ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, Appellee, v. RODNEY CHRISTOPHER JONES, Appellant.	1 CA–CR 16–0703 Yavapai County Superior Court No. CR2014–00328

APPELLEE'S ANSWERING BRIEF

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QUESTION PRESENTED FOR REVIEW

The Arizona Medical Marijuana Act (the AMMA) immunizes the possession of "usable marijuana"; that is, the dried flowers of the marijuana plant and any mixtures/preparations thereof. Cannabis is not the dried flowers of the marijuana plant or a mixture/preparation thereof; it is the resin of the plant—its own distinct substance. Does cannabis meet the AMMA's definition of "usable marijuana"?

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STATEMENT OF THE CASE

On April 9, 2014, the State filed an indictment in Yavapai County Superior Court charging Appellant with possession of a narcotic drug, a class four felony (Count 1), and possession or use of drug paraphernalia, a class six felony (Count 2). (R.O.A., Item 1.) The evidence presented at trial, viewed in the light most favorable to sustaining the verdict, *State v. Stroud*, 209 Ariz. 410, 412, ¶ 6 (2005), reflects the following.

On March 1, 2013, Officer Katrina Kjellstrom responded to a noise complaint at the Prescott Resort in Prescott, Arizona. (Ex. 3 at 13.) A resort employee advised her that the resort had received multiple complaints from hotel guests about noise coming from Room 422. (*Id*.) Officer Kjellstrom responded to Room 422 and smelled marijuana when Appellant opened the room's door. (*Id*.) She advised Appellant that she was there because of the noise complaint and asked him whether he had marijuana in the room. (*Id*.) Appellant reported that he had some in his backpack, and he stated he possessed an Arizona Medical Marijuana Card. (*Id*.) Officer Kjellstrom searched Appellant's backpack and found two glass mason jars that contained (1) a green leafy substance, which she opined was marijuana, and (2) a

resinous substance wrapped in wax paper, which Appellant identified as "hashish."[1] (*Id*. at 9, 13.)

Officer Kjellstrom arrested Appellant and read him his *Miranda* rights. (*Id*. at 14.) Appellant agreed to waive his rights and told Officer Kjellstrom that an employee at a marijuana dispensary in Phoenix had given him the cannabis for free. (*Id*.) Officer Kjellstrom booked the marijuana, cannabis, and Appellant's Arizona Medical Marijuana Card into evidence. (*Id*.) Later testing of the cannabis showed that it weighed 1.43 grams. (*Id*. at 9.)

Appellant waived his right to a jury trial and stipulated a record to the trial court via a "memorandum for bench trial." (R.T. 9/14/16, at 3, 10; R.O.A., Items 84–85.) After considering the evidence contained therein, the court found Appellant guilty of both counts. (R.T. 9/14/16, at 12–13.) In so concluding, the court made the following findings:

> The Court finds, based on the police report, that the defendant, on or about March 1, 2015 [sic], did possess hashish; that he had advised the officer that he obtained it in Phoenix, Arizona. It was later analyzed by the laboratory and found to contain Cannabis, which the lab sets forth as a narcotic drug.

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[1] The term "cannabis" as defined in A.R.S. § 13–3401(4) includes "hashish" as "the resin extracted from the marijuana plant." *See State v. Bollander*, 110 Ariz. 84, 87 (1973).

> The Court finds that, based on the report, that there was paraphernalia as well that the hashish was in, a large mason jar, and that was being used to hold the hashish.
>
> And so the Court finds, based on all of the evidence reviewed, that the defendant is guilty of the crimes of Possession of a Narcotic Drug . . . and Possession of Drug Paraphernalia . . . both of those offenses committed on or about March 1st, 2014 [sic].

(*Id*. at 12–13.) The court sentenced Appellant to concurrent, presumptive prison terms of two and one-half years on Count 1 and one year on Count 2. (R.T. 10/3/16, at 8.)

Appellant filed a timely notice of appeal. (R.O.A., Item 96.) This Court has jurisdiction under Arizona Constitution Article VI, Section 9, and Arizona Revised Statutes §§ 12–120.21(A)(1), 13–4031, and –4033(A).

ARGUMENT

APPELLANT IS NOT ENTITLED TO IMMUNITY BECAUSE CANNABIS DOES NOT MEET THE AMMA'S DEFINITION OF "USABLE MARIJUANA."

