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**IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE**

**STATE OF ARIZONA,**

**Appellant,**

**vs.**

**STANLEY K. KEMMISH, JR,**

**Appellee.**

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) **Case Number: 1 CA-CR 17-0417**  
)  
) **La Paz County Superior Court**  
) **No. S1500CR2016-00241**  
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**APPELLANT’S OPENING BRIEF**

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2 **I: STATEMENT OF CASE**

3 Stanley Kent Kemmish, Jr. (hereinafter “Defendant”) was charged by  
4 supervening indictment on September 7, 2016 with three counts: possession of narcotic  
5 drugs, possession of marijuana, and possession of drug paraphernalia. Index of Record  
6 (hereinafter “IR”) 3. On April 10, 2017, Defendant filed a Motion to Dismiss or in the  
7 Alternative Motion Suppress. IR 21. The issue raised in Defendant’s motion was  
8 whether his physician’s recommendation issued under California’s Compassionate Use  
9 Act (hereinafter “CUA”) was the equivalent of a registry identification card issued  
10 under the Arizona Medical Marijuana Act (hereinafter “AMMA”).  
11  
12

13 The State filed its Response on April 11, 2017. IR 23. An evidentiary hearing  
14 was scheduled for May 25, 2017. IR 22, 26. On May 24, 2017, the parties filed  
15 stipulated facts for the evidentiary hearing. IR 25.<sup>1</sup> Oral arguments were held on  
16 Defendant’s motion on May 25, 2017, and Defendant’s motion was taken under  
17 advisement. IR 26.  
18  
19

20 On June 9, 2017, the Court issued its ruling granting Defendant’s motion to  
21 dismiss. IR 27. The Court held that Defendant’s physician recommendation was the  
22 equivalent of a registry identification card for the purposes of A.R.S. § 36-2804.03(C),  
23 reasoning that the word “equivalent” used in the statute “has more to do with the impact  
24 the documentation will have rather than what the documentation actually is: either a  
25

26  

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<sup>1</sup> The parties’ stipulated facts are included in the Appendix to the State’s Opening Brief.

1 letter or a card.” *Id.* A timely notice of appeal was filed on June 21, 2017. IR 28. This  
2 Court has jurisdiction pursuant to A.R.S. § 13-4032(1).  
3

## 4 **II: STATEMENT OF FACTS**

5  
6 Defendant was stopped by Arizona DPS Troopers Keeling and Laurel on  
7 Interstate 10 eastbound at approximately 8:49 p.m. on August 24, 2017. Appendix at 1  
8 ¶ 1-2<sup>2</sup>. Defendant’s vehicle was observed traveling eastbound on the Interstate with  
9 only the left headlamp illuminated, and was stopped for failing to have two required  
10 headlamps on his vehicle. *Id.* at 1-2 ¶¶ 3-4. It was after dark when Defendant’s vehicle  
11 was stopped. *Id.* at 2 ¶ 5.  
12

13  
14 During their contact with Defendant during the traffic stop, the officers noticed an  
15 odor of marijuana emanating from inside Defendant’s vehicle. *Id.* at ¶ 6. While  
16 Defendant was searching for his registration in his glove compartment, the officers  
17 observed a white pipe with black residue. *Id.* at ¶ 7. Defendant was asked to exit his  
18 vehicle and was informed by the officers that they would be conducting a probable  
19 cause search of his vehicle. *Id.* at ¶ 8. Defendant admitted the pipe was his, and  
20 admitted to possessing medical grade marijuana that he purchased in California. *Id.* at ¶  
21 9.  
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<sup>2</sup> The Parties’ Stipulated Facts for Defendant’s Motion to Dismiss.

1 Defendant was asked if he had a medical marijuana card. *See id.* at ¶ 10.  
2 Defendant responded that he did, and produced a physician’s recommendation from  
3 California. *Id.* at ¶ 10-11. Defendant’s physician’s recommendation was valid at the  
4 time of the stop, and was obtained pursuant to the CUA. *Id.* at ¶¶ 12-13. Defendant’s  
5 physician’s recommendation was not a state issued medical marijuana card from  
6 California. *Id.* at ¶ 16. Defendant did not have a card issued by a state agency  
7 authorizing him to possess medical marijuana at the time of his stop. *Id.* Defendant  
8 would qualify as a visiting qualified patient for the purposes of the AMMA. *See*  
9 Transcript of Hearing at 7:10-11.  
10  
11

12  
13 The officers conducted a probable cause search of Defendant’s vehicle, and  
14 located personal possession amounts of marijuana and marijuana/THC wax. Appendix  
15 at ¶¶ 14-15.  
16

17 **III: ISSUES PRESENTED**

18 Two issues are presented for appeal:

- 19  
20 1. Whether a physician’s recommendation issued under the CUA is the equivalent of  
21 a registry identification card issued under the AMMA for the purposes of A.R.S.  
22 § 36-2804.03(C).  
23  
24  
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1 2. Whether the police had probable cause to search Defendant’s vehicle, or in the  
2 alternative whether the good faith exception applies to the search of Defendant’s  
3 vehicle.  
4

5  
6 **IV: DEFENDANT’S PHYSICIAN’S RECOMMENDATION IS NOT THE  
EQUIVALENT OF AN AMMA REGISTRY IDENTIFICATION CARD**

7  
8 The primary issue presented for appeal is whether Defendant’s physician’s  
9 recommendation issued under the CUA is the equivalent of an AMMA registry  
10 identification card for the purposes of A.R.S. § 36-2804.03(C). Defendant’s physician’s  
11 recommendation is not the equivalent of an AMMA registry identification card because  
12 the AMMA has adopted a clear policy requiring state oversight and because treating a  
13 physician’s recommendation as the equivalent of a registry identification card would  
14 grant California residents greater protections than Arizona residents under the AMMA.  
15

