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COPY

OCT 28 2013

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DEPUTY CLERK

ARIZONA SUPERIOR COURT

MARICOPA COUNTY

ZANDER WELTON, as represented by JACOB WELTON and JENNIFER WELTON, Plaintiffs v. STATE OF ARIZONA, a governmental entity; JANICE BREWER, Governor of the State of Arizona in her official capacity, ARIZONA DEPARTMENT OF HEALTH SERVICES, an Arizona administrative agency; WILLIAM HUMBLE, Director of Arizona Department of Health Services in his official capacity; and WILLIAM MONTGOMERY, Maricopa County Attorney in his official capacity, Defendants.	CASE NO.: CV2013-014852 **COMPLAINT** **REQUEST FOR DECLARATORY JUDGMENT, AND PERMANENT AND PRELIMINARY INJUNCTION**

INTRODUCTION

1. This case is brought on behalf of five-year-old Zander Welton by his parents. Since he was nine months old, Zander has suffered from intractable seizures, and he has developed a number of intellectual, emotional, and physical impairments. He has been hospitalized numerous times and has undergone two brain surgeries.

2. In the last two months, Zander, who is unable to speak, has made striking developmental progress. Zander's seizures have all but stopped, and for the first time he can walk backwards, is nearly able to run, and can stack more than two blocks at a time. Zander is showing unprecedented improvement, and beginning to relate to people in a way he has not before. He is seeking love and comfort from his parents, Jacob and Jennifer, actively trying to play with his brothers, and recognizing his parents' laughter and responding with his own.

3. Zander's progress is attributable to medication that the Arizona Medical Marijuana Act (AMMA) permits him to take. The AMMA, which voters of Arizona approved in 2010, allows seriously ill patients to use medical marijuana based on a doctor's recommendation and after the Arizona Department of Health Services approves a patient's application.

4. To maximize the benefits and minimize the side effects of this medicine, Zander needs to use extracts from marijuana rather than just raw plant material, which he also uses. The extraction process allows producers to isolate the most medicinally valuable constituents of the plant and provide them to patients in a form that can be taken in precise doses and has no psychoactive effect.

5. After only a short time, this medicine has already improved Zander's quality of life. But Zander's prospects for experiencing basic emotional interactions with his parents and brothers, improving his physical abilities, and living as full a life as possible are now at risk. Law enforcement agencies, led by Maricopa County Attorney William Montgomery, have indicated that they believe the AMMA does not allow patients to use marijuana-derived products, including extracts, and that patients who do

so will be criminally prosecuted. Because of these new threats, Zander is not currently taking the marijuana extract that contributed to his dramatic progress, and thus his progress is now in jeopardy.

6. Beyond the threats regarding the use of marijuana extracts, Governor Brewer and Maricopa County Attorney Montgomery oppose the AMMA in its entirety and have actively sought to void or limit this law despite the will of the voters. Federal and state courts have found these efforts misguided and baseless.

7. Jacob and Jennifer Welton want to treat their seriously ill son with the most effective medicine they can without fear that they will be criminally prosecuted based on an incorrect interpretation and or application of Arizona law.

8. By and through undersigned counsel, Plaintiffs bring this civil action for declaratory and injunctive relief grounded in the AMMA's clear meaning and intent. Plaintiffs have already suffered significant harm attributable to the threats of prosecution from Maricopa County Attorney Montgomery and others.

9. Plaintiffs respectfully request that this court declare that the AMMA's decriminalization of marijuana for medicinal purposes includes products, such as extracts, derived from said marijuana. In addition, Jacob and Jennifer respectfully request that this court preliminarily and permanently enjoin Defendants, their employees and successors, from taking any adverse action against them for treating their son with medicinal extracts derived from marijuana.

JURISDICTION AND VENUE

10. Jurisdiction is proper under the Uniform Declaratory Judgments Act, A.R.S. § 12-1831 *et seq.*, because this is a civil action seeking a declaration of the meaning of an Arizona statute in order to afford Plaintiffs relief from uncertainty and insecurity about the legality of the medical treatment they were and want to resume providing to their son Zander.

11. Venue is proper in the Superior Court of Arizona for Maricopa County because this is the judicial district where Plaintiffs reside, where Defendants are believed

to reside, and where a substantial portion of the events and omissions giving rise to this action occurred.

PARTIES

12. Plaintiffs Jacob and Jennifer Welton are residents of unincorporated Maricopa County. They reside there with their three sons, five-year old Plaintiff Zander, seven-year old Marcus, and two-year old Graham.

13. Defendant State of Arizona is a sovereign state of the United States.

14. Defendant Janice Brewer is the Governor of the state of Arizona and is believed to be a resident of Maricopa County. In her capacity as Governor, Defendant Brewer is vested with the supreme executive power of the state and is responsible for the faithful execution of its laws. She is sued in her official capacity.

15. Defendant Arizona Department of Health Services (ADHS) is an Arizona administrative agency with its principal place of business in Maricopa County responsible for implementing and administering the AMMA.

16. Defendant William Humble is the Director of ADHS and is believed to be a resident of Maricopa County. In his capacity as Director of ADHS, Defendant Humble is responsible for implementing and administering the AMMA. He is sued in his official capacity.

17. Defendant William Montgomery is the County Attorney for Maricopa County and is believed to be a resident of Maricopa County. In his capacity as County Attorney, Defendant Montgomery is the public prosecutor of the county and is responsible for instituting proceedings for the arrest of persons charged with or reasonably suspected of public offenses when he has information that the offenses have been committed. He is sued in his official capacity.