Appellant argues that the plain language of the AMMA immunized him from prosecution for his possession of cannabis because (1) the AMMA allows a registered, qualifying patient (RQP) to possess any substance prepared from the dried flowers of the marijuana plant and (2) cannabis is such a preparation. (O.B. at 6.) Yet the plain language of the AMMA clearly and unambiguously does not include cannabis within its definition of usable marijuana: cannabis is the resin of the plant, a distinct part of the plant, and is therefore neither the

dried flowers of the marijuana plant or a preparation/mixture of the dried flowers. Outside of the AMMA's plain language, Appellant's claim still fails because permitting possession or use of cannabis would (1) not serve the AMMA's spirit and purpose, (2) run contrary to Arizona's statutory scheme concerning cannabis, and (3) result in absurdities. For these reasons, this Court should reject Appellant's claim and affirm the trial court's ruling.

A. STANDARD OF REVIEW.

Appellate courts "review questions of statutory interpretation de novo." *State v. Liwski*, 238 Ariz. 184, 186, ¶ 5 (App. 2015). Whether an RQP is entitled to immunity under the AMMA "is a question of law," also reviewed *de novo*. *Id.* at 186, ¶ 8. In interpreting a voter-approved measure, this Court gives effect to "the intent of the electorate that adopted it," and in doing so interprets the words according to "their natural, obvious and ordinary meaning." *Cave Creek Unified Sch. Dist. v. Ducey*, 233 Ariz. 1, 6–7, ¶ 21 (2013) (citations omitted). When the language is clear and unambiguous and thus subject to only one reasonable meaning, this Court "appl[ies] the language without resort to other means of statutory construction." *State v. Siplivy*, 228 Ariz. 305, 307, ¶ 6 (App. 2011) (citing *Calik v. Kongable*, 195 Ariz. 496, 498, ¶ 10 (1999)). If the plain meaning of a statute is unclear, then this Court will consider other factors such as "the statute's context, history, subject matter,

effects and consequences, spirit, and purpose." *State v. Fell*, 203 Ariz. 186, 188, ¶ 6 (App. 2002); *see also State v. Matlock*, 237 Ariz. 331, 334, ¶ 10 (App. 2015) (applying rules of construction to statutes adopted by initiative). This Court will also avoid an interpretation that leads to absurd results. *State v. Kerr*, 142 Ariz. 426, 433 (App. 1984).

B. FACTUAL BACKGROUND.

On October 13, 2014, Appellant moved to dismiss the State's indictment. (R.O.A., Item 27.) Relying heavily on a Maricopa County Superior Court minute entry order, Appellant contended that the AMMA permitted him to possess cannabis because it was a marijuana extract and the AMMA allowed an RQP to possess "usable marijuana," which includes "any mixture or preparation" of the dried flowers of the marijuana plant. (*Id*. at 1–2.) Appellant further asserted that the AMMA and its ballot materials did not contain language that limited "usable marijuana" to "unmanipulated plant materials." (*Id*. at 4.)

The State, however, clarified that marijuana and cannabis are separate substances that are illegal under different provisions of the criminal code. (R.O.A., Item 34, at 9.) The State argued that the AMMA did not explicitly include cannabis within the definition of "usable marijuana." (*Id*. at 14.) The State further contended that the phrase "preparation thereof" allowed an RQP

to dry, separate, grade, grind, crush, roll, blend, or bake the dried flowers of the marijuana plant, but did not allow an RQP to extract resin from the marijuana plant to make a more potent substance. (*Id*. at 11.) Finally, the State argued that classifying cannabis as "usable marijuana" would subrogate the AMMA's spirit and purpose of the AMMA and result in absurdities. (*Id*. at 15–17.)

Following oral argument, the trial court denied Appellant's motion. (R.O.A., Item 50.) The court disagreed with the Maricopa County Superior Court's minute entry order—on which Appellant had relied—and did not believe that Appellant had shown that cannabis fell within the protections of the AMMA:

> [T]his Court has concerns that Judge Cooper's ruling does not address the fact that the statute defines the extract of cannabis separately as a narcotic drug, and not as marijuana. The Court accepts the State's position that the Arizona Medical Marijuana Act was not specifically written in a way that addresses this issue. This Court is not as clear as Judge Cooper that the Arizona Medical Marijuana Act includes what the legislature defines as cannabis.