16  
17 **A: STANDARD OF REVIEW FOR STATUORY INTERPRETATION**

18 Issues of statutory interpretation are reviewed de novo. [Castillo v. Lazo, 241](#)  
19 [Ariz. 295, 297 ¶ 5 \(Ct. App. 2016\)](#). In interpreting statutes, courts are to interpret them  
20 so that all related statutes are harmonious and consistent. [Id. at 299 ¶ 17](#). *See also State*  
21 [v. Bowsher, 225 Ariz. 586, 589 ¶ 14 \(2016\)](#) (“When construing two statutes, [courts]  
22 will read them in such a way as to harmonize and give effect to all of the provisions  
23 involved.”); [Hosea v. City of Phoenix Fire Pension Bd., 224 Ariz. 245, 250 ¶ 23 \(Ct.](#)  
24  
25  
26

1 [App. 2010](#)) (stating courts “construe statutory provision in light of their place in the  
2 statutory scheme so they may be harmonious and consistent.”).

3  
4 In construing ballot measures, courts look to give effect to the voters’ intent.  
5 [State v. Gear, 239 Ariz. 343, 345 ¶ 11 \(2016\)](#). See also [State v. Maestas, 394 P.3d 21,](#)  
6 [24 ¶ 11 \(Ariz. Ct. App. 2017\)](#). In construing a voter initiative, courts may consider the  
7 arguments presented in favor of the proposition with the materials provided by the  
8 Secretary of State to help determine the intent of the voters and those who framed the  
9 initiative. See [Gear, 239 Ariz. at 345 ¶ 11](#) (citing to the Arizona Secretary of State’s  
10 2010 publicity pamphlet as evidence of the purpose of the AMMA).  
11  
12

### 13 **B: ARIZONA AND CALIFORNIA MEDICAL MARIJUANA LAWS**

14 Both Arizona and California have adopted medical marijuana laws. However,  
15 each state treats medical marijuana differently.  
16

#### 17 **1: ARIZONA MEDICAL MARIJUANA ACT**

18 Arizona adopted the AMMA via voter initiative in 2010. See [Dobson v.](#)  
19 [McClennen, 238 Ariz. 389, 390 ¶ 1 \(2015\)](#). Despite the adoption of the AMMA, under  
20 Arizona law, possession of marijuana is still generally illegal. [State v. Liwski, 238 Ariz.](#)  
21 [184, 186 ¶ 6 \(Ct. App. 2015\)](#). See also [Ariz. Rev. Stat. § 36-2802\(E\) \(2010\)](#) (stating  
22 that the AMMA does not authorize using marijuana except as authorized by the  
23 AMMA). Under the AMMA, there is a rebuttable presumption that a qualifying patient  
24 is engaged in the medical use of marijuana if they are in possession of a registry  
25  
26

1 identification card and do not possess more than the allowable amount of marijuana. *Id.*  
2 [at § 36-2811\(A\)\(1\)](#). A “registered qualifying patient...is not subject to arrest,  
3 prosecution or penalty in any manner...for the registered qualifying patient’s medical  
4 use of marijuana” pursuant to the AMMA so long as he does not possess more than the  
5 allowable amount of marijuana. *Id.* [at § 36-2811\(B\)\(1\)](#).

7  
8 The AMMA defines a registry identification card as a “document issued by [the  
9 Department of Health Services<sup>3</sup>] that identifies a person as a registered qualifying  
10 patient, registered designated caregiver, or a registered nonprofit medical marijuana  
11 dispensary agent.” *Id.* [at § 36-2801\(14\)](#). The AMMA provides a specific list of  
12 conditions for which a patient may be issued a registry identification card. *Id.* [at § 36-](#)  
13 [2801\(3\)](#). Additional medical conditions can be included, but only if approved by DHS.  
14 *Id.* [at § 36-2801.01](#).

16  
17 The AMMA describes the procedure for DHS to issue a registry identification  
18 card. *Id.* [at § 36-2804.03\(A\)\(1\)](#). Prior to issuing a registry identification card, DHS is  
19 required to “verify the information contained in an application or renewal submitted  
20 pursuant [the AMMA] and approve or deny an application or renewal within ten days of  
21 receiving a completed application or renewal.” *Id.*

23  
24 The AMMA also provides the application process for obtaining a registry  
25 identification card from DHS. *Id.* [at § 36-2804.02](#). An application for a registry

26 \_\_\_\_\_  
<sup>3</sup> Hereinafter referred to as “DHS”

1 identification card must include: a written certification issued by a physician; the  
2 applicable fee; the name, address and telephone number of the physician; and a  
3 statement signed by the patient pledging not to divert marijuana to anyone not  
4 authorized to possess marijuana under the AMMA. *Id.* The registry identification card  
5 issued by DHS is required to include: the name, address and birth date of the  
6 cardholder; the date of issuance and expiration of the card; an identification number for  
7 the card; and a photograph of the cardholder. *Id. at § 36-2804.04.* Law enforcement is  
8 able to confirm the validity of an AMMA registry identification card online.<sup>4</sup>

## 11 2: CALIFORNIA MEDICAL MARIJUANA LAWS

12 California has enacted two statutory schemes for possessing medical marijuana:  
13 the Compassionate Use Act of 1996 (the CUA) and the Medical Marijuana Program in  
14 2003. *See [Browne v. County of Tehama, 213 Cal. App. 4th 704, 711-12 \(Cal. Ct. App.](#)*  
15 *2013)* (discussing the legislative history of the CUA and Medical Marijuana Program).  
16 Unlike Arizona, California does not require its residents to obtain a state issued card to  
17 possess medical marijuana.  
18

