

Thomas W. Dean  
13201 N. 35<sup>TH</sup> Ave.  
Office Suite B-10  
Phoenix, AZ 85029  
Tel: (602) 635.4990  
Fax: (928) 247.6036  
AZ Bar No. 015700

**IN THE ARIZONA SUPREME COURT**

ANDRE LEE JUWAUN MAESTAS, )  
) CA-CV \_\_\_\_\_  
)  
)  
Petitioner, )  
) Maricopa County Superior Court No.  
vs. ) CR2014-127252-001  
)  
)  
THE HONORABLE DEAN M. FINK, )  
) Court of Appeals Case No.  
Judge of the Superior Court for the State ) 1 CA-SA 14-0245  
of Arizona, County of Maricopa, )  
)  
)  
Respondent/Judge, )  
and ) **PETITION FOR REVIEW OF A**  
) **SPECIAL ACTION DECISION OF**  
) **THE COURT OF APPEALS**  
STATE OF ARIZONA, )  
)  
)  
Real Party in Interest. )  
)  
)  
\_\_\_\_\_ )

Petitioner, Andre Maestas, through the undersigned counsel, hereby requests this Court to review the Court of Appeals' decision to decline special action jurisdiction dated December 12<sup>th</sup>, 2014. Jurisdiction and relief should be granted for the reasons set forth in the attached brief.

**TABLE OF CONTENTS**

1

2

3 TABLE OF CONTENTS.....1

4 TABLE OF AUTHORITIES.....2

5 STATEMENT OF THE CASE..... 3

6 STATEMENT OF THE FACTS .....4

7 STATEMENT OF THE ISSUES.....5

8 REASONS TO ACCEPT REVIEW.....6

9 ARGUMENT.....8

10 I. Standard of Review.....8

11

12 II. The Arizona Medical Marijuana Act provides immunity to registered

13 patients for their possession and use of marijuana.....9

14 III. A.R.S §15-108 modifies the provisions of the Arizona Medical

15 Marijuana Act by prohibiting the possession of medical marijuana by

16 registered qualifying patients on the campus of a public

17 university.....11

18 IV. A.R.S §15-108 violates Article 4, Part 1, Section 1, Subsection (6)(C)

19 of the Arizona Constitution because it does not further the purpose

20 of the Arizona Medical Marijuana.....12

21

22

23

24

25 V. CONCLUSION.....18

1 **TABLE OF AUTHORITIES**

2 **CONSTITUTIONAL PROVISIONS:**

3 Article 4, Part 1, Section 1, Subsection (6)(C)

4 **ACTS:**

5 Arizona Medical Marijuana Act (AMMA)

6 Arizona Voter Protection Act (AVPA)

7 **CASES:**

8 *Jones v. Sterling*, 210 Ariz. 308, 110 P.3d 1271 (2005)

9 *Andrade v. Superior Court*, 183 Ariz. 113, 901 P.2d 461 (App.1995)

10 *Stallings v. Spring Meadows*, 185 Ariz. 156, 913 P.2d 496 (1996)

11 *State v. Altieri*, 191 Ariz. 1, 3, 951 P.2d 866, 868, (1997)

12 *Ariz. Early Childhood Dev. & Health Bd.*, 221 Ariz. 467, (2006)

13 *Calik v. Kongable*, 195 Ariz. 496; 990 P.2d 1055 (1999)

14 *Cave Creek Unified Sch. Dist. v. Ducey*, 233 Ariz. 1, (2013)

15 *State v. Gomez*, 212 Ariz. 55, 127 P.3d 873 (2006)

16 **RULES:**

17 Rule 12.9, the Arizona Rules of Criminal Procedure

18 **STATUTES:**

19 A.R.S §36-2801(1)(a)(i)

20 A.R.S §15-108

21 A.R.S. §12-120.21(A)(4)

22 A.R.S. §13-906

23 A.R.S. §36-2801(1)(a)(i)

24 A.R.S. §36-2811(B)(1)

25 A.R.S. §36-2801(9)

A.R.S. §36-2802

A.R.S §36-2804.02(B)

A.R.S §36-2804.03

A.R.S. §28-1381(A)(3)

