanol or n-hexane)

¹⁷ <https://www.leafy.com/sativa/charlottes-web>

¹⁸ It is a physical impossibility to touch or store a marijuana flower without creating hashish or cannabis under these definitions, just as it is impossible to eat Cheetos without getting orange fingers.

<https://www.maximumyield.com/definition/4901/finger-hash-cannabis> .

Jostling the flower will dislodge the trichomes, making hashish. Even putting a flower in a container for storage will create crumbs of trichomes in the bottom, just like crumbs in the bottom of a potato chip bag.

<https://www.leafscience.com/2018/01/04/store-marijuana-5-tips-beginners/>;

<https://www.cannabischeri/mary-jane/learning/what-is-marijuana-shake/> .

Thus, under *Jones*, a patient could go from an immunized medical marijuana user to a felon possessing "cannabis" simply by shaking the container holding his medicinal marijuana.

or even ice water.¹⁹ This extraction produces a base product of trichomes and their resin removed from the marijuana flower that then can be used to make all forms of medicinal marijuana.

All of these medicinal cannabis products are a "mixture or preparation,"²⁰ A.R.S. § 36-2801(15), of a "part[] of [a] plant of the genus cannabis," A.R.S. § 36-2801(8). The waxes, crystals, oils and tinctures are derived by preparing marijuana by separating chemical components of marijuana from the rest of the plant. The materials derived by this preparation can be further prepared, ingested or applied in various ways by medicinal cannabis patients, or used as ingredients in further preparations.

Virtually all unsmoked medical marijuana, even homemade brownies or cookies, requires separation of the resin in the trichomes from the leaves of the marijuana plant, a process which the Court of Appeals in *Jones* would find unprotected by the AMMA because it creates "cannabis" as that term is inartfully used in the Arizona Criminal Code. In manufacturing these medicines, the only ingredients used are parts or

19 <https://www.meltingpointextracts.com/news/2018/7/6/4-considerations-for-creating-standardized-cannabis-extracts>

20 A "preparation" is "something that is prepared *specifically*: a medicinal substance made ready for use." <https://www.merriam-webster.com/dictionary/preparation>; "something prepared, manufactured or compounded." <https://www.dictionary.com/browse/preparation>; "a substance, such as a medicine, prepared for a particular purpose." <https://www.thefreedictionary.com/preparation>; "A substance that is specially made up, especially a medicine or food." <https://em.oxforddictionaries.com/definition/preparation>.

preparations of the marijuana plant (of the genus cannabis) and additional inert ingredients such as water, sugar, food gums or other ingredients common to processed food one might find in any grocery store. These medicines meet the definitions of both "marijuana," A.R.S. § 36-2801(8) and "useable marijuana," A.R.S. § 36-2801(15), and qualified patients under the AMMA should be immune from prosecution for using or possessing qualifying quantities of them.

II. ARIZONA VOTERS WERE AWARE OF THE FULL ARRAY OF MEDICINAL CANNABIS PRODUCTS WHEN THEY APPROVED THE AMMA.

In construing a voter initiative like the AMMA a court's "primary purpose is to effectuate the intent of those who framed it and the electorate that adopted it." *State ex rel Montgomery v. Woodburn ex rel County of Maricopa*, 231 Ariz. 215, 216 ¶ 5 (App.2012) (quoting *State v. Pereyra*, 199 Ariz. 252, 254 ¶ 6 (App.2001)).

The Court recently applied this principle to the AMMA in *Reed-Kaliher v. Hoggat*, 237 Ariz. 119 (2015). After starting with the proposition that the "primary objective in construing statutes adopted by initiative is to give effect to the intent of the electorate," *id.*, p.122 ¶ 6 (quoting *State v. Gomez*, 212 Ariz. 55, 57 ¶ 11 (2006)), this Court noted that the "AMMA permits those who meet statutory conditions to use medical marijuana [The] AMMA broadly immunizes qualified patients The immunity expressly applies to any 'registered qualifying patient.'" 237 Ariz. at 122 ¶s.7, 8. Thus, the question presented in this case is whether the electorate intended this broad immunity to extend to registered qualifying patients who use "parts of any plant of the genus cannabis," A.R.S. §§ 36-2801(8) or "any mixture or preparation thereof." A.R.S. § 36-2801(15) other than the smokeable green leafy substance "to treat or alleviate a . . . debilitating medical condition or symptoms associated with the . . . debilitating medical condition," A.R.S. § 32-2801(9).