19 Under the CUA, the medical use of marijuana is authorized. *See [Cal. Health &](#)*  
20 *[Safety Code § 11362.5\(b\)\(1\)\(A\).](#)* A state issued identification card is not required under  
21 the CUA; rather it is voluntary. *See [id. at § 11362.7\(f\)](#)* (defining a qualified patient as  
22

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23  
24  
25 <sup>4</sup> *See [http://www.azdhs.gov/licensing/medical-marijuana/index.php#id-verify-law-](http://www.azdhs.gov/licensing/medical-marijuana/index.php#id-verify-law-enforcement)*  
26 *[enforcement](#)* (Arizona DHS website discussing law enforcement verification of registry  
identification cards).

1 “a person who is entitled to the protections of [the CUA], but who does not have an  
2 identification card issued pursuant to this article.”). *See also* [id. at § 11362.71\(a\)\(1\)](#)  
3 (stating that the program for the issuance of a state issued identification card is  
4 voluntary). Under the CUA, all that is required is a physician’s recommendation that  
5 the medical use of marijuana would benefit a patient’s health. *See id. at §*  
6 [11362.5\(b\)\(1\)\(A\)](#).  
7

8  
9 The CUA does not regulate what form a physician’s recommendation is required  
10 to take, or what information is required to be on a physician’s recommendation.<sup>5</sup> *See id.*  
11 [at § 11362.5](#). The CUA does not include any limits on how much marijuana a person  
12 can possess. *See id.* The CUA does provide a specific list of medical conditions for  
13 which medical marijuana can be issued, but the list includes a catchall provision for  
14 “any other illness for which marijuana provides relief.” *Id. at § 11362.5(b)(1)(A)*.  
15 Unlike the AMMA, under the CUA there is no state involvement in determining  
16 whether medical marijuana would be an appropriate treatment for these additional,  
17 unlisted medical conditions. *See id.*  
18  
19

20  
21 While not required, California still has a mechanism in place to obtain a state  
22 issued identification card. An identification card is defined under California law as “a  
23

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24 <sup>5</sup> Indeed, the CUA by its language does not require a recommendation be in writing.  
25 *See* Cal. Health & Safety Code § 11362.5(d) (providing that California criminal statutes  
26 who possess or cultivate marijuana for medical use “upon the written or **oral**  
recommendation or approval of a physician.”).

1 document issued by the State Department of Health Services that...identifies a person  
2 authorized to engage in the medical use of marijuana and the person's designated  
3 primary caregiver, if any." [Id. at § 11362.7\(g\)](#).

4  
5 The California medical marijuana program has its own list of medical conditions  
6 for which an identification card can be issued. [Id. at § 11362.7\(h\)](#) (defining "serious  
7 medical condition" for the medical marijuana program). While this list also has a  
8 catchall provision, it is not nearly as broad as what is contained in the CUA. [Id. at §](#)  
9 [11362.7\(h\)\(12\)](#) (stating that the condition must either substantially limit the ability of  
10 the patient to conduct a major life activity as defined in the Americans with Disabilities  
11 Act, or that it is a condition that may cause serious harm to the patient's safety or health  
12 if not treated).

13  
14  
15 Similar to the AMMA, and unlike the CUA, California's medical marijuana  
16 program imposes limits on how much medical marijuana a qualifying patient can  
17 possess. [Id. at § 11362.77](#). Additionally, similar to the AMMA, California's medical  
18 marijuana program set up a system to allow law enforcement to verify the validity of an  
19 identification card. [Id. at § 11362.71\(a\)\(2\)](#).

20  
21  
22 The application process for obtaining an identification card in California is nearly  
23 identical to the process for obtaining a registry identification card in Arizona. In order  
24 to obtain an identification card in California, the patient is required to pay a fee and  
25 provide the following information to a county health department or its designee: the  
26

1 name of the patient; proof of residency in the county; written documentation by the  
2 patient’s doctor stating the patient has been diagnosed with a serious medical condition;  
3 a certification from the doctor that medical marijuana is appropriate; the doctor’s  
4 contact information; and a government issued photo identification card. *See id. at §*  
5 [11362.715\(a\)](#).

7  
8 The county health department must verify the information contained in the  
9 application for an identification card, and approve or deny the application. *Id. at §*  
10 [11362.72\(a\)](#). A California identification card is required to have: a user identification  
11 number for the cardholder; expiration date for the card; the name and telephone number  
12 of the county health department or designee; and a photo identification of the  
13 cardholder. *Id. at § 11362.735*.

### 16 **3: RECIPROCITY UNDER THE AMMA**

17 Arizona Revised Statute § 36-2804.03(C) provides that “a registry identification  
18 card, **or its equivalent**, that is issued under the laws of another state...that allows a  
19 visiting qualifying patient to possess or use marijuana for medical purposes in the  
20 jurisdiction of issuance has the same force and effect when held by a visiting qualifying  
21 patient as a registry identification card” issued by DHS. [Ariz. Rev. Stat. § 36-](#)  
22 [2804.03\(C\)](#), *emphasis added*. A visiting qualifying patient is defined as a person “who  
23 is not a resident of Arizona or has been a resident of Arizona for less than thirty days”  
24 who “has been diagnosed with a debilitating medical condition by a person who is  
25  
26

1 licensed with authority to prescribe drugs to humans in the state of the person's  
2 residence...or former residence.” [Id. at 36-2801\(17\)](#).