FACTUAL BACKGROUND

The Arizona Medical Marijuana Act

18. On November 2, 2010, a majority of Arizona voters passed the Arizona Medical Marijuana Act ("AMMA") for "the purpose of . . . protect[ing] patients with

debilitating medical conditions, as well as their physicians and providers, from arrest and prosecution, criminal and other penalties and property forfeiture if such patients engage in the medical use of marijuana." Prop. 203 § 2(G).

19. The Descriptive Title voters read before casting their vote on the AMMA stated that the law "allows the use of marijuana for people with debilitating medical conditions who obtain a written certification from a physician and [it] establishes a regulatory system governed by the Arizona Department of Health Services for establishing and licensing medical marijuana dispensaries." [1]

20. The November 2, 2010 ballot further stated that "[a] 'yes' vote shall have the effect of authorizing the use of marijuana for people with debilitating medical conditions who obtain a written certifications from a physician and [of] establishing a regulatory system governed by the Arizona Department of Health Services for establishing and licensing medical marijuana dispensaries. A 'no' vote shall have the effect of retaining current law regarding the use of marijuana." [2]

21. The AMMA decriminalizes, under state law, certain activities associated with the medical use of marijuana for patients and caregivers to whom ADHS has issued identification cards. The AMMA also decriminalizes activities associated with cultivating, packaging, and selling medical marijuana for individuals to whom ADHS has issued appropriate licenses.

22. The voters of Arizona intended to decriminalize medical marijuana use for patients who suffer from ailments including: cancer, glaucoma, positive status for human immunodeficiency virus, acquired immune deficiency syndrome, hepatitis C, amyotrophic lateral sclerosis, Crohn's disease, agitation of Alzheimer's disease, and chronic or debilitating medical conditions or treatments that produce cachexia or wasting syndrome, severe and chronic pain, severe nausea, seizures, including those

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[1] Available at http://www.azsos.gov/election/2010/info/pubpamphlet/english/Prop203.htm (last visited October 14, 2013).

[2] *Id.*

characteristic of epilepsy, or severe and persistent muscle spasms, including those characteristic of multiple sclerosis. A.R.S. §36-2801(3).

23. The AMMA provides that ADHS can issue a medical marijuana patient identification card to patients under 18 years old if: "1. The qualifying patient's physician has explained the potential risks and benefits of the medical use of marijuana to the custodial parent or legal guardian responsible for health care decisions for the qualifying patient. 2. A custodial parent or legal guardian responsible for health care decisions for the qualifying patient submits a written certification from two physicians. 3. The custodial parent or legal guardian with responsibility for health care decisions for the qualifying patient consents in writing to: (a) Allow the qualifying patient's medical use of marijuana. (b) Serve as the qualifying patient's designated caregiver. (c) Control the acquisition of the marijuana, the dosage and the frequency of the medical use of marijuana by the qualifying patient." A.R.S. § 36-2804.03(B).

24. Under the AMMA, "'Medical use' means the acquisition, possession, cultivation, manufacture, use, administration, delivery, transfer or transportation of marijuana or paraphernalia relating to the administration of marijuana 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).

25. Under the AMMA, "'Marijuana' means all parts of any plant of the genus cannabis whether growing or not, and the seeds of such plant." A.R.S. § 36-2801 (8).

26. Under the AMMA, "'Usable marijuana' means the dried flowers of the marijuana plant, *and any mixture or preparation thereof,* but does not include the seeds, stalks and roots of the plant and does not include the weight of any non-marijuana ingredients combined with marijuana and *prepared for consumption as food or drink.*" A.R.S. § 36-2801(15) (emphasis added).

27. Under the AMMA, "the 'allowable amount of marijuana' means: (i) Two-and-one-half ounces of usable marijuana," and "Marijuana that is incidental to medical use, but is not usable marijuana as defined in this chapter, shall not be counted toward a

qualifying patient's or designated caregiver's allowable amount of marijuana." A.R.S. § 36-2801(1)(a), (b), (c).

28. According to its plain language, the AMMA allows patients to use "any mixture or preparation" made from the dried flowers of the marijuana plant. The AMMA also plainly provides that patients can take these marijuana mixtures or preparations by "consum[ing] [them] as food or drink."

29. Marijuana "preparation[s]" that are consumed "as food or drink" typically involve marijuana extracts. An extraction generally refers to a method by which certain constituents—usually cannabinoids from marijuana—are removed from the plant.

30. There are many ways that different parts of the plant can be removed. Historically, people have used inexpensive ways to isolate parts of the plant for different preparations, including edible preparations.

31. As medical marijuana producers have become more sophisticated, the extraction methodology they use to create edible preparations has also become more sophisticated. Many edible preparation producers now utilize extraction technology developed for large-scale food preparation.

32. Extractions are important for patients because they enable medical marijuana producers to create products that are tailored to different types of patients' specific needs. By using extraction methods, a manufacturer can isolate the particular parts of the plant that the manufacturer wants to use, test it for proper and precise dosing, and provide different types of patients with medicine specifically designed for their condition. Extractions also increase the delivery options for patients so that they neither have to inhale marijuana nor eat bulky and fibrous dried plant material to get the medicine they need.