26 **INITIATIVE FINDINGS:**

27 Proposition 203, 2010, Section 2(G)

1 **STATEMENT OF THE CASE**

2 Petitioner was indicted on by a grand jury of the Maricopa County Superior  
3 Court on September 8<sup>th</sup>, 2014 for (1) obstructing a highway or other public  
4 thoroughfare and (2) possession of marijuana. The supervening indictment is  
5 attached. At the grand jury proceeding, during direct examination of the State’s  
6 chief witness, Sergeant Mark Janda of the ASU Police Department, the  
7 prosecutor asked: “And in fact having marijuana on school grounds is a violation  
8 of the law, correct?”. Sergeant Janda answered: “Yes, even with a medical  
9 marijuana card. (GJ transcripts at p. 8). The prosecutor next asked: “And how  
10 much medical marijuana card was allowed to have (sic)” to which Sergeant Janda  
11 answered: “He’s not allowed to have any on a college campus, but I believe it’s  
12 two ounces”. (GJ transcripts at p. 8).

13  
14  
15  
16 After deliberating, the grand jury returned an indictment for felony  
17 possession of marijuana. Petitioner entered a plea of not guilty to both charges at  
18 his arraignment on September 17<sup>th</sup>, 2014. Petitioner then filed a *Motion to*  
19 *Dismiss* October 7<sup>th</sup>, 2014, arguing that A.R.S. §15-108(A) was unconstitutional  
20 modification of the Arizona Medical Marijuana Act (hereinafter the “AMMA”),  
21 in violation of the Arizona Voter Protection Act. The motion was based on both  
22 the fact that the grand jury was instructed to follow an unconstitutional statute  
23  
24  
25

1 and on the AMMA's immunity provisions independently. The State filed the  
2 *State's Objection to Defendant's Motion to Dismiss* on October 17<sup>th</sup>, 2014.  
3 Defendant filed his *Defendant's Reply to State's Objection to Defendant's Motion*  
4 *to Dismiss* on October 23<sup>rd</sup>, 2014. The Court denied the motion to dismiss in a  
5 one page minute entry which was filed on November 19<sup>th</sup>, 2014. The decision  
6 was made on the pleadings, without a hearing, and without making findings of  
7 fact or explaining the reasons for his decision. Petitioner timely filed a Petition  
8 for Special Action with the Arizona Court of Appeals on December 9<sup>th</sup>, 2014.  
9 The Court of Appeals issued an Order Denying Special Action Jurisdiction on  
10 December 12<sup>th</sup>, 2014. Petitioner filed a Request to Stay Trial Court Proceedings  
11 Pending Supreme Court Petition for Review on December 17<sup>th</sup>, 2014. The  
12 Request to Stay was denied on December 30<sup>th</sup>, 2014.  
13  
14  
15  
16  
17

### 18 **STATEMENT OF THE FACTS**

19 On March 18<sup>th</sup>, 2014, Petitioner, Andre Maestas, was arrested by Officer  
20 Mark Janda of the ASU Police Department for a violation of A.R.S. §13-2906  
21 (obstruction of a public highway or other public thoroughfare) after he was found  
22 to be sitting on a campus drive. During the search of his wallet incident to the  
23 arrest, Officer Janda discovered a valid Arizona medical marijuana registration  
24  
25

1 card bearing Petitioner’s name and photograph. The State does not contest the  
2 validity of the registration card. A copy of the card is attached.

3  
4 At the ASU Police Station, Officer Janda questioned Petitioner about his  
5 marijuana use and about how much marijuana he had in his dorm room.  
6 Petitioner truthfully told the officer that he had less than a gram of the medicine  
7 in his dorm room. Based on this information Officer Janda was able to obtain a  
8 search warrant that authorized the search of Petitioner’s dorm room. The search  
9 warrant was executed and officers discovered a total of approximately .6 grams of  
10 medical marijuana, well within AMMA’s “allowable amount” of 2.5 ounces.  
11 Petitioner was subsequently charged with felony possession of marijuana, despite  
12 the fact that the arresting officer had taken possession valid medical marijuana  
13 registration card. Petitioner has no prior criminal record.  
14  
15  
16  
17

18 **STATEMENT OF THE ISSUES**

19 **I. Whether the trial court erred in denying Petitioner’s Motion to**  
20 **Dismiss:**

- 21 A. Whether the AMMA provides immunity to registered  
22 patients for their possession and use of marijuana.
- 23 B. Whether A.R.S §15-108 modifies the provisions of the  
24 AMMA by prohibiting the possession of medical  
25

1 marijuana by registered qualifying patients on the  
2 campus of a public university.