3  
4 No Arizona appellate court has addressed what the equivalent of a registry  
5 identification card is for the purposes of A.R.S. § 36-2804.03(C). However, [State v.](#)  
6 [Abdi, 236 Ariz. 609 \(Ct. App. 2015\)](#)<sup>6</sup> stated that the AMMA “gives a qualifying patient  
7 issued a **registry identification card by another state** the same presumptions and  
8 immunities when she visits Arizona.” [State v. Abdi, 236 Ariz. 609, 611 ¶ 11 \(Ct. App.](#)  
9 [2015\)](#), *emphasis added*. While dicta, the language used by the *Abdi* court indicates that  
10 to be given the same protections as an Arizona resident, a visiting qualifying patient is  
11 required to possess a state issued card because a registry identification card is defined  
12 by the AMMA as a “document issued by [DHS] that identifies a person as a registered  
13 qualifying patient.....” [Ariz. Rev. Stat. § 36-2801\(14\)](#).

#### 17 4: VOTERS’ INTENT IN PASSING THE AMMA

18 In passing the AMMA, Arizona voters rejected allowing individuals to possess  
19 medical marijuana with just a physician’s recommendation. Rather, they elected to  
20 require patients to register with the state in order to possess medical marijuana. This is  
21 evidenced by the arguments presented in favor of the AMMA included with the Arizona  
22 Secretary of State’s publicity pamphlet.

23  
24  
25 <sup>6</sup> *State v. Abdi* addressed the issue of whether a designated caregiver from another state  
26 was afforded the protections provided to visiting qualifying patients under A.R.S. § 36-  
2804.03(C). See [Abdi, 236 Ariz. at 611-12 ¶ 12-13](#).



1 Andrew Myers, the campaign manager for the Arizona Medical Marijuana Policy  
2 Project, states in his argument in favor of the AMMA “Unlike California, where it’s  
3 possible to get a doctor’s recommendation to use marijuana for almost any condition,  
4 only patients with a limited number of serious and debilitating conditions...will be able  
5 to acquire medical marijuana in Arizona. Patients will also **have to register with the**  
6 **state....**”Appendix at 16, *emphasis added*. This is further evidenced by the statutory  
7 scheme of the AMMA, which was also included in the publicity pamphlet. *See*  
8 Appendix at 5-15 (containing the language of the AMMA).  
9  
10

11 Under the AMMA, a qualified patient is entitled to a presumption that he is  
12 engaged in the medical use of marijuana if he is “in possession of a registry  
13 identification card.” [Ariz. Rev. Stat. § 36-2811\(A\)\(1\)\(a\)](#). Further, a registered  
14 qualifying patient is not subject to arrest or prosecution for his medical use of marijuana  
15 pursuant to the AMMA. [Id. at § 36-2811\(B\)\(1\)](#). A registry identification card is  
16 defined by the AMMA as “a document issued by [DHS] that identifies a person as a  
17 registered qualifying patient....” [Id. at § 36-2801\(14\)](#). A qualifying patient is “a person  
18 who has been diagnosed by a physician as having a debilitating medical condition. [Id.](#)  
19 [at § 36-2801\(13\)](#). While there is no specific definition for a registered qualifying  
20 patient, A.R.S. § 36-2804.02 makes it clear that becoming a registered qualifying patient  
21 requires a qualifying patient to apply for and receive a registry identification card. *See*  
22 [id. at § 36-2804.02](#) (the statute is entitled “Registration of qualifying patients and  
23  
24  
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1 designated caregivers” and details the process to obtain a registry identification card).  
2 This is further reinforced by the definition of a registry identification card. *See id. at §*  
3 [36-2801\(14\)](#) (defining registry identification card as “a document issued by [DHS] that  
4 identifies a person as a **registered qualifying patient**....”).

6 This statutory scheme thus makes it clear that in order to be considered a  
7 registered qualifying patient, a qualifying patient is required to possess a registry  
8 identification card, i.e. a state issued card. The AMMA, therefore, has clearly adopted a  
9 policy that Arizona residents are only permitted to possess marijuana with a state issued  
10 medical marijuana card. This policy would have been clear to voters at the time.

13 All of the information available to the voters prior to voting for the AMMA  
14 makes it clear that the AMMA’s policy required registration with the state to possess  
15 medical marijuana. As such, the voter’s intent in passing the AMMA was to require  
16 registration with the state to possess medical marijuana.

### 18 **C: FULL FAITH AND CREDIT**

20 The Full Faith and Credit Clause of the United States Constitution provides that  
21 “Full Faith and Credit shall be given in each State to the Public Acts, Records and  
22 judicial Proceedings of every other State.” [U.S. Const. art. IV § 1](#). “A statute is a  
23 ‘public Act’ within the meaning of the Full Faith and Credit Clause.” [Franchise Tax](#)  
24 [Bd. of Cal. v. Hyatt, 136 S.Ct. 1277, 1281 \(2016\)](#). However, the Full Faith and Credit  
25 Clause “does not require a State to substitute for its own statute, applicable to persons  
26

1 and events within it, the statute of another State reflecting a conflicting and opposed  
2 policy.” *Id.*, *internal quotations omitted, citing Carroll v. Lanza*, 349 U.S. 408, 412  
3 (1955).  
4