(*Id*.) The court therefore denied Appellant's motion "based on [its] review of the statutes and the information presented." (*Id*.)

C. THE AMMA CLEARLY AND UNAMBIGUOUSLY DOES NOT INCLUDE CANNABIS WITHIN ITS DEFINITION OF "USABLE MARIJUANA."

The plain language of the AMMA allows an RQP to possess the dried flowers of the marijuana plant and mixtures/preparations of those flowers for food and drink. Because cannabis is merely the resin of the marijuana plant—a

separate and distinct part of the plant—it is neither the dried flowers nor a preparation/mixture thereof. An RQP therefore does not receive immunity for possessing cannabis.

In Arizona, the use or possession of marijuana is illegal and punishable as a felony. *See* A.R.S. § 13–3405(A) ("a person shall not knowingly . . . [p]ossess or use marijuana); –3405(B) (setting forth felony classifications based on the amount of marijuana possessed). The use or possession of cannabis is also illegal and punishable as a felony—and Arizona recognizes it as a controlled substance independent of marijuana. *See* A.R.S. § 13–3401(20)(w) (defining cannabis as a narcotic drug); –3408(A) ("a person shall not knowingly . . . [p]ossess or use a narcotic drug"); *State v. Bollander*, 110 Ariz. 84, 87 (1973) (recognizing "hashish" as cannabis and distinct from marijuana).

Arizona's complete prohibition of marijuana changed in 2010 after voters passed the AMMA with the purpose of "decriminaliz[ing] possession and use of marijuana for medicinal purposes." *State v. Maestas*, 762 Ariz. Adv. Rep. 4, ¶ 6 (App. 2017); *see also* 2010 Proposition 203, § 2(G) (stating, "the purpose of this act is to protect patients with debilitating medical conditions . . . from arrest and prosecution, criminal and other penalties . . . if such patients engage in the medical use of marijuana."). Consistent with that purpose, the

AMMA immunizes RQPs from "arrest, prosecution or penalty in any manner" for their medical use of marijuana pursuant to the AMMA if they do "not possess more than the allowable amount of marijuana." A.R.S. § 36–2811(B)(1). The allowable amount of marijuana is "two-and-one-half ounces of *usable marijuana*." A.R.S. § 36–2801(1)(a)(i) (emphasis added).

Under the AMMA, "usable marijuana" is *not* all parts of the marijuana plant. *See* A.R.S. § 36–2801(15); *see also* A.R.S. § 36–2801(8) (defining "marijuana," generally, as "*all* parts of any plant of the genus cannabis whether growing or not, and the seeds of such plant") (emphasis added). Instead, "usable marijuana" is only "the dried flowers of the marijuana plant, and any mixture or preparation thereof"—that is, any mixture or preparation of *only* the dried flowers of the marijuana plant. A.R.S. § 36–2801(15). Elsewhere, the AMMA explains that "usable marijuana" excludes "the seeds, stalks and roots of the plant" and "the weight of any non-marijuana ingredients combined with marijuana and prepared for consumption as food or drink." A.R.S. § 36–2801(15).

Consistent with this language, the AMMA creates the following rule: an RQP is immune from prosecution for possession of marijuana if the RQP possesses (1) the dried flowers of the marijuana plant or a mixture/preparation of the dried flowers and (2) 2.5 ounces or less of the dried flowers.

Definitions in the criminal code similarly illustrate the distinction between marijuana and cannabis: marijuana is "all parts of any plant of the genus cannabis, from which the resin has not been extracted" while cannabis is "[t]he resin extracted from any part of a plant of the genus cannabis." *Compare* A.R.S. § 13–3401(4) (defining cannabis), *with* –3401(19) (defining marijuana). The Arizona Supreme Court has described cannabis "as a derivative of marijuana or 'the resin extracted' from the marijuana plant." *Bollander*, 110 Ariz. at 87. This Court has further distinguished marijuana from cannabis based on differences in their potency: cannabis has greater concentrations of the psychoactive agent delta-9-tetrahydrocannabinol that can render it "more susceptible to serious and extensive abuse than bulkier marijuana." *State v. Floyd*, 120 Ariz. 358, 360 (App. 1978).