33. By contrast, simply testing raw plant material as opposed to extracting parts of the plant does not provide patients with as accurate a picture of the actual cannabinoid constituents in their medicine, and does not provide patients with medicine

specifically tailored to their needs. Flowers from the same plant test differently. Multiple tests can provide an average, but each dose of plant material will vary.

34. Patients who are limited to edible or drinkable marijuana preparations made from un-manipulated plant material have fewer, less precise, and less palatable options available to them than patients who have access to edible or drinkable marijuana preparations made using extracts from plant material.

Zander Welton

35. Zander Welton is five years old. His parents, Jacob and Jennifer, thought that Zander would develop normally until he experienced his first seizure at nine months old.

36. Since then, Zander has suffered from numerous periods of extremely active seizures. During these periods, Zander has multiple seizures every night. Every year between 2009 and 2012, Zander was hospitalized because of his seizures. In 2013, Zander suffered from extreme seizures for several weeks. His parents treated Zander at home during this time rather than hospitalizing him again.

37. Zander has been diagnosed with focal cortical dysplasia type 2A, which is a congenital condition that prevents cells from migrating to the proper area in utero. Because Zander's brain did not develop the correct pathways, he has epilepsy, global developmental delays, and autism. He also has multiple intracranial cavernomas, which are enlarged blood vessels in the brain. In addition, Zander's immune system is compromised, resulting in frequent infections and sickness.

38. Since his first seizure at nine months old, Zander has received consistent medical care. Zander has been treated by doctors from a number of different specialties including: neurology, neurosurgery, genetics, developmental psychology, occupational therapy, physical therapy, and speech therapy.

39. Under the supervision of his doctors, Zander has taken many different pharmaceutical medications to address his seizures and developmental limitations. The

majority of these medications had little or no positive effect for Zander, while other medications have brought only minimal relief.

40. Zander has suffered debilitating side effects from some of these pharmaceutical medications. One of the medications caused him to experience organ failure. Another medication suppressed his appetite so severely that he refused to eat.

41. Even the pharmaceutical medication that has had some positive impact on Zander's seizures has harmful side effects, including destabilizing his mood and causing irrational behavior.

42. Because of the limited relief pharmaceutical medications have provided to Zander, his doctors recommended brain surgery in late 2011. Zander had his first brain surgery on January 19, 2012. During this surgery, doctors removed Zander's hippocampus and a small portion of his left temporal lobe.

43. Soon after this surgery, Zander's seizures began again and it became clear that the surgery was unsuccessful.

44. Zander's second brain surgery occurred in two stages. In the first stage on May 15, 2012, surgeons drilled holes in Zander's skull and placed intracranial grids, or sensors, on the left hemisphere of his brain. The grids were buried in numerous different places in Zander's brain and, over the next week, these grids provided a map of where his seizures were coming from.

45. In the second stage of this brain surgery on May 22, 2012, surgeons removed the grids and Zander's remaining left temporal lobe, a portion of his left parietal lobe, and a portion of his left frontal lobe.

46. Zander's recovery from his second brain surgery was extremely difficult. His abilities to eat, drink, sit up, stand, and walk were all compromised.

47. After several months, Zander's seizures returned.

48. With his seizures still uncontrolled, Zander had surgery to implant a vagus nerve stimulator ("VNS") device in his chest on February 7, 2013. Signals emitted from

this device to the brain can help prevent the electrical bursts that cause seizures. The VNS did not reduce the incidence of Zander's seizures.

49. In July 2013, Zander's neurologist told Jacob and Jennifer that the only remaining option was a third brain surgery. During this surgery, doctors would remove the entire remaining left hemisphere of Zander's brain. This surgery could potentially leave Zander partially or fully paralyzed, comatose, or in a vegetative state.

50. In early August 2013, Jacob and Jennifer learned about Charlotte Figi, another child suffering from intractable epilepsy, from Sanjay Gupta's CNN documentary, "Weed." [3] According to the documentary, Charlotte has Dravet Syndrome, a rare and severe form of intractable epilepsy that caused her to have 300 grand mal seizures per week. Charlotte's parents tried all the traditional forms of treatment her doctors recommended but nothing worked. After doctors told Charlotte's parents that there was nothing more to be done, they decided to try medical marijuana. Charlotte's parents had heard about a boy in California who suffered from Dravet and was being successfully treated with medical marijuana. Charlotte experienced stunning improvement after her parents obtained a medical marijuana card in Colorado for Charlotte and started treating her with a strain of marijuana that is low in the cannabinoid tetrahydrocannabinol (THC) and high in the cannabinoid cannabidiol (CBD). Approximately one year later, Charlotte only has seizures two to three times per month and almost only in her sleep.

51. After learning about Charlotte's story and faced with the possibility of a third brain surgery that could leave Zander partially or fully paralyzed, comatose, or in a vegetative state, and having already endured years of agonizing and largely unsuccessful treatment, Jacob and Jennifer decided to try giving Zander medical marijuana.

52. Jacob and Jennifer discussed the possibility of giving Zander medical marijuana with their neurologist. The neurologist told them that there was nothing else

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[3] Full documentary available at http://www.youtube.com/watch?v=tShnVEmdS2o (last visited October 20, 2013).

left for Zander to try if they did not want him to undergo the proposed third brain surgery.

53. Jacob and Jennifer also consulted with a family friend who is a Bishop in the Mormon Church to which they belong. The Bishop told them that the church would approve of their giving Zander marijuana for medical purposes. The Bishop cited The Book of Mormon, Doctrine and Covenants Section 89: 10 – 11: "And again, verily I say unto you, all wholesome herbs God hath ordained for the constitution, nature, and use of man— Every herb in the season thereof, and every fruit in the season thereof; all these to be used with prudence and thanksgiving."