5 **D: ARGUMENT**

6 The trial court erred in holding that Defendant’s physician’s recommendation  
7 issued under the CUA was the equivalent of an AMMA registry identification card. The  
8 trial court’s ruling ignores the structure and policy of the AMMA, and grants greater  
9 rights to non-residents than to Arizona residents under the AMMA. Accordingly, this  
10 Court should reverse the trial court’s ruling and remand this case for further  
11 proceedings.  
12  
13

14 **1: A PHYSICIAN’S RECOMMENDATION ISSUED UNDER THE**  
15 **COMPASSIONATE USE ACT IS NOT THE EQUIVALENT OF**  
16 **AN AMMA REGISTRY IDENTIFICATION CARD BECAUSE IT**  
17 **IS NOT ISSUED BY A STATE AGENCY**

18 A physician’s recommendation under the CUA is not the equivalent of an  
19 AMMA registry identification card. Rather, an identification card issued under  
20 California’s medical marijuana program is the equivalent of an AMMA registry  
21 identification card.  
22

23 As seen above (sections IV:B:1-2, *supra*), the process for obtaining an AMMA  
24 registry identification card and an identification card under California’s medical  
25 marijuana program are nearly identical. Both involve submitting a physician’s  
26

1 recommendation along with an application and fee to a state agency which then reviews  
2 the application. The applications require essentially identical information.  
3

4 Both applications require the patient to provide their information to a government  
5 agency (or the designee of a government agency in California). Both applications  
6 require a patient to provide the contact information for the doctor who issued the  
7 recommendation. Both require a patient to provide a government issued identification  
8 with the application.  
9

10  
11 If the application is approved, both result in the patient being issued a card  
12 containing essentially the same information. Both states issue cards containing the  
13 patient's name, an identification number for the cardholder, photo of the cardholder and  
14 expiration date.  
15

16 A physician's recommendation under the CUA, which can be oral, however does  
17 not involve any of the same oversight. A physician's recommendation under the CUA  
18 is not required to contain the same information that is required to be on an identification  
19 card issued under California's medical marijuana program or an AMMA registry  
20 identification card. There are no safeguards to prevent abuse under the CUA.<sup>7</sup> An  
21 identification card issued under California's medical marijuana program and a registry  
22 identification card issued under the AMMA both provide these safeguards by requiring  
23  
24

25  
26 <sup>7</sup> Unlike the AMMA and medical marijuana program, the CUA does not establish any  
limits on how much medical marijuana a patient may possess.

1 a neutral third-party to review applications. Beyond the similarity in the cards issued,  
2 the AMMA and California’s medical marijuana program also share other similarities  
3 which further highlight how the CUA is not the equivalent of the AMMA.  
4

5 Both the AMMA and medical marijuana program have nearly identical lists of  
6 medical conditions for which medical marijuana can be recommended. Both allow  
7 recommendations to treat cancer, glaucoma, AIDS, cachexia, chronic pain, severe  
8 nausea and anorexia. *See* [Ariz. Rev. Stat. § 36-2801\(3\)](#), [Cal. Health & Safety Code §](#)  
9 [11362.7\(h\)](#). While California’s medical marijuana program has a catchall provision that  
10 the AMMA does not, its catchall provision specifically delineates what is required for a  
11 condition not specifically listed to justify a medical marijuana recommendation. *See*  
12 [Cal. Health & Safety Code § 11362.7\(h\)\(12\)](#). The fact that an independent state agency  
13 is required to approve the application provides additional guarantees against abuse.  
14  
15  
16

17 The CUA, however, does not have such a limitation in its catchall provision. *See*  
18 [id. at § 11362.5\(b\)\(1\)\(A\)](#) (stating medical marijuana may be recommended for “any  
19 other illness for which marijuana provides relief.”). While the CUA lists many of the  
20 same specific conditions contained in the AMMA and medical marijuana program (*see*  
21 [id.](#)), its broad catchall provision would allow medical marijuana recommendations for  
22 almost any condition, including conditions not covered by the AMMA. Further, the  
23 lack of state oversight means there is nothing in place to prevent abuse of the CUA’s  
24  
25  
26

1 system, meaning individuals who would not be a qualifying patient under the AMMA  
2 could receive medical marijuana in California under the CUA.  
3

4 The trial court's ruling does not take into account that California has two systems  
5 in place to obtain and possess medical marijuana. One system, the medical marijuana  
6 program, is essentially identical to the AMMA. The other, the CUA, is not. The  
7 process for obtaining a state issued medical marijuana card in California is not unduly  
8 difficult. As stipulated by the parties, all Defendant would have to do to obtain a state  
9 issued card is fill out an application, present a valid government ID and pay a \$100.00  
10 fee. Appendix at 3 ¶ 19.<sup>8</sup> This is effectively what Defendant would be required to do to  
11 obtain an AMMA registry identification card. It is clear then that it is no great burden  
12 for California residents, including Defendant, to obtain a state issued medical marijuana  
13 card in California.  
14  
15

16  
17 Further, only treating a California identification card as the equivalent of an  
18 AMMA registry identification card is consistent with the policy of the AMMA. The  
19 AMMA has clearly adopted a policy in favor of requiring state registration to possess  
20 medical marijuana in Arizona. Under the AMMA, a qualifying patient is only permitted  
21 to possess medical marijuana if they are in possession of a state issued card. *See*  
22 Section IV:B:4, *supra*. Under the CUA, a patient does not even need to have a written  
23  
24

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25 <sup>8</sup> Defendant presented a copy of the application he would have to fill out, along with a  
26 copy of an AMMA application, for the trial court to review at oral arguments. IR 32,  
33.

1 recommendation. See [Cal. Health & Safety Code § 11362.5\(d\)](#) (stating that California’s  
2 criminal statutes related to possession or cultivation of marijuana do not apply to  
3 patients or caregivers for personal medical purposes who do so “upon the written or  
4 **oral** recommendation or approval of a physician.”).