If there is doubt as to the Framers and voter's meaning and intent, this Court can look to factors such as "the statute's context; its language, subject matter, and historical background; its effects and consequences; and its spirit and purpose." *Gomez*, 212 Ariz. 57 ¶ 11 (quoting *Hayes v. Cont'l Ins. Co.*, 178 Ariz. 264, 268 (1994)).

Numerous contemporaneous sources indicate that the voters were well aware that extracts, concentrates, edibles and other products derived by preparing the marijuana plant in order to separate the cannabinoids were all within the scope of the immunity conferred on registered patients by the AMMA.

Newspaper articles, editorials and commentaries from the time the AMMA was still Proposition 203 reflect that the public understood non-smokeable marijuana products were within the scope of the AMMA and Proposition 203. Indeed, this information was often conveyed in "con" opinion pieces. For example, articles referred to "marijuana . . . infused into a smoothie or a brownie or some other mechanism where you could ingest it."²¹ The same article made reference to "dispensaries that wants [sic] to sell brownies or other forms of edible marijuana." Another article noted that nursing homes and assisted living centers (where smoking anything is frowned upon) could prohibit smoking, but would be required to allow

²¹ https://azdailysun.com/news/state-and-regional/stringent-medical-pot-rules-proposed/article_de4c5ba6-f367-5a36-a3a4-679022461a7b.html - (internal quotations omitted).

marijuana to be consumed in other ways.²² In an article prior to the passage of Proposition 203, the Phoenix New Times made reference to dispensaries "offering a smorgasbord of marijuana products."²³ The same article even whimsically referred to "potsicles." *Id.* After the election, the same publication noted that in addition to marijuana buds or flowers themselves, dispensaries would sell "products made from marijuana, such as hash and a smorgasbord of edibles – including brownies, cookies, space cakes, and weed-based drinks."²⁴ This article also noted that the same products were for sale in dispensaries in California and Colorado with which Arizonans were familiar.²⁵

These publications demonstrate that, at the time they were voting on Proposition 203, Arizona voters were aware that they were voting for more than just burning and inhaling the smoke of dried marijuana flowers.

The AMMA itself demonstrates that the framers of the law anticipated non-smoking use of medical marijuana. Indeed, the definition of "usable marijuana" includes "food and drink." A.R.S. § 36-2801(15). In § 36-2802 B and C, the AMMA sets out two different scopes of prohibited areas depending upon whether the person is "smoking marijuana" or merely "possessing or engaging in the medical use of

22 https://tucson.com/news/blogs/health/tucson-health-marijuana--in-arizona-nursing-homes/article_e79442e8-b6e3-11df-9fc7-001cc4c03286.html

23 <https://www.phoenixnewtimes.com/content/printView/6445478>

24 <https://www.phoenixnewtimes.com/content/printView/6446718>

25 *Id.*

marijuana." The prohibited areas for smoking are far broader, encompassing any form of public transportation or any other public place, whereas non-smoking medical use of marijuana is only prohibited on a school bus, the grounds of a school, or in a correctional facility. Thus, the AMMA itself acknowledges that medical marijuana use would take forms other than smoking, and crafted prohibited areas accordingly.