54. Zander's parents applied for Zander's medical marijuana card in mid-August. In late August, the Arizona Department of Health Services approved the application and provided Zander with a patient identification card and Jacob with a caregiver identification card.

55. After consulting with medical marijuana experts, Jacob and Jennifer determined that marijuana very high in cannabidiol (CBD) and very low in tetrahydrocannabinol (THC) would be ideal for Zander's treatment. CBD is one of approximately 85 cannabinoids in the marijuana plant and it has been shown to reduce seizure activity. THC is another cannabinoid in the marijuana plant. Adding some THC to CBD can enhance the anti-seizure effects of the CBD. THC is the principal psychoactive cannabinoid in marijuana. The ideal ratio of CBD to THC for Zander's condition is between 20:1 and 25:1.

56. When Jacob and Jennifer were ready to start treating Zander with medical marijuana, they were unable to find a sustainable supply of marijuana with the proper characteristics. As an alternative, Jacob and Jennifer were advised to start treating Zander with a hemp extract, which is typically called CBD oil. The CBD oil has no measurable THC, but is high in CBD. CBD oil contains high levels of cannabidiol but does not contain many of the other cannabinoids found in the marijuana plant.

57. Experts advised Jacob and Jennifer that medical marijuana patients tend to experience better results from extractions that come from the marijuana plant and contain some of all of the naturally occurring cannabinoids than from CBD oil, which comes from hemp and contains a far less robust cannabinoid profile. Accordingly, Jacob and Jennifer combined CBD oil with available marijuana plant material that was relatively high in CBD and relatively low in THC. They used the CBD oil in addition to the plant material to achieve a 20:1 CBD to THC ratio.

58. Jacob and Jennifer have seen significant positive changes in Zander since he began taking marijuana and CBD oil. He is showing signs of wanting emotional stimulation and notices that people are people, not inanimate objects. Zander is seeking physical attention from his parents when he wants comfort or love. He actively tries to play with his brothers and he recognizes his parents' laughter and responds with his own laughter.

59. Zander's physical development has also improved. Before Jacob and Jennifer started treating Zander with marijuana and CBD oil, his development of physical skills had been stunted. In the short amount of time that he has been taking marijuana and CBD oil, Zander's physical skills have improved considerably. His gait has narrowed and he stands up straighter. For the first time, Zander can walk backwards, avoid objects when walking without needing support, is nearly able to run, and has been able to stack more than two blocks at a time.

60. In addition to Zander's intellectual, emotional, and physical improvements since he started taking marijuana and CBD oil, his seizures have significantly decreased. Amazingly, Zander has had only two confirmed seizures since he started taking marijuana and CBD oil and both were considerably shorter than the seizures he experienced before.

61. In the past, Zander's seizures have been especially bad when his immune system is compromised and he has an infection or a virus. Since starting the marijuana

and CBD oil, Zander has been sick more than once but has not experienced multiple seizures as a result.

62. In September 2013, Jacob and Jennifer learned that certain state and county officials believe that the CBD oil they were giving to Zander is not allowed under the AMMA. As a result, they feared that they might be criminally prosecuted for continuing to treat Zander with the combination of CBD oil and marijuana plant that had been so effective in reducing his seizures and improving his development.

63. Despite the significant improvements Jacob and Jennifer had observed in Zander since starting to treat him with medical marijuana in plant and extract form, they reluctantly decided to change Zander's treatment regime because of the legal uncertainty surrounding the CBD oil and their fear of prosecution.

64. Instead of the marijuana plant in conjunction with the CBD oil, Jacob and Jennifer, in consultation with medical professionals, are currently giving Zander a high-level CBD marijuana plant with a 15:1 CBD to THC ratio. Zander takes 660mg of dried plant per day, broken into three doses that are mixed into pudding or applesauce. This is significantly more dried plant per day than he had to consume when Jacob and Jennifer were treating him with CBD oil in conjunction with dried plant material. In addition, this plant's 15:1 ratio is lower than the ratio Zander was getting from the combination of plant material and CBD oil.

65. Eating a dried plant is not palatable for anyone and is particularly hard for Zander given his physical limitations. He frequently has difficulty eating as much plant material as is necessary for this new treatment regime but Jacob and Jennifer do not want Zander to smoke or otherwise inhale the marijuana because that form of delivery would activate the THC's psychoactive properties.

66. Because of the difficulty plant material poses for accurate dosing and effective and comfortable ingestion for Zander, Jacob and Jennifer want to go back to treating him with a combination of CBD oil and plant material, or another marijuana extract.

67. Jacob and Jennifer want to supplement Zander's 15:1 plant consumption with CBD oil to achieve the CBD to THC ratio of between 20:1 and 25:1.

68. Eventually, Jacob and Jennifer hope that Arizona dispensaries will supply plants that contain the ideal CBD to THC ratio. Even with a plant that contains the ideal ratio, however, Zander would have to consume more dried plant material than he can do so comfortably. To address this issue, Jacob and Jennifer would like to be able to give Zander an extract from the plant with the right ratio because it will be much easier for him to consume and they will be able to more precisely control his dosage.

69. Jacob and Jennifer have decided that until the legal uncertainty surrounding extracts is resolved, they will treat Zander only with the 15:1 plant material even though it is a less effective medicine for their son.