6 Treating an identification card issued under California’s medical marijuana  
7 program as the equivalent of an AMMA registry identification card furthers the purpose  
8 of the AMMA. Arizona is not required to recognize a physician’s recommendation  
9 under the Full Faith and Credit Clause because doing so would undermine Arizona’s  
10 policy requiring state registration to possess medical marijuana.  
11

13 Additionally, treating an identification card from California as the equivalent of  
14 an AMMA registry identification card provides for consistency in the AMMA’s  
15 statutory provisions. Treating a physician’s recommendation under the CUA as the  
16 equivalent of an AMMA registry identification card brings A.R.S. § 36-2804.03(C) into  
17 conflict with the rest of the AMMA because it would allow some patients to possess  
18 medical marijuana with just a physician’s recommendation while not allowing others.  
19 Holding that a physician’s recommendation under the CUA is not the equivalent of an  
20 AMMA registry identification card thus ensures the entirety of the AMMA is  
21 consistently applied.  
22

24 Finally, this interpretation is supported by language used in *State v. Abdi*. *Abdi*  
25 dealt with whether A.R.S. § 36-2804.03(C) afforded a defense to possession of  
26

1 marijuana for an out of state caregiver. [Abdi, 236 Ariz. at 612 ¶13](#). The *Abdi* court  
2 concluded that it did not because the express language of A.R.S. § 36-2804.03(C) did  
3 not refer to out of state caregivers. [Id. at 611-12 ¶ 12-13](#). Prior to reaching that holding,  
4 however, the *Abdi* court stated that the AMMA, through A.R.S. § 36-2804.03(C), “gives  
5 a qualifying patient issued a **registry identification card by another state** the same  
6 presumptions and immunities when she visits Arizona.” [Id. at 611 ¶11](#), *emphasis*  
7 *added*.  
8

9  
10 The *Abdi* court referred to the definitions contained in the AMMA in reaching its  
11 decision (*see id. at 611 ¶11*, citing to the definition of visiting qualifying patient), so the  
12 Court was presumably familiar with the definition of registry identification card. The  
13 fact that the *Abdi* court stated that a qualifying patient issued a registry identification  
14 card by another state is entitled to the protections of the AMMA indicates that the *Abdi*  
15 court operated under the assumption that A.R.S. § 36-2804.03(C) only applied if a  
16 visiting qualifying patient possessed a state issued medical marijuana card.  
17  
18

19 That statement implicitly rejects the basis for the trial court’s ruling here, and  
20 makes it clear that to be the equivalent of an AMMA registry identification card, the  
21 documentation relied upon by a visiting qualifying patient must be issued by a state  
22 agency. Defendant did not possess a state issued card. Accordingly, the trial court  
23 erred in granting Defendant’s motion.  
24  
25  
26



1                   **2: HOLDING THAT A PHYSICIAN’S RECOMMENDATION**  
2                   **UNDER THE COMPASSIONATE USE ACT IS THE**  
3                   **EQUIVALENT OF AN AMMA REGISTRY IDENTIFICATION**  
4                   **CARD AFFORDS NON-RESIDENTS GREATER RIGHTS**  
5                   **THAN ARIZONA RESIDENTS**

6                   The trial court’s ruling does not advance the policy adopted by the AMMA  
7 requiring registration with the state. Under the AMMA, a qualifying patient is only  
8 permitted to possess marijuana if they are in possession of a state issued card. *See*  
9 Section IV:B:4, *supra*.

10                  The statutory scheme makes it clear that in order to be considered a registered  
11 qualifying patient, a qualifying patient is required to possess a registry identification  
12 card, i.e. a state issued card. The AMMA has adopted the policy that Arizona residents  
13 are only permitted to possess marijuana with a state issued card. This is evidenced by  
14 the arguments put forward in support of the AMMA. *See* Appendix at 16 (the  
15 arguments in favor of the AMMA put forward by Andrew Myers). Under the AMMA,  
16 Arizona residents are not permitted to possess marijuana with only a physician’s  
17 recommendation.  
18  
19

20                  The trial court’s ruling thus works an absurd result. The trial court’s ruling grants  
21 non-Arizona residents greater protections than Arizona residents. Had Defendant been  
22 an Arizona resident, he would not have been permitted to possess the marijuana  
23 products he did with just a physician’s recommendation. Had Defendant been an  
24  
25  
26

1 Arizona resident, he would not have been entitled to the defenses provided in A.R.S. §  
2 36-2811 with just a physician's recommendation.  
3

4 In granting Defendant's motion, the trial court held that California residents are  
5 permitted to possess medical marijuana, and are entitled to the protections provided by  
6 A.R.S. § 36-2811, with just a physician's recommendation. This result is contrary to the  
7 AMMA's clear policy preference in favor of only allowing individuals to possess  
8 medical marijuana after registering with the State. Further, this holding does not give  
9 effect to the voters' intent. The arguments in favor of the AMMA made it clear that  
10 registration with the state would be required to possess medical marijuana under the  
11 statute. Appendix at 16. Indeed, these arguments dismissed the system embodied by  
12 the CUA, which allows California residents to possess medical marijuana with just a  
13 physician's recommendation. *Id.*  
14  
15  
16

17 Further, it is illogical to hold that Arizona residents, in enacting the AMMA  
18 (including A.R.S. § 36-2804.03(C)), would have voted to afford residents of California  
19 greater protections than what they were voting to grant themselves. However, the trial  
20 court's ruling held that California residents are entitled to greater protections than  
21 Arizona residents.  
22