3 C. Whether the modification of the AMMA by A.R.S §15-  
4 108 violates Article 4, Part 1, Section 1, Subsection  
5 (6)(C) of the Arizona Constitution because it does not  
6 further the purpose of AMMA.

7 **REASONS TO ACCEPT REVIEW**

8 This Petition is properly brought before the Supreme Court pursuant to  
9 Rule 8(b) of the Rules of Procedure for Special Actions. This is a case of first  
10 impression involving a challenge to A.R.S §15-108, as statute that explicitly  
11 modifies the AMMA by eliminating the protections afforded to registered  
12 patients by that initiative when those patients are on public university campuses.  
13 This violates the Arizona Voter Protection Act because that modification directly  
14 contradicts that initiative's expressed purpose (i.e., to protect registered patients  
15 from criminal and other penalties). As such, it was an unconstitutional abuse of  
16 legislative authority. Jurisdiction is appropriate because no Arizona decision  
17 controls the point of law in question. Also, this Court should accept jurisdiction  
18 because the underlying Court's ruling was clearly erroneous and an abuse of  
19 discretion.  
20  
21  
22  
23  
24  
25

1           Jurisdiction is also appropriate because the situation is urgent. Petitioner  
2 ought not to have to undergo the rigors of trial and sentence if he is correct that  
3 he is immune from prosecution and penalty and a trial is, therefore, be unlawful.  
4  
5 Moreover, Petitioner is a full time student at ASA and the Arizona Student  
6 Handbook establishes that a student can be expelled from school and evicted  
7 from student housing for engaging in the “[u]nauthorized use, sale, possession,  
8 or distribution of any controlled substance or illegal drug or possession of drug  
9 paraphernalia that would violate the law” (Arizona State University Policy  
10 Number 5-308: “Arizona Student Code of Conduct”, section (F)(16), attached).  
11  
12 Furthermore, federal law provides that a student who has been convicted of an  
13 offense under any federal or state law involving the possession of marijuana  
14 during a period of enrollment for which the student was receiving financial aid  
15 shall not be eligible to receive any federal or institutional grant, loan, or work  
16 assistance for one year (20 U.S.C. §1091(r)(1) ). The AMMA provides that a  
17  
18 registered patient is immune from arrest and prosecution.  
19

20           Finally, this Petition involves legal questions of statewide importance and  
21 of first impression which are likely to arise again. The issues presented in the  
22 Petition affects the rights of tens of thousands of registered medical marijuana  
23 patients in Arizona, especially those who currently attend, reside, visit, or work  
24  
25

1 on public university campuses. This is a large number of persons, many of  
2 whom are likely to set foot on a public university campus as a student, employee  
3 or visitor at some point in the near future. If this Court does not accept  
4 jurisdiction here, registered patients will continue to be convicted resulting in  
5 severe consequences, including the loss of their civil rights and the imposition of  
6 mandatory fines, community service, probation, and imprisonment. Many will  
7 also suffer additional collateral consequences of the conviction, such as the loss  
8 of employment, housing, immigration status, and child custody. These tragic  
9 consequences are exactly what the AMMA was intended to prevent. Petitioner,  
10 therefore, respectfully urges the Court to accept jurisdiction and reverse the  
11 lower court's decision.  
12  
13  
14

## 15 **ARGUMENT**

### 16 **I. Standard of Review**

17  
18 The applicable standard of review on questions of law is *de novo*. *Stallings*  
19 *v. Spring Meadows Apartment Complex Ltd. Partnership*, 185 Ariz. 156, 158, 913  
20 P.2d 496, 498 (1996). This includes mixed questions of law and fact and findings  
21 that combine law and fact where there is a legal error. *State v. Altieri*, 191 Ariz.  
22 1, 3, 951 P.2d 866, 868, (1997).  
23  
24  
25