Other reference sources similarly describe cannabis as the highly potent resin of the marijuana plant. *See* New Oxford American Dictionary 795 (3d ed. 2010) (common dictionary definition of "hashish" as "an extract of the cannabis plant, containing concentrations of the psychoactive resins."); Stedman's Medical Dictionary 767 (26th ed. 1995) (medical dictionary definition of "hashish" as "a form of cannabis that consists largely of resin from the flowering tops and sprouts of cultivated female plants; contains the highest concentration of cannabinols among the preparations derived from

cannabis"); Hashish Definition, drugs.com (medically reviewed by Leigh Ann Anderson, PharmD) (pharmacological resource describing "hashish" as a form of cannabis "produced by collecting and compressing trichomes," which "are the fine growths on cannabis plants that produce a sticky resin" and are "the most potent material from cannabis plants").

As all of these sources confirm, cannabis does not meet the AMMA's straightforward definition of "usable marijuana" because it is not the dried flowers of the marijuana plant. Because the AMMA defined "usable marijuana" as only the dried flowers of the marijuana plant, to the exclusion of all other parts of the plant, the resin (cannabis) is excluded from the AMMA's definition of "usable marijuana." *See State v. Gonzales*, 206 Ariz. 469, 471, ¶ 11 (App. 2003) (the expression of one thing is the exclusion of another); *see also* A.R.S. § 36–2801(15) (explicitly excluding from the definition "the seeds, stalks and roots of the plant"). Accordingly, cannabis is not "usable marijuana" in its most straightforward meaning.

Additionally, and contrary to Appellant's claim on appeal (O.B. at 6–7), cannabis is not a mixture or preparation of the dried flowers of the marijuana plant. To start, the resin can be taken from "*any* part of a plant of the genus cannabis" including "from the stalks" of the plant. A.R.S. § 13–3401(4) (emphasis added). For example, closed loop extraction systems can use butane

to strip the resins off of the entire marijuana plant in order to form cannabis. *See* CBS 5 News, 7 Things You Should Know About Marijuana Labs; SensiSeeds.com, Emotak Labs—Closed Loop Extraction. Thus, even if this Court were to accept Appellant's contention that separating the resin of the plant constitutes some sort of "preparation," such "preparation" would not necessarily be limited to the dried flowers of the plant. And if cannabis was made with resin from other parts of the plant, this "preparation" would not fall within the AMMA's narrow definition of "usable marijuana." A.R.S. § 36–2801(15). For that reason alone, Appellant's interpretation is troublesome and must fail.[2]

Furthermore, the resin of the marijuana plant is a unique part of the plant that is separate and distinct from the flowering buds of the plant. Although the dried flowers of the marijuana plant may contain resin, separating the resin for consumption is not akin to "preparing" or "mixing" the dried flowers for use themselves or for use as food or drink. *See* A.R.S. § 36–2801(15) (providing that "usable marijuana" may be "prepared" or used as a "mixture" such that non-marijuana ingredients may be "combined" with it and "prepared for

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[2] There is no indication in the record whether Appellant's cannabis included resin from just the dried flowers of the marijuana plant or from other parts of the plant as well.

consumption as food or drink"). It is merely separating one part of the plant from another.

Several examples illustrate how preparing and mixing the dried flowers of the marijuana plant differs from separating resin from the plant. In the strictest sense, an RQP may prepare the dried marijuana flowers by rolling them into a joint or cigarette with rolling paper. An RQP may mix the dried marijuana flowers into a brownie batter and consume the batter—either raw or cooked—as food. In like manner, an RQP could prepare the dried marijuana flowers for consumption as drink by mixing and heating them with milk, butter, vanilla, tea leaves, honey, cinnamon, and water—creating a tea latte. In these examples, the dried marijuana flowers in one way or another are being consumed after undergoing a mixture or preparation process.

In contrast, even if separating the dried marijuana flowers from the resin involved a "preparation" process, the product is not a manner in which the dried marijuana flowers are consumed. Rather, the end result is to separate the dried flowers from the resin so that the resin—as an entity distinct from the dried flowers—can be smoked or eaten. The plain language of "usable marijuana" contemplates that the dried marijuana flowers will be part of the end product: it ensures that only the weight of the dried flowers and not the

weight of non-marijuana ingredients counts toward the 2.5 ounce possession limit.