Defendants' Incorrect Interpretation of the AMMA and the Resulting Risk to Zander, Jennifer, and Jacob Welton

70. Defendant Montgomery alleges that patients can be criminally prosecuted for their medical use of marijuana derived products, including extracts, based on the definition of "cannabis" found in the Arizona Criminal Code, which was enacted before the AMMA. See A.R.S. § 13-3401(4). Defendant Montgomery claims that the AMMA only allows patients to use un-manipulated plant material for medicine and not products that are made from plant material.

71. The AMMA plainly states that patients can use "any mixture or preparation" made from the dried flowers of the marijuana plant by "consum[ing] [them] as food or drink." There is no language in the AMMA or its ballot material that either limits or suggests the voters intended to limit patients' medical marijuana use to un-manipulated plant material. Indeed, constraining patients' medical marijuana options is directly at odds with the broad purpose of the AMMA to "protect patients with debilitating medical conditions . . . from arrest and prosecution, criminal and other

penalties and property forfeiture if such patients engage in the medical use of marijuana." Prop. 203 § 2(G).

72. Defendant Montgomery's interpretation would allow criminal prosecution of patients with debilitating medical conditions for using the form of medical marijuana that is most beneficial to them. This is clearly not what the voters of Arizona intended.

73. On October 29, 2012, Phoenix Police Department Lieutenant Aaron J. Thomas responded to an email request to clarify the Department's understanding of the interaction between the AMMA and the Arizona Criminal Code. Lieutenant Thomas wrote: "The Phoenix Police Department, and the Maricopa County Attorney's Office are both law enforcement agencies. Our span of control is to decipher if a violation of the AMMA constitutes a violation of title 13. If so, it is our responsibility to identify what statue was violated, and take enforcement action as necessary. In discussing the tincture (and other extractions) issue with the County Attorney's Office, they advised that based on the title 13 definition, those items are considered a narcotic drug and they will prosecute as such. In order to ensure consistency in enforcement (and or until this issue can be resolved through a change in the statute), the Phoenix Police Department must abide by the title 13 definition as well. As far as the question of pulverizing the usable marijuana and adding it to a recipe, there is nothing in title 13 or the AMMA that would prevent a qualified patient, caregiver or dispensary from doing that." See Exhibit A.

74. In early October 2013, Phoenix police Sergeant Steve Martos told the *Phoenix New Times* in an email that the Phoenix Police Department considers marijuana extracts to be a narcotic drug under the Arizona Criminal Code. See Exhibit B.

75. On August 30, 2013, Defendant Humble published commentary on his ADHS Director's Blog titled "Marijuana v. Cannabis." Defendant Humble warned that "registered identification card holders and dispensaries may be exposed to criminal prosecution under the Criminal Code for possessing a narcotic drug if the card holder or dispensary possesses resin extracted from any part of a plant of the genus *Cannabis* or an edible containing resin extracted from any part of a plant of the genus *Cannabis*. If

you're concerned that your conduct may expose you to criminal prosecution, you may wish to consult an attorney. We'll be providing some specific guidance for dispensaries licensed by the ADHS next week." See Exhibit C.

76. On September 4, 2013, Defendant Humble published commentary on his ADHS Director's Blog titled "Medical Marijuana Edibles" in which he referenced his August 30 entry and indicated that further guidance would be coming in mid-September. That blog entry has since been changed and now states that ADHS's "guidance will provide clarity regarding extraction processes for mixing and/or preparing edibles and liquid suspensions from the dried flowers of the marijuana plant. We expect to have the guidance sometime in October." See Exhibit D.

77. Defendants Brewer and Montgomery have publicly opposed the AMMA and have actively sought to void or limit this law despite the will of the voters. In January 2012, a federal district court judge dismissed a lawsuit Defendant Brewer and Defendant Humble filed against the United States and the Department of Justice seeking to undermine the AMMA. Defendant Montgomery's motion to intervene in that lawsuit, in which he argued that the entire AMMA was preempted by federal law, was denied in the same order. In December 2012, a Maricopa superior court judge ordered Defendant Montgomery to cease thwarting the law by refusing to certify a dispensary applicant's zoning compliance. Earlier in 2012, Defendant State of Arizona intervened in the lawsuit to argue that federal law preempts parts of the AMMA. In October 2013, the same Maricopa superior court judge invalidated a dispensary zoning ordinance that was adopted at the advice of Defendant Montgomery because it was a "transparent attempt to prevent the implementation of the AMMA in unincorporated [Maricopa] County areas."

78. Defendants have consistently demonstrated their opposition to the AMMA and have attempted to undermine the effect of the law multiple times.

Harm to Plaintiffs

79. In light of the above, Jacob and Jennifer are left with an impossible choice. They can either treat Zander with the form of marijuana that has proven more beneficial to him than any other treatment regimen and risk criminal prosecution based on an incorrect interpretation of Arizona law, or they can comply with this erroneous interpretation of Arizona law and deprive Zander of the medicine that is most effective for him.

CAUSES OF ACTION

Count One: Declaratory Judgment

80. Plaintiffs incorporate by reference all allegations made in the preceding paragraphs.

81. A.R.S. § 12-1832 authorizes any person whose rights, status, or other legal relations are affected by a statute to have determined any question of construction arising under the statute and to obtain a declaration of rights thereunder.