1  
2 **II. The Arizona Medical Marijuana Act provides immunity to**  
3 **registered patients for their possession and use of marijuana.**

4 On November 2, 2010, Arizona voters passed Proposition 203, an initiative  
5 called the “Arizona Medical Marijuana Act” (AMMA), adding a chapter to Title  
6 36 establishing the conditions under which marijuana may be used medicinally.  
7 *State v. Okun*, 231 Ariz. 462, ¶ 4, 296 P.3d 998, 1000 (App. 2013); *see also* §§  
8 36-2801 through 36- 2804.02. Upon the certification by a qualifying physician  
9 that a patient “is likely to receive therapeutic or palliative benefit . . . [for a]  
10 debilitating medical condition,” § 36-2801(18), the AMMA allows such a patient  
11 to obtain a registry identification card and thereby possess and use limited  
12 amounts of marijuana for medicinal purposes. *Okun*, 231 Ariz. 462, ¶ 5, 296 P.3d  
13 at 1000; *see also* § 36- 2804.02. Under § 36-2811, cardholders receive “two  
14 different statutory protections”: a rebuttable presumption that the holder’s  
15 possession or use of marijuana is for medical purposes if it is consistent with the  
16 AMMA’s requirements and an immunity from state prosecution for medical use  
17 of marijuana so long as the patient possesses a no more than the “allowable  
18 amount” of 2.5 ounces (A.R.S. §36-2801(1)(a)(i)). *Fields*, 232 Ariz. 265, ¶¶ 13-  
19 14, 304 P.3d at 1092.  
20  
21  
22  
23  
24  
25

1 The expressed purpose of the AMMA "... is to protect patients with  
2 debilitating medical conditions... from arrest and prosecution, criminal and other  
3 penalties". Proposition 203, Section 2(G), which can be reviewed here:

4 <http://azsos.gov/election/2010/info/PubPamphlet/english/prop203.pdf>

5  
6 A specific statutory immunity is set forth in § 36-2811(B)(1) and provides  
7 that a "registered qualifying patient . . . is not subject to arrest, prosecution or  
8 penalty in any manner, or denial of any right or privilege, including any civil  
9 penalty or disciplinary action by a court or occupational or professional licensing  
10 board or bureau" for the patient's "medical use of marijuana pursuant to" the  
11 AMMA.  
12

13  
14 The above protection applies to the possession of marijuana by registered  
15 patients *everywhere* in the State of Arizona except in the following areas,  
16 which are enumerated in the AMMA (A.R.S. §36-2802):  
17

- 18 1. On a school bus.  
19 4. On the grounds of any preschool or primary or secondary school.  
20 3. In any correctional facility.

21 In this case, Petitioner was not found to have been in possession of  
22 marijuana in any of the above prohibited areas. Therefore, he was within his  
23 rights under the AMMA and ought to be immune from prosecution and penalty.  
24  
25

1 Another law was passed after the AMMA, however, which purports to cancel the  
2 right of patients to possess their medicine on public university campuses.  
3

4 **III. A.R.S §15-108 modifies the provisions of the Arizona Medical**  
5 **Marijuana Act by prohibiting the possession of medical**  
6 **marijuana by registered qualifying patients on the campus of a**  
7 **public university.**

8 After the enactment of the AMMA, the legislature passed a bill which  
9 became A.R.S §15-108 on April 3rd, 2012. The statute modified the AMMA by  
10 adding new places wherein a registered patient may not lawfully possess  
11 marijuana. Pursuant to A.R.S §15-108, registered patients may be arrested,  
12 prosecuted and punished for possessing marijuana on a public university campus.  
13

14 In pertinent part, A.R.S §15-108 provides as follows:  
15

- 16
- 17 A. In addition to the limitations prescribed in section 36-2802,  
18 subsection B, a person, including a cardholder as defined  
19 in section 36-2801, may not lawfully possess or use  
20 marijuana on the campus of any public university, college,  
21 community college or postsecondary educational institution.