Appellant would have this Court hold that cannabis nevertheless falls within the AMMA's protections because the AMMA "does not dictate that patients can only use plant materials that have not been manipulated." (O.B. at 9.) This is a straw man. As discussed above, Appellee does not argue that only "plant materials that have not been manipulated" fall within the AMMA's immunity provision. To the contrary, numerous forms of "manipulation" are permitted, provided that they do not go so far as to transform useable marijuana into an entirely different and radically more toxic drug.

More generally, the AMMA is an exception to the general rule that it is illegal to possess marijuana and cannabis, and the AMMA provides only a *limited* immunity from criminal penalties for actions that are authorized by the Act. *See State v. Sisco*, 239 Ariz. 532, 536 ¶¶ 16, 17 (2016) (recognizing that the "AMMA did not decriminalize the possession or use of marijuana generally," that the AMMA "makes marijuana legal in only limited circumstances," and "those subject to [the] AMMA must strictly comply with its provisions to trigger its protections and immunities"). For that reason, Appellant's framing of the issue is backwards: he seeks to claim as permissible an action not expressly prohibited by the AMMA. (O.B. at 9.) The appropriate

framing is whether the AMMA expressly authorizes the use of cannabis. The only possible answer is "no" because cannabis is not "usable marijuana."

Other courts construing similar medical-marijuana statutes have also held that the extracts of the marijuana plant are not "usable marijuana." In *State v. Carruthers*, the Michigan Court of Appeals addressed the Michigan Medical Marijuana Act's definition of "usable marihuana," which defined the term as "the dried leaves and flowers of the marihuana plant, and any mixture or preparation thereof, but does not include the seeds, stalks, and roots of the plant." 837 N.W.2d 16, 21 (Mich. Ct. App. 2013) (citing Mich. Comp. Laws § 333.26423(k) (2013)). Because the act's definition of "usable marihuana" was narrower than the act's definition of "marihuana"—which included all parts of the cannabis plant and, specifically, the resin—the court concluded that "the drafters clearly expressed their intent *not* to include resin, or a mixture or preparation of resin, within the definition of 'usable marihuana.'" *Id*. at 24. The court thus held that "the only 'mixture or preparation' that falls within the definition of 'usable marihuana' is a mixture or preparation of 'the dried leaves and flowers of the marihuana plant.'" *Id*.

Similarly, in *State v. Pirello*, the Montana Supreme Court addressed the Montana Medical Marijuana Act's definition of "usable marijuana," which defined the term as "the dried leaves and flowers of the marijuana plant and

any mixture or preparation of marijuana," excluding "the seeds, stalks, and roots of the plant." 282 P.3d 662, 664 (Mont. 2012) (citing Mont. Code Ann. § 50–46–102(10) (2009)). The court concluded that cannabis did not fall within the state's definition of "usable marijuana" because (1) the Montana Medical Marijuana Act adopted the state criminal code's general definition of "marijuana" and (2) Montana's criminal code recognized marijuana and cannabis as distinct substances. *Id*. at 664, ¶ 14. The court thus held that cannabis did not fall within the Montana Medical Marijuana Act's definition of "usable marijuana." *Id*. at 665–66, ¶ 17.[3]

Although distinctions can be drawn between the statutes in those cases and the AMMA, they nevertheless demonstrate the general proposition that narrowing "usable marijuana" to the dried flowers of the marijuana plant excluded other parts of the marijuana plant identified in a general definition of "marijuana." The same holds true here. While the AMMA is silent regarding the resin, its definition of "usable marijuana" includes only the dried flowers of the plant to the exclusion of *all* other parts of the plant. In that regard, the

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[3] In 2016, the Michigan Legislature amended its medical marijuana act to add plant resin and extracts to its definition of "usable marijuana." Marihuana–Medical Care and Treatment–Weights and Measures, 2016 Mich. Legis. Serv. P.A. 283 (H.B. 4210). In 2017, the Montana Legislature enacted similar amendments. An Act Revising the Montana Medical Marijuana Act, 2017 Mont. Legis. Serv. ch. 408 (S.B. 333).

AMMA is similar to *Carruthers* and *Pirello*. Further, the AMMA, *Carruthers*, and *Pirello* stand in contrast to other statutory schemes that recognize marijuana and cannabis as one in the same. *See State v. Ellis*, 316 P.3d 412 (Or. Ct. App. 2013) (holding that "hashish" was protected by the state's medical marijuana act because "hashish" was the same as marijuana under its controlled substances act).