82. Defendants' incorrect interpretation of the AMMA has created uncertainty and insecurity for Jacob and Jennifer Welton, who fear that if they give their son Zander the form of marijuana that is most beneficial to him, they may be criminally prosecuted even though Zander has an ADHS-issued medical marijuana patient card.

83. Jacob and Jennifer Welton seek a declaration from this Court that the AMMA's decriminalization of marijuana for medicinal purposes includes products, such as extracts, derived from said marijuana.

84. Jacob and Jennifer Welton seek this declaration so that they can treat Zander with a high CBD and low THC marijuana extract. This extract is the marijuana product that is most beneficial to Zander. It is also the easiest marijuana product for Zander to consume in the proper dosage and does not result in any intoxication.

Count Two: Preliminary and Permanent Injunctive Relief

85. Plaintiffs incorporate by reference all allegations made in the preceding paragraphs.

86. Equity authorizes an injunction when a governmental entity is poised to take an illegal act.

87. Plaintiffs do not have an adequate or complete remedy at law for the above harms.

88. Jacob and Jennifer Welton seek preliminary and permanent injunctions preventing Defendants and their employees from taking any adverse action against them based on Defendants' incorrect allegation that the AMMA's decriminalization of marijuana for medicinal purposes does not include products, such as extracts, derived from said marijuana.

RELIEF REQUESTED

WHEREFORE, Zander, Jacob, and Jennifer Welton respectfully request declaratory and injunctive relief as follows:

1. Enter a judgment declaring that the AMMA's decriminalization of marijuana for medicinal purposes includes products, such as extracts, derived from said marijuana.

2. Issue preliminary and permanent injunctions restraining Defendants, their employees, agents, and successors, from taking any adverse action against qualifying medical marijuana patients, caregivers, including Plaintiffs, dispensary agents, or dispensaries for criminal violations of A.R.S. § 13-3408 involving "cannabis" as defined in A.R.S. § 13-3401(4) based on patients, caregivers, dispensary agents, or dispensaries' "medical use" of marijuana-derived products as protected under the AMMA. "Adverse action" includes but is not limited to arresting, prosecuting, and seizing property from.

3. Award Plaintiffs their costs and expenses incurred pursuing this action, including reasonable attorneys' fees under A.R.S. § 12-1840, A.R.S. § 12-348, A.R.S. § 12-341, and any and all applicable authorities.

4. For such other and further relief as this Court deems appropriate and proper.

DATED this 28th day of October, 2013.

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**Pro Hac Vice motions to be filed*

Attorneys for Plaintiffs

Exhibits

Exhibit A

Emma Andersson

From:	Emma Andersson
Sent:	Tuesday, October 22, 2013 12:38 PM
To:	Emma Andersson
Subject:	FW: Fwd: Tincture clarification

From: aaron.thomas@phoenix.gov
Date: October 29, 2012 10:46:37 AM MDT
To: "azingrid@ymail.com" <azingrid@ymail.com>
Subject: FW: Clarification

Good morning Ingrid. Thank you for forwarding the link below, and thank you for reaching out for clarification. I do understand your confusion, especially since we had just discussed this issue. The best way to explain this is by identifying roles in the process.

The Arizona Department of Health Services and Director Humble, are responsible for administrating the Arizona Medical Marijuana Act; however they are not a law enforcement agency, therefore they do not have law enforcement powers. Their span of control is that of managing the program. When someone violates the rules, they can only take administrative steps to address it.

The Phoenix Police Department, and the Maricopa County Attorney's Office are both law enforcement agencies. Our span of control is to decipher if a violation of the AMMA constitutes a violation of title 13. If so, it is our responsibility to identify what statue was violated, and take enforcement action as necessary.

In discussing the tincture (and other extractions) issue with the County Attorney's Office, they advised that based on the title 13 definition, those items are considered a narcotic drug and they will prosecute as such. In order to ensure consistency in enforcement (and or until this issue can be resolved through a change in the statute), the Phoenix Police Department must abide by the title 13 definition as well.

As far as the question of pulverizing the usable marijuana and adding it to a recipe, there is nothing in title 13 or the AMMA that would prevent a qualified patient, caregiver or dispensary from doing that.

I hope this helps to clarify the issue for you Ingrid. Have a great day.

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Exhibit B

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Phoenix Police to Medical-Pot Community: "Medibles" Will Be Tested for Extracts

By Ray Stern
Published Thu., Oct. 10 2013 at 2:21 PM

Image: Ray Stern

Cannabis-infused honey, made by Uncle Herb's Health Center in Payson

Watch your step, medical-marijuana users:

Phoenix police say they might bust you for holding the wrong kind of cookie.

In researching this week's cover story about marijuana food products and concentrates, "Half Baked," *New Times* asked police to clarify their position on the preparations of marijuana not protected by the Arizona Medical Marijuana Act.

Patients and dispensary operators won't like the answer, though it might not surprise them.

See also:
- *Medical-Pot Edibles Are Legal, but Prosecutors and Cops Aren't Backing Off*

As our article discusses, police and prosecutors around the state decided on their own to interpret the 2010 law as forbidding marijuana extracts. Their theory, untested in courts, is that while the AMMA allows qualified people to possess marijuana buds and "any mixture or preparation thereof," an older law defining the "resin extracted" from marijuana as a "narcotic" still applies.

Based on advice from the Maricopa County Attorney's Office, says Phoenix police Sergeant Steve Martos, Phoenix police will continue to treat this

"narcotic" as a felony for people registered to use marijuana medicinally under state law.