III. THE *JONES* COURT'S APPLICATION OF THE DEFINITIONS OF THE AMMA IS CONTRARY TO SOUND STATUTORY CONSTRUCTION.

The Court of Appeals' opinion relied upon what it described as the parties agreement, *Jones* at ¶ 6, that hashish is distinguishable from marijuana. MPX cannot address whether the parties made such an agreement on this point or what the parties meant by it (which affects the scientific and legal accuracy of the parties' agreement). MPX can comment that the Court of Appeals took that distinction too far and drew untenable conclusions from it. It is true that the Criminal Code, A.R.S. § 13-3401(4) defines "cannabis" idiosyncratically as "[t]he resin extracted from any part of the plant of the genus cannabis" or products thereof, while "marijuana" is defined in A.R.S. § 13-2901 as "all parts of any plant of the genus cannabis, from which the resin has not been extracted" Both of these definitions are preceded by the qualifier "[i]n this Chapter."

The Court of Appeals relied heavily on *State v. Bollander*, 110 Ariz. 84 (1973). However, the issue in that case solely had to do with which crime the defendant committed. The question was whether the defendant should be sentenced for possession of the plant of the genus cannabis without the resin extracted, or possession of the extracted resin. The distinction between "marijuana" and "cannabis" as defined in the criminal code relates solely to the level or degree of offense and hence the available punishments. This distinction is irrelevant to the AMMA, which immunizes

a qualified patient from any punishment. The AMMA treats all parts of the plant of the genus cannabis as medicine and immunizes such medicinal use. Because the AMMA immunizes medical use, the degree of offense or possible punishment in the absence of medical use is not even implicated.

The critical element under the AMMA is not whether the resin is extracted or unextracted, or the strength of the product involved, but its "medical use," which is "to treat or alleviate a registered qualifying patient's debilitating medical condition or symptoms associated with the patient's debilitating medical condition, A.R.S. § 36-2801(9), as specifically delineated in § 36-2801(3). The distinction between extracted resin and leaves with unextracted resin is appropriately drawn for the criminal code, where legislative judgments are made regarding the severity of punishment for various illicit uses of marijuana. These same distinctions have no place in the AMMA, which simply provides that the possession or use of any part of a plant of the genus cannabis is immune when it is used for one of these medical purposes.

Simply reading of the definitions of the AMMA against one another further reveals that extracting resin, a part of the plant, from the plant to use as medicine is not outside the immunizing scope of the AMMA. The AMMA defines "marijuana" as "all parts of any plant of the genus cannabis." A.R.S. § 36-2801(8). Because the resin is present in the marijuana plant to be extracted, it is a part of the marijuana plant. In other words, resin could not be extracted from the plant if it was not already a part of

the plant. Accordingly, the resin in trichomes fits this definition. Arizona Superior Courts have recognized this. *See, State of Arizona v. Reuther*, Navajo County Case No. S0900 CR 2017-00536/738 (March 6, 2018); *Wilton v. State of Arizona*, Maricopa County Case No. CV 2013-014852 (March 24, 2014). Further, the AMMA defines "useable marijuana" to mean "the dried flowers of the marijuana plant, and any mixture or preparation thereof." A.R.S. § 36-2801(15). As previously addressed, in dictionaries and common parlance, a "preparation" includes "something that is prepared; *specifically*: a medicinal substance made ready for use."²⁶ Resins or extracts of the marijuana plant or the products made from them qualify as a medicinal substance prepared from the marijuana plant.

Resort to the Criminal Code in order to interpret the AMMA is unnecessary and contrary to both statutes. The legislature prefaced its definitions in the Criminal Code with the limitation that they apply "[i]n this chapter," A.R.S. § 13-2901; A.R.S. § 13-3401. In each instance, the Legislature further provided that these definitions would be flexible by providing that the definitions apply "unless the context otherwise requires."

The AMMA has an entirely different context, applying in a different chapter and with its own clear and complete set of definitions. Not intending to create a conflict with any other Arizona statutes, including the criminal code, the AMMA likewise limits its glossary of definitions to application "in this chapter, unless the context

26 <https://www.merriam-webster.com/dictionary/preparation>.

otherwise requires." A.R.S. § 36-2801. The comprehensiveness and completeness of the glossary of definitions in the AMMA eliminate any necessity to reach into the Criminal Code to borrow definitions that, by the limitations of the Criminal Code itself, are not applicable to the AMMA.