For these reasons, the plain language of the AMMA illustrates that cannabis is not "usable marijuana." This Court should therefore reject Appellant's claim without resort to any other modes of statutory construction.

D. EVEN IF THIS COURT LOOKS OUTSIDE OF THE PLAIN LANGUAGE OF THE AMMA, IT MUST STILL CONCLUDE THAT CANNABIS IS NOT "USABLE MARIJUANA."

Even if this Court is inclined to look outside of the plain language of the AMMA, it should still conclude that cannabis is not "usable marijuana" under the AMMA because permitting possession of cannabis would (1) not serve the AMMA's spirit and purpose, (2) run contrary to Arizona's statutory scheme concerning cannabis, and (3) result in absurdities.

1. *Spirit and purpose.*

First, reading cannabis into the AMMA's definition of "usable marijuana" disrupts the AMMA's purpose of allowing limited use of marijuana for medical purposes.

"The purpose of the AMMA is to decriminalize possession and use of marijuana for medicinal purposes." *Maestas*, 762 Ariz. Adv. Rep. 4, ¶ 6. In achieving this purpose, the AMMA recognized the need to continue regulating non-medicinal use of marijuana. *See* 2010 Proposition 203, § 2(G) ("State law should make a distinction between the medical and nonmedical uses of marijuana."); *see also generally Heath v. Kiger*, 217 Ariz. 492, 496, ¶ 13 (2008) ("To determine the intent of the electorate, a court may also look to the publicity pamphlet distributed at the time of the election"). The AMMA therefore struck a balance between an RQP's medicinal need for marijuana and the risks to the RQP/the public welfare. *See e.g.* A.R.S. § 36–2801(1)(a)(i) (establishing limits on the amount of marijuana an RQP may possess); –2802 (setting limits on where and when an RQP may use marijuana); –2816(A) (setting forth a fourteen-day time period in which an RQP may obtain additional marijuana). Proponents of the AMMA recognized this balance as an important aspect of the law. *See* 2010 Proposition 203, Arguments for Proposition 203, Arizona Medical Marijuana Policy Project (stating that the AMMA "is about compassion, control, and commonsense" and that it allows patients "to acquire the medicine they need under tightly regulated conditions").

Here, reading cannabis into the definition of "usable marijuana" upsets the AMMA's careful balance. Cannabis is far more potent than leafy marijuana. *See Floyd*, 120 Ariz. at 360 (explaining that cannabis has greater concentrations of the psychoactive agent delta-9-tetrahydrocannabinol than leafy marijuana). The higher concentration of this psychoactive agent makes cannabis a fundamentally different substance—one that is "more susceptible to serious and extensive abuse than bulkier marijuana." *Id.* The AMMA's purpose is not served by reading a more dangerous substance into its definition of "usable marijuana." *See Carruthers*, 837 N.W.2d at 25 ("Given the heightened potency of the THC extract, as compared with 'the dried leaves and flowers,' this definition of 'usable marihuana' . . . strikes us as a sound and reasoned mechanism to promote the 'health and welfare of [Michigan] citizens" while also providing "an essential mechanism for implementing the voters' desire to continue prosecutions for possession and use of marijuana in excess of that which is permitted for medical use") (internal citations omitted).

2. *Arizona's statutory scheme concerning marijuana and cannabis.*

Second, reading cannabis into the AMMA's definition of "usable marijuana" when the Act is otherwise silent regarding cannabis ignores Arizona's pre-existing law distinguishing between cannabis and marijuana. If

the authors of the AMMA sought to dissolve that distinction, it was their duty to be explicit about doing so.

When statutes "relate to the same subject matter or have the same general purpose as one another," this Court will construe the statutes together as though they constitute one law. *State v. Gamez*, 227 Ariz. 445, 449, ¶ 27 (App. 2011); *see also Sedona Grand, LLC v. City of Sedona*, 229 Ariz. 37, 40, ¶ 11 (App. 2012) (courts apply principles for interpreting a statute to the interpretation of a voter-approved initiative). This Court generally presumes that an entity knows existing laws when it enacts a statute. *See State v. Garza Rodriguez*, 164 Ariz. 107, 11 (1990) ("We presume that the legislature knows the existing laws when it enacts or modifies a statute"); *see also State v. Soltero*, 205 Ariz. 378, 380, ¶ 7 (App. 2003) ("The promulgation of a law by a legislature in accordance with its constitutional obligations is deemed to constitute adequate notice to all;" thus, "all persons of sound mind are presumed to know the law").