22 A.R.S §15-108 clearly amends the AMMA by adding public universities  
23 and other facilities to the list of places where a patient cannot possess medical  
24

1 marijuana. A.R.S §15-108, therefore, specifically modifies a section of the  
2 AMMA, a voter passed initiative, and is, consequently, subject to scrutiny under  
3 the Arizona Voter Protection Act (Article 4, Part 1, Section 1, Subsection (6)(C)  
4 of the Arizona Constitution).  
5

6  
7 **IV. A.R.S §15-108 violates Article 4, Part 1, Section 1, Subsection**  
8 **(6)(C) of the Arizona Constitution because it does not further the**  
9 **purpose of Arizona Medical Marijuana Act.**

10 The AMMA was the third attempt by the voters of Arizona to legalize the  
11 medical use of marijuana. The first medical marijuana related voter initiative was  
12 passed in 1996 (Prop. 200). The government never enacted the medical  
13 marijuana provisions of the initiative, however, citing technical problems with the  
14 initiatives wording. In response to this and other examples of the government's  
15 apparent disregard for the people's initiative power, the voters formed the Voter  
16 Protection Alliance which was successful in getting an initiative called the  
17 Arizona Voter Protection Act on the ballot in 1998, as Proposition 105. The  
18 initiative passed and amended the Arizona Constitution, prohibiting legislative  
19 modifications of voter passed initiatives in Arizona unless the legislation meets  
20 certain strict requirements.  
21  
22  
23  
24  
25

1           The Arizona Voter Protection Act is codified at Article 4, Part 1, Section  
2 1, Subsection (6)(C) of the Arizona Constitution, and prohibits that the  
3 legislature from modifying an initiative unless it “furthers the purpose of that  
4 initiative:  
5

6           Legislature's power to amend initiative or referendum. The  
7 legislature *shall not have the power to amend an initiative*  
8 measure approved by a majority of the votes cast thereon, or to  
9 amend a referendum measure decided by a majority of the votes  
10 cast thereon, *unless the amending legislation furthers the*  
11 *purposes of such measure* and at least three-fourths of the  
12 members of each house of the legislature, by a roll call of ayes  
13 and nays, vote to amend such measure. (emphasis added).

14           Accordingly, in order to pass muster under the Arizona Constitution, any  
15 legislative modification of the AMMA must “further the purpose” of that  
16 initiative. Before it can be determined whether A.R.S §15-108 can be said to  
17 further the purpose of the AMMA, however, it must first be determined what that  
18 purpose is.

19           “In determining the purpose of an initiative, we consider such materials as  
20 statements of findings passed with the measure as well as other materials in the  
21 Secretary of State's publicity pamphlet available to all voters before a general  
22 election.” *Ariz. Early Childhood Dev. & Health Bd.*, 212 P.3d 805, 809, 221 Ariz.  
23 467, 471 (2006). (See also, *Calik v. Kongable*, 195 Ariz. 496; 990 P.2d 1055  
24  
25

1 (1999), where the Arizona Supreme Court determined that the controlling  
2 purpose of 2010's Proposition 200, the "Drug Medicalization, Prevention, and  
3 Control Act of 1996", was explicitly set forth in its publicity pamphlet).  
4

5 The purpose of the AMMA is expressly set forth in section 2(G) of  
6 Proposition 203 itself:  
7

8 State law should make a distinction between the medical  
9 and nonmedical uses of marijuana. Hence, **the purpose of**  
10 **this act is to protect patients** with debilitating medical  
11 conditions, as well as their physicians and providers, **from**  
12 **arrest and prosecution, criminal and other penalties** and  
13 property forfeiture if such patients engage in the medical use of  
14 marijuana. (emphasis added).