Hashish, hash oil, and "kief" are out. Even a basic preparation like strained cannabutter is disallowed for patients, Martos told *New Times* in an e-mail.

Police are prepared to use the crime lab to determine whether marijuana-infused food and drinks were made with a concentrate, he says.

See below for Martos' e-mail in full:

Sergeant Martos' e-mail:

Hash oil purity:

"In order to identify marijuana we need to be able to look at plant material under the microscope and observe structures on the leaf surfaces. If someone has removed the resin from the plant material by mechanical or chemical means what we get is hashish, hash oil or cannabutter for example.

I can tell you that hashish runs the gamut in color from green to dark brown. Under the microscope it appears resinous and not like plant material and occasionally there may be some particles of plant material adhering to it. The resinous material does not look like plant material, nor does it contain the features in place for us to look at so we do not call it marijuana. Testing the hashish in the lab will allow us to identify THC and other cannabinoids which is how we arrive at classifying the material as cannabis (narcotic drug) vs. marijuana.

The lab does not grade hashish or marijuana for that matter for purity, quality etc. If we receive a food product as evidence, which contain no plant material, but we can identify THC etc. the material will be reported out as cannabis (narcotic drug). Our examination of items submitted as evidence is using definitions contained in ARS 13-3401. We do not use the AMMA as a means of testing evidence submitted to the laboratory.

"cannabutter": This substance is considered a narcotic drug if created from extracts from marijuana. We deal with this in accordance with title 13.

We do not have a department policy for every single Title 13 criminal violation. It is our job as law enforcement personnel to enforce the laws of Arizona, which is what is being done when it comes to the aforementioned violations related to use/possession of cannabis. Department policies are not specific to each A.R.S. code.

Other Valley police agencies, as well as prosecutors around the state, are developing their own interpretations of the "preparations" law, with many apparently taking the same stance as the Phoenix PD.

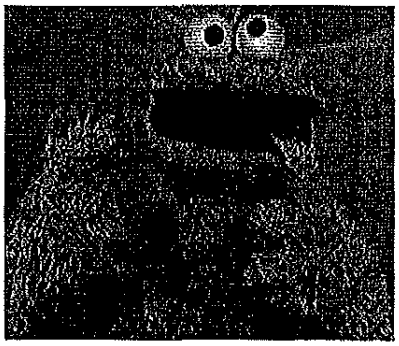

Image: Sesame Street

This policy, driven locally by Maricopa County Attorney Bill Montgomery, seems like it's on shaky ground, given the law's allowance of "any . . . preparation." The law enforcement interpretation seems at odds with science. For example, although Martos states, "the resinous material does not look like plant material," it is, in fact, plant material.

Responding to concerns by law enforcement, Will Humble, director of the Department of Health Services, directed his staff to come up with guidelines for dispensaries that sell medibles or operate kitchens. Marijuana advocates worry the policies of law enforcement agencies, and the pending DHS guidelines, means the end of most kinds of medibles in Arizona, even though eating or drinking herb (and its extracts) is a more healthful alternative for users than smoking.

Experts tell us the issue will likely end up in courts.

Concentrates and edibles are a hot topic in the marijuana world right now, with Colorado and Washington preparing to sell them along with buds at retail stores to anyone 21 and older. We get into the subject in detail in our feature story, so give it a click.

Exhibit C

AZ Dept. of Health Services Director's Blog

Will Humble, ADHS Director

Marijuana v. Cannabis

August 30th, 2013 by Will Humble

Leave a reply »

[http://directorsblog.health.azdhs.gov/wp-content/uploads/2013/08/MedicalMarajuana1.jpg] Are Marijuana and Cannabis the same thing when it comes to Arizona Law? The short answer is no- and the distinction may be an important one for Qualified Patients.

The Arizona Medical Marijuana Act [http://azdhs.gov/medicalmarijuana/rules/] provides registry identification card holders and dispensaries a number of legal protections for their medical use of Marijuana pursuant to the Act [http://www.azleg.gov/FormatDocument.asp?inDoc=/ars/36/02811.htm&Title=36&DocType=ARS] . Interestingly, the Arizona Medical Marijuana Act definition of "Marijuana" in A.R.S. § 36-2801(8) [http://www.azleg.gov/FormatDocument.asp?inDoc=/ars/36/02801.htm&Title=36&DocType=ARS] differs from the Arizona Criminal Code's ("Criminal Code") definition of "Marijuana" in A.R.S. § 13-3401(19) [http://www.azleg.gov/FormatDocument.asp?inDoc=/ars/13/03401.htm&Title=13&DocType=ARS] . In addition, the Arizona Medical Marijuana Act makes a distinction between "Marijuana" and "Usable Marijuana." A.R.S. § 36-2801(8) and (15) [http://www.azleg.gov/FormatDocument.asp?inDoc=/ars/36/02801.htm&Title=36&DocType=ARS] .

The definition of "Marijuana" in the Arizona Medical Marijuana Act is "*... all parts of any plant of the genus cannabis whether growing or not, and the seeds of such plant.*" The definition of "Usable Marijuana" is "*... the dried flowers of the marijuana plant, and any mixture or preparation thereof, but does not include the seeds, stalks and roots of the plant and does not include the weight of any non-marijuana ingredients combined with marijuana and prepared for consumption as food or drink.*" The "allowable amount of marijuana" for a qualifying patient and a designated caregiver includes "two-and-one half ounces of *usable marijuana.*" A.R.S. § 36-2801(1) [http://www.azleg.gov/FormatDocument.asp?inDoc=/ars/36/02801.htm&Title=36&DocType=ARS] .

