

THE SUPREME COURT OF ARIZONA

STATE OF ARIZONA,

Appellee,

v.

RODNEY CHRISTOPHER JONES,

Appellant.

Case No. CR-18-0370-PR

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

Yavapai County Superior Court  
No. CR2014-00328

STATE'S RESPONSE TO BRIEFS OF AMICI CURIAE

SHEILA POLK  
YAVAPAI COUNTY ATTORNEY

DENNIS M. MCGRANE, SBN 015186  
CHIEF DEPUTY COUNTY ATTORNEY  
BENJAMIN D. KREUTZBERG, SBN 027984  
DEPUTY COUNTY ATTORNEY

255 East Gurley Street  
Prescott, Arizona 86301  
928-771-3344  
YCAO@yavapai.us

Attorneys for Appellee

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## ARGUMENT

### **I. Various amici present information about many types of marijuana-related substances that are not at issue in this case.**

Several amici have argued, both before and after this Court granted review,<sup>1</sup> that a holding that cannabis is not protected by the AMMA would affect other substances. As described in more detail in the State’s Supplemental Brief, this case is about Jones’s possession of the narcotic drug cannabis, not about cannabidiol (“CBD”) or “extracts” generally. (State’s Supplemental Brief at 1–4.) As previously argued, cannabis is outside of the AMMA’s protections.

Moreover, this case is a poor vehicle for this Court to assess whether those other substances are included within the AMMA’s protection. The Arizona Prosecuting Attorneys’ Advisory Council’s (“APAAC’s”) brief highlights the lack

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<sup>1</sup> Jones has noted that the State did not formally respond to the amicus briefs filed before this Court granted review before this Response. (Supplemental Brief of Rodney Jones at 5 n.10; Response in Opposition to the Arizona Prosecuting Attorneys’ Advisory Council’s (“APAAC’s”) Motion for Leave to File an Amicus Brief at 4.) To the extent Jones suggests that not filing a prior response waives any opposition to those briefs, that proposition is incorrect. Nothing in the Arizona Rules of Criminal Procedure would have authorized an earlier response, and this Response is only authorized by the Court’s order dated January 8, 2019. Likewise, nothing in the rules suggests that not responding to an amicus brief waives opposition to it. Moreover, the State opposed many of the characterizations of several amici in its Supplemental Brief. (State’s Supplemental Brief at 1–4.) That is the same phase of the proceedings at which Jones adopted the arguments of those amici. (Supplemental Brief of Rodney Jones at 5 n.10.) To avoid any confusion, the State clarifies that it opposes the arguments of all amici in this case except APAAC.

of unanimity regarding the medical value of various substances, and it disagrees with some other amici as to the medical utility of tetrahydrocannabinol (“THC”) as opposed to CBD. (APAAC Brief at 7.) The APAAC brief also disagrees with some other amici that a prohibition on cannabis would undermine the medical effectiveness of marijuana-related drugs. (APAAC Brief at 8–9.)

The parties have not presented their own expert analysis of other substances, and the lower courts have developed no record about them. This Court is an inappropriate forum for a “battle of the experts” regarding substances other than what Jones indisputably possessed: the narcotic drug cannabis.

**II. Amici’s arguments about the medical utility of various marijuana-related products highlight why the AMMA is preempted.**

Several amici advance the alleged medical benefits of various marijuana-related products. (*E.g.* Brief of Amici Curiae Physicians; Brief of Amicus Curiae, MPX Bioceutical Corporation; Amicus Curiae Brief of Arizona Dispensaries Association in Support of Appellant.) As more fully described in the State’s Supplemental Brief, the federal government has established a comprehensive system to regulate medicine and its delivery in the United States. (State’s Supplemental Brief at 13–14.)

“The [Food, Drug and Cosmetic Act’s] comprehensive scheme of drug regulation is designed to ensure the nation’s drug supply is safe and effective.” *U.S. v. Sage Pharmaceuticals, Inc.*, 210 F.3d 475, 479 (5th Cir. 2000) (citation omitted).

Similarly, “the [Controlled Substances Act] is a comprehensive regulatory regime specifically designed to regulate which controlled substances can be utilized for medicinal purposes, and in what manner.” *Gonzales v. Raich*, 545 U.S. 1, 27 (2005). A state cannot generate its own pharmacopoeia to allow marijuana derived products any more than such a state could authorize its own antibiotics that the federal government has rejected. Both undermine the ability of the federal government to regulate the delivery of medicine.

The federal system has not found that most of these marijuana-related substances have sufficient medical value to be introduced into commerce as medicines. The AMMA is in positive conflict with federal law to the extent that it authorizes them, and is in positive conflict with federal law because it authorizes marijuana at all. *Michigan Cannery and Freezers Ass’n, Inc. v. Agric. Mktg. and Bargaining Bd.*, 467 U.S. 461, 477–78 (1984) (holding that a state law that “empowers” persons or entities “to do precisely what the federal Act forbids them to do” was preempted). The AMMA is therefore preempted.

### **III. This Court should affirm Jones’s convictions.**

For all the reasons described in this Response and the State’s prior briefing, this Court should affirm Jones’s convictions.

RESPECTFULLY SUBMITTED this 25th day of February, 2019.

Sheila Polk  
YAVAPAI COUNTY ATTORNEY

By: /s/ Benjamin D. Kreutzberg  
Dennis M. McGrane  
Chief Deputy Yavapai County Attorney  
Benjamin D. Kreutzberg  
Deputy Yavapai County Attorney  
Attorneys for Appellee