Here, this Court should read the AMMA and the criminal code *in pari materia*: the criminal code sets forth the illegality of cannabis and marijuana while the AMMA creates a limited immunity for the possession of "usable marijuana." In considering the two as one legislative scheme, Arizona has long recognized marijuana and cannabis as distinct substances. *See Bollander*, 110

Ariz. at 86 (recognizing this distinction in 1973, four decades before Proposition 203). The distinction between marijuana and cannabis continued to exist in 2010 when voters passed the AMMA. *See* A.R.S. § 13–3401(4), (19) (West 2010). Consequently, this Court may presume that the drafters of the AMMA knew the difference between marijuana and cannabis when drafting the AMMA and deliberately decided not to refer to the resin of the plant in the Act. Cannabis is therefore outside of the protections of the AMMA.

Appellant argues that this Court should pay no regard to the criminal statutes in applying secondary means of construction because the AMMA is the "more recently enacted and more specifically worded statute." (O.B. at 6.) Yet this rule of statutory construction applies only "[w]hen two conflicting statutes cannot operate contemporaneously." *State v. Jones*, 235 Ariz. 501, 503, ¶ 8 (2014) (internal quotation marks omitted). Otherwise, this Court will "adopt a construction that reconciles" both statutes and gives "force and meaning to each." *Id*. at 502, ¶ 6. In this instance, Appellee's position reconciles the criminal code and the AMMA and gives force and meaning to each. Appellee's position allows the AMMA to continue protecting medical use of the dried flowers of the marijuana plant. It also gives full force to the criminal code's distinction between the dried flowers of the plant and the resin of the plant.

In contrast, Appellant's position impermissibly renders as null the pre-existing legislative distinction between marijuana and cannabis. *See State v. Artur*, 125 Ariz. 153, 155 (App. 1980) ("Whenever possible, a statute will be given such effect that no clause, sentence, or word is rendered superfluous, void, contradictory or insignificant"). It also implicitly repeals the full force of the criminal code's prohibition against cannabis by reading cannabis into the AMMA's limited immunity provision. Out of respect for the separation of powers, courts are reluctant to find such implied repeals. *See J.E.M. Ag Supply, Inc. v. Pioneer Hi-Bred Intern., Inc.*, 534 U.S. 124, 142 (2001) (noting the "rarity" of implied repeals because "the only permissible justification for a repeal by implication is when the earlier and later statutes are irreconcilable) (internal citations and quotation marks omitted).

3. *Absurdities*.

Finally, absurdities result when one reads cannabis into the AMMA's definition of "usable marijuana." *See Kerr*, 142 Ariz. at 433 (this Court will also avoid an interpretation that leads to absurd results).

As explained above, the AMMA sought to balance an RQP's medicinal need for marijuana against the risk of drug abuse. The AMMA therefore limited an RQP to possessing no more than 2.5 ounces of usable marijuana at a time. A.R.S. § 36–2801(1)(a)(i). The AMMA also prohibited an RQP from

obtaining more than 2.5 ounces of marijuana from registered nonprofit medical marijuana dispensaries in any fourteen-day period. A.R.S. § 36–2816(A).

Here, the State submitted via judicial notice to the trial court that the conversion ratio between leafy marijuana and cannabis is approximately 35 to 1. (R.O.A., Item 34, at 15.) If Appellant's definition prevailed, an RQP could obtain 2.5 ounces of THC resin (cannabis)—the equivalent of more than 5.5 *pounds* of dried marijuana flowers or 7,080 joints—every two weeks. (*Id*.) The disparity between these two amounts is absurd. If the AMMA had intended to encompass cannabis, it would have prescribed a different quantity limit for the concentrated resin. The absence of such a provision and the absurd disparity Appellant's interpretation would create underscore the Act's assumption that cannabis is excluded from the meaning of "usable marijuana."

* * *

This Court should conclude that cannabis does not fall within the AMMA's definition of "usable marijuana." Appellant therefore was not entitled to immunity under the AMMA for his possession of the substance.

CONCLUSION

Based on the foregoing authorities and arguments, Appellee respectfully requests that this Court affirm the judgment and sentence of the trial court.

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