The definition of "Marijuana" in the Criminal Code is "... all parts of any plant of the genus cannabis, *from which the resin has not been extracted*, whether growing or not, and the seeds of such plant." "Cannabis" (a narcotic drug under the Criminal Code) is defined as: "*... the following substances under whatever names they may be designated: (a) The resin extracted from any part of a plant of the genus cannabis, and every compound, manufacture, salt, derivative, mixture or preparation of such plant, its seeds or its resin. Cannabis does not include oil or cake made from the seeds of such plant, any fiber, compound, manufacture, salt, derivative, mixture or preparation of the mature stalks of such plant except the resin extracted from the stalks or any fiber, oil or cake or the sterilized seed of such plant which is incapable of germination;* and *(b) Every compound, manufacture, salt, derivative, mixture or preparation of such resin or tetrahydrocannabinol.*" A.R.S. § 13-3401(4) and (20)(w) [http://www.azleg.gov/FormatDocument.asp?inDoc=/ars/13/03401.htm&Title=13&DocType=ARS] .

An issue the Department has been wrestling with for some time is how the definition of "Marijuana" and "Usable Marijuana" in the Arizona Medical Marijuana Act and the definition of "Cannabis" and "Marijuana" in the Criminal Code fit together. This confusion, which appears to be shared by dispensaries and registered identification card holders alike, is not easy to clear up and has resulted in the Department receiving numerous questions regarding the interplay between the protections in A.R.S. § 36-2811 [http://www.azleg.gov/FormatDocument.asp?inDoc=/ars/36/02811.htm&Title=36&DocType=ARS] and the Criminal Code. While we can't provide legal advice as to whether a certain conduct is punishable under the Criminal Code (only an individual's or entity's legal counsel can do this), "Cannabis" is defined as the "resin extracted from any part of a plant of the genus cannabis" and "Cannabis" is listed as a narcotic drug according to the Criminal Code in A.R.S. § 13-3401(4) and (20)(w) [http://www.azleg.gov/FormatDocument.asp?inDoc=/ars/13/03401.htm&Title=13&DocType=ARS] .

In other words, registered identification card holders and dispensaries may be exposed to criminal prosecution under the Criminal Code for possessing a narcotic drug if the card holder or dispensary possesses resin extracted from any part of a plant of the genus *Cannabis* or an edible containing resin extracted from any part of a plant of the genus *Cannabis*. If you're concerned that your conduct may expose you to criminal prosecution, you may wish to consult an attorney. We'll be providing some specific guidance for dispensaries licensed by the ADHS next week.

- Previous Entry: Project Quit Kickoff
- Next Entry: CDC Sortable Stats

Posted in General

Exhibit D

AZ Dept. of Health Services Director's Blog

Will Humble, ADHS Director

Medical Marijuana Edibles

September 4th, 2013 by Will Humble

Leave a reply »

[http://directorsblog.health.azdhs.gov/wp-content/uploads/2013/08/MedicalMarajuana1.jpg] Last week I posted a blog [http://directorsblog.health.azdhs.gov/?p=4427] that points out that the words "Marijuana" in the Arizona Medical Marijuana Act [http://www.azleg.gov/FormatDocument.asp?inDoc=/ars/36/02811.htm&Title=36&DocType=ARS] and "Cannabis" in the Arizona Criminal Code [http://www.azleg.gov/FormatDocument.asp?inDoc=/ars/13/03401.htm&Title=13&DocType=ARS] have different definitions… and that the distinction may be an important one for Qualifying Patients.

The major difference is that the definition of "Useable Marijuana" in AMMA includes "*… dried flowers of the marijuana plant, and any mixture or preparation thereof…*" without specifically addressing the "resins" and "extracts" identified in the Criminal Code.

We're developing guidance to clarify these issues for licensed dispensaries. The guidance will provide clarity regarding extraction processes for mixing and/or preparing edibles and liquid suspensions from the dried flowers of the marijuana plant. We expect to have the guidance sometime in October.

- Previous Entry: Local Suicide Prevention Day Event
- Next Entry: Filariasis

Posted in General
Tags: AMMA Arizona Medical Marijuana Act cannabis edibles medical marijuana
You can follow any responses to this entry through the RSS 2.0 Feed. You can leave a response , or trackback from your own site.

25 comments

Add your comment

rootney — *September 5, 2013 at 12:42 pm*

Then is the criminal code going to be changed as well, or is every cop /judge going to leave to their interpretation. Get no knocks for smoke smell when we have a card. Criminal codes need to change or be modified to protect the patients rights. Use some of the cash the dept of health is getting from prop 203 to work on prop 203 issues and not your salary.

Reply

James — *September 26, 2013 at 8:39 pm*

It's not DHS' responsibility to change anything! It didn't write the law. The problem is the criminal code, not the AMMA.

It's our industry's responsibility and we need to get responsible and stop whining!

Reply

gary — *September 5, 2013 at 1:04 pm*

The major difference is that the definition of "Useable Marijuana" in AMMA includes "… dried flowers of the marijuana plant, and any mixture or preparation thereof…" without specifically addressing the "resins" and "extracts" identified in the Criminal Code.
ANY PREPARATION!!!!
DOES AZDHS have a definition of ANY that differs from ANY definition of ANY that ANYone who ever took an English class ANYwhere in the world?

Reply