23  
24 The result worked by the trial court's ruling thus undermines the AMMA's  
25 purpose and effectively grants California residents greater protections than Arizona  
26 residents. The intent of the voters in enacting the AMMA was not to grant greater

1 protections to California residents than to Arizona residents. The intent of the voters  
2 was to require patients to register with the state in order to possess medical marijuana.  
3 Accordingly, the trial court erred in granting Defendant's motion.  
4

### 5 **3: A.R.S. § 36-2804.03(C) REFERS TO A STATE ISSUED CARD<sup>9</sup>**

6 Defendant argued at oral arguments that the language in A.R.S. § 36-2804.03(C)  
7 referring to a registry identification card, or its equivalent, refers to a state issued card or  
8 the equivalent of a state issued card under the laws of another state. Transcript of  
9 Hearing at 20:25 to 21:19. Defendant proffered an interpretation at oral argument that  
10 the language in A.R.S. § 36-2804.03(C) was written specifically to apply to states like  
11 California, wherein a state issued card is not required. *Id.* at 21:22 to 22:14.  
12  
13

14 Defendant's argument fails for three reasons. First, Defendant is contending that  
15 the language in A.R.S. § 36-2804.03(C) was written specifically to apply to a minority  
16 of states with medical marijuana laws.<sup>10</sup> In the majority of states that have legalized  
17 medical marijuana, a state issued card is required to possess medical marijuana.  
18  
19

20 Defendant's proffered interpretation is not reasonable. It is not reasonable to  
21 interpret the language of the statute to carve out an exception to the AMMA's  
22

---

23 <sup>9</sup> Defendant raised this argument for the first time at oral arguments. As such, the State  
24 was unable to brief this issue in the trial court.

25 <sup>10</sup> See *29 Legal Medical Marijuana States and DC*, n.3,  
26 <http://medicalmarijuana.procon.org/view.resource.php?resourceID=000881> (last  
updated June 26, 2017) (indicating that patient ID cards are voluntary in only three of  
29 states that have legalized medical marijuana).

1 requirement to register with the state for the benefit of only three states. Defendant's  
2 proffered interpretation only benefits him.

3  
4 Secondly, Defendant's proffered interpretation is contrary to the overall statutory  
5 scheme of the AMMA. As argued above, under the AMMA a person can only possess  
6 medical marijuana if they are in possession of a state issued card. Defendant's  
7 interpretation ignores the overall statutory scheme of the AMMA. In interpreting  
8 statutes, courts are to avoid interpretations that result in contradictory provisions.

9  
10 [Premier Physicians Group, PLLC v. Navarro, 240 Ariz. 193, 195 ¶ 9 \(2016\).](#)

11 Defendant's proposed interpretation would result in such a contradictory result. Under  
12 Defendant's interpretation, in order to receive the protections afforded by the AMMA,  
13 you must possess a state issued card unless you are from a state where a state issued  
14 card is optional. Defendant's interpretation undermines the overall scheme of the  
15 AMMA and is inconsistent with its policy.

16  
17  
18 Finally, Defendant's interpretation ignores the language of A.R.S. § 36-  
19 2804.03(C) and the definitions in the AMMA. Section 36-2804.03(C) provides a  
20 "registry identification card, or its equivalent, **that is issued under the laws of**  
21 **another state...**that allows a visiting qualifying patient to possess or use marijuana for  
22 medical purposes **in the jurisdiction of issuance** has the same force and effect when  
23 held by a visiting qualifying patient" as an AMMA registry identification card issued by  
24 DHS. [Ariz. Rev. Stat. § 36-2804.03\(C\)](#), *emphasis added*.

1 The statute first refers to a registry identification card, which is a card issued by  
2 DHS ([Id. at § 36-2801\(14\)](#)), that is issued under the laws of another state. The “or its  
3 equivalent” language should thus be read as referring to the equivalent of a registry  
4 identification card (i.e. a state issued card, in case another state refers to their state  
5 issued card by another name<sup>11</sup>) or a card issued by the equivalent of DHS (in the event  
6 another state has a different agency issue medical marijuana cards or refers to its analog  
7 of DHS by another name). The statute goes on to say that if they have such a card that  
8 allows them to possess medical marijuana in the jurisdiction that issued the card, the  
9 patient can possess medical marijuana in Arizona, subject to the allowable amount limit.  
10  
11

12  
13 The State’s interpretation thus treats the “or its equivalent” language in A.R.S. §  
14 36-2804.03(C) as a catchall provision for other state issued cards, in case another state  
15 refers to their state issued card by another name or has it issued by a state agency with a  
16 name other than “Department of Health Services.” This interpretation works in  
17 harmony with the rest of the AMMA, which only permits possession of medical  
18 marijuana if a patient is in possession of a state issued card.  
19  
20  
21  
22  
23  
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26 <sup>11</sup> California refers to their state issued cards as identification cards. [Cal. Health & Safety Code § 11362.7\(g\)](#).