Each statute operates discretely within its own ambit. The Criminal Code criminalizes possession of marijuana as it defines that term as one level of offense, and cannabis as it defines that term as a different level of offense. The AMMA, on the other hand, immunizes the possession and use of marijuana as the AMMA defines that term, so long as the possession and use are for a medicinal purpose and the requirements of the AMMA are met. Resort to one statute is not necessary for the application of the other. In fact, resort to the AMMA presumes that, but for the application of the AMMA, there would be a Criminal Code violation of some sort, and the AMMA immunizes a patient for this criminal violation. Indeed, if there was no presumed criminal violation, there would be nothing to grant immunity for. Since the criminal violation is a given, there is no need to resort to the criminal statutes to determine the application or the scope of the immunity.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this Court should accept jurisdiction to review *Jones*, and reverse the majority decision, clarifying that the AMMA extends its immunity to qualifying use of all parts of the marijuana plant and preparations thereof.

RESPECTFULLY SUBMITTED,

By: /s/ Sharon A. Urias
Sharon A. Urias
Arizona Bar No. 016970
GREENSPOON MARDER LLP
8585 East Hartford Drive, Suite 700
Scottsdale, AZ 85255
Tel: 480.306.5458
Fax: 480.306.5459
sharon.urias@gmlaw.com

By: /s/ John H. Pelzer
John H. Pelzer, *pro hac vice pending*
Florida Bar No. 376647
GREENSPOON MARDER LLP
200 East Broward Boulevard, Suite 1800
Fort Lauderdale, Florida 33301
Tel: 954.527.2469
Fax: 954.333.4069
john.pelzer@gmlaw.com
dotti.cassidy@gmlaw.com

CERTIFICATE OF COMPLIANCE WITH RULE 32(A)

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 3,440 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

By: /s/ Sharon A. Urias

Sharon A. Urias
Arizona Bar No. 016970
GREENSPOON MARDER LLP
8585 East Hartford Drive, Suite 700
Scottsdale, AZ 85255
Tel: 480.306.5458
Fax: 480.306.5459
sharon.urias@gmlaw.com

By: /s/ John H. Pelzer

John H. Pelzer, *pro hac vice pending*
Florida Bar No. 376647
GREENSPOON MARDER LLP
200 East Broward Boulevard, Suite 1800
Fort Lauderdale, Florida 33301
Tel: 954.527.2469
Fax: 954.333.4069
john.pelzer@gmlaw.com
dotti.cassidy@gmlaw.com

CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing with the Clerk of the Court through AZ Turbo Court and I also certify that the foregoing document is being sent via email/mail to counsel of record as noted below on this 31st day of October, 2018.

By: /s/ Mary Dobos
Mary Dobos

Mark Brnovich
Dominic Emil Draye
Joseph T. Maziarz
Michael Valenzuela
Office of the Attorney General
2005 North Central Avenue
Phoenix, AZ 85004
mark.brnovich@azag.gov
michael.valenzuela@azag.gov
dominic.draye@azag.gov
joseph.maziarz@azag.gov
Attorneys for the State of Arizona

Sarah L. Mayhew
Pima County Public Defender's Office
33 N. Stone Avenue, Suite 2100
Tucson, AZ 85701
sarah.mayhew@pima.gov
Arizona Attorneys for Criminal Justice

Lee D Stein
Anna H. Finn
Mitchell Stein Carey Chapman, PC
One Renaissance Square
2 North Central Avenue, Suite 1450
Phoenix, AZ 85004
lee@mscclaw.com
anna@mscclaw.com
Attorneys for Rodney Christopher Jones

Robert A. Mandel
Taylor C. Young
Mandel Young PLC
2390 Camelback Road, Suite 318
Phoenix, AZ 85016-4400
rob@mandelyoung.com
taylor@mandelyoung.com
courtorders@mandelyoung.com
Attorneys for Rodney Christopher Jones