1 **V: THE SEARCH OF DEFENDANT’S VEHICLE WAS VALID**

2 Related to the issue of whether Defendant’s physician’s recommendation is the  
3 equivalent of an AMMA registry identification card is the issue of whether law  
4 enforcement had probable cause to search Defendant’s vehicle.  
5

6 **A: AUTOMOBILE EXCEPTION**

7  
8 The Fourth Amendment prohibits unreasonable searches and seizures, and  
9 warrantless searches are generally unreasonable. [State v. Cheatham, 375 P.3d 66, 67 ¶ 7](#)  
10 [\(Ariz. 2016\)](#). However, an exception to the warrant requirement “allows the warrantless  
11 search of an automobile, including containers within, provided an officer has probable  
12 cause to believe contraband or evidence will be found.” *Id.* “Probable cause exists  
13 when the facts known to a police officer would warrant a person of reasonable caution  
14 in the belief that contraband or evidence of a crime is present.” [State v. Sisco, 373 P.3d](#)  
15 [549, 552 ¶ 8 \(Ariz. 2016\)](#), *internal quotations omitted, citing Florida v. Harris, — U.S.*  
16 *—, (2013)*.  
17  
18

19 Prior to the passage of the AMMA, the odor of marijuana alone was sufficient to  
20 give officers probable cause. [Id. at ¶ 10](#). After the passage of the AMMA, the smell or  
21 sight marijuana alone will still support a finding of probable cause “unless, under the  
22 totality of the circumstances, other facts would suggest to a reasonable person that the  
23 marijuana use or possession complies with AMMA.” [Id. at 555 ¶ 22](#). *See also*  
24 [Cheatham, 375 P.3d at 68 ¶ 12](#). Following the enactment of the AMMA, police officers  
25  
26

1 are required to “consider any indicia of AMMA-compliant possession or use” of  
2 marijuana, and facts indicating AMMA-compliant use of marijuana “might dispel  
3 probable cause that otherwise exists based on odor alone.” [Cheatham, 375 P.3d at 68 ¶](#)  
4 [12.](#)

## 6 **B: GOOD FAITH EXCEPTION**

7  
8 Evidence obtained in violation of the Fourth Amendment can be suppressed under  
9 the exclusionary rule. [State v. Valenzuela, 239 Ariz. 299, 308-09 ¶ 31 \(2016\).](#) The  
10 exclusionary rule “is a prudential doctrine used to discourage future violations” of the  
11 Fourth Amendment. [State v. Peoples, 378 P.3d 421, 427 ¶ 26 \(Ariz. 2016\).](#) However,  
12 “when law enforcement officers ‘act with an objectively reasonable good-faith belief  
13 that their conduct is lawful,’ deterrence is unnecessary and the exclusionary rule does  
14 not apply.” [Valenzuela, 239 Ariz. at 309 ¶ 31, citing Davis v. United States, 131 S.Ct.](#)  
15 [2419, 2427-28 \(2011\).](#)

## 18 **C: ARGUMENT**

19 In determining whether Defendant’s physician’s recommendation is the  
20 equivalent of an AMMA registry identification card, this Court would necessarily  
21 determine whether there were any indicia of AMMA compliance which would defeat  
22 the officers’ probable cause in this case.

23  
24  
25 Under *Sisco* and *Cheatham*, the odor or presence of marijuana still provides law  
26 enforcement probable cause, unless there are facts indicating compliance with the

1 AMMA. Defendant did not have an AMMA registry identification card or a California  
2 identification card. He only had a physician's recommendation issued under the CUA.  
3  
4 If this Court concludes that a physician's recommendation under the CUA is not the  
5 equivalent of an AMMA registry identification card, then there were no indicia of  
6 AMMA compliance present in this case, and the officers would have probable cause to  
7 search Defendant's vehicle. Conversely, if this Court concludes a physician's  
8 recommendation under the CUA is the equivalent of an AMMA registry identification  
9 card, the officers would not have had probable cause to search because there were no  
10 other indicia of non-compliance with the AMMA.  
11

12  
13 The officers smelled an odor of marijuana coming from Defendant's vehicle  
14 during the traffic stop, and noticed in plain view a white pipe with black residue.  
15 Defendant admitted to possessing marijuana. Defendant admitted to possessing  
16 marijuana. Based upon the odor of marijuana and the pipe and Defendant's admission,  
17 the officers had probable cause to search Defendant's vehicle. And because  
18 Defendant's physician's recommendation is not the equivalent of an AMMA registry  
19 identification card, the search of Defendant's vehicle was valid.  
20

21  
22 Alternatively, the good faith exception applies to the officers' search of  
23 Defendant's vehicle. At the time of the search, there was no legal authority addressing  
24 whether a physician's recommendation from California would be recognized under the  
25 AMMA. Given that California has state issued cards (and that Defendant did not have a  
26



1 state issued card), and the holding in *Sisco* and *Cheatham* that the odor of marijuana can  
2 still provide law enforcement with probable cause to search, the officer's decision to  
3 search here was objectively reasonable. The officers' search was conducted in a good  
4 faith reliance on then existing case law.  
5

6 Further, suppressing the evidence here would not further the purposes of the  
7 exclusionary rule. The purpose of the exclusionary rule is to deter future violations of  
8 suspects' Fourth Amendment rights. Suppressing the evidence in this case would not  
9 deter future violations as there was no legal authority directly on point to guide law  
10 enforcement here. Accordingly, the good faith exception to the exclusionary rule is  
11 applicable here.  
12  
13

14 ///

15 ///

1 **VI: CONCLUSION**

2 The trial court erred in granting Defendant’s Motion to Dismiss. Defendant’s  
3 physician’s recommendation issued under the CUA is not the equivalent of an AMMA  
4 registry identification card for the purposes of A.R.S. § 36-2804.03(C), and as such  
5 Defendant is not entitled to the protections afforded visiting qualifying patients under  
6 A.R.S. § 36-2804.03(C). The trial court’s ruling dismissing the prosecution should be  
7 reversed and this case should be remanded back to the trial court for further  
8 proceedings.  
9  
10

11 RESPECTFULLY SUBMITTED

12  
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