15 Having determined the purpose of the AMMA, the question becomes  
16 whether A.R.S §15-108 can be said to further it. That is, whether A.R.S §15-108  
17 protects patients from arrest, prosecution, and penalty. The obvious answer is  
18 that it does not. Both the statute's intent and impact directly contradicts to the  
19 purpose of the AMMA because instead of protecting patients from criminal  
20 penalty, it actually subjects them to it. Accordingly, A.R.S §15-108 is an  
21 unconstitutional violation of the Voter Protection Act.  
22  
23  
24  
25

1           In its response to Petitioner’s Motion to Dismiss filed before the underlying  
2 trial court (“State’s Objection to Defendant’s Motion to Dismiss”, attached) the  
3 State argued that A.R.S §15-108 does not violate the Arizona Voter Protection  
4 Act because it furthers another purpose, not explicitly stated in the initiative, that  
5 should be given primacy over the initiative’s expressed purpose. Specifically, the  
6 State argued that the purpose of the AMMA is to prohibit possession in “areas  
7 where young people gather for education” (State’s Objection p. 6) and that this  
8 implicit purpose trumps the explicit purpose discussed above, which is to protect  
9 registered patients from criminal prosecution and penalty.  
10

11  
12           The AMMA does not contain any language that would suggest that the  
13 voters either silently intended to exempt registered patients from the benefits of  
14 the law while on a public university campus, however, or that they failed to  
15 consider whether to do so. To the contrary, the AMMA comprehensively  
16 contemplates and addresses the potential friction points between its goals and  
17 those of law enforcement. It provides exclusions for people convicted of certain  
18 felony offenses set forth in § 36-2801(7). *See* §§ 36-2801(5)(c) (designated  
19 caregivers), 36-2804.01(D) (nonprofit dispensary agents). And, it specifically  
20 itemizes those circumstances when the possession of marijuana is prohibited  
21 (school buses, preschools, primary and secondary schools, correctional facilities).  
22  
23  
24  
25

1           In sum, the AMMA is a comprehensive scheme that allows state officials  
2 to prohibit a person from “[u]sing marijuana except as authorized under” the act.  
3 A.R.S. § 36-2802(E). The canon of construction *expressio unius est exclusio*  
4 *alterius* applies with particular force in this context, given that Arizona voters  
5 were well aware marijuana would remain criminalized except as specifically  
6 provided in the AMMA.  
7

8           If protecting areas where “young people” gather for the purpose of  
9 education was so important to the voters, and the they wanted to include public  
10 university campuses in the short list of prohibited areas set forth in A.R.S. §36-  
11 2802, then they could have easily done so. This is precisely the reasoning that the  
12 Court of Appeals used in the recent case of the *Darrah v. McClennen* (Ariz. App.,  
13 2014). In arriving at the holding in *Darrah*, that the AMMA does not provide  
14 immunity to registered patients from prosecution for the DUI metabolite statute  
15 (A.R.S. §28-1381(A)(3)), the Court of Appeals quoted with approval the  
16 reasoning of *Cave Creek Unified Sch. Dist. v. Ducey*, 233 Ariz. 1, 6-7, ¶ 21, 308  
17 P.3d 1152, 1157-58 (2013): “we interpret a voter-approved measure “to effect  
18 the intent of the electorate that adopted it,” and, in doing so, we interpret the  
19 words used according to their “natural, obvious and ordinary meaning”) (internal  
20 quotation omitted).” The Court then concluded as follows: “If Arizona voters had  
21  
22  
23  
24  
25

1 intended to completely bar the State from prosecuting authorized marijuana users  
2 under § 28-1381(A)(3), they could have easily done so by using specific language  
3 to that effect.” Likewise, in this case, the if Arizona voters had intended to  
4 completely bar registered patients from possession marijuana on public university  
5 campuses, “*they could have easily done so by using specific language to that*  
6 *effect*”.

7  
8  
9 In *State v. Gomez*, 212 Ariz. 55, 127 P.3d 873 (2006), this Court again  
10 examined 2010’s “Drug Medicalization, Prevention, and Control Act of 1996,”  
11 and explained the proper method to use in searching for the intent of the  
12 electorate in an initiative as follows: “[w]hen the language is “clear and  
13 unambiguous,” and thus subject to only one reasonable meaning, we do so by  
14 applying the language *without using other means of statutory construction*.” Id at  
15 P.3d 875 (emphasis added). Here, the AMMA’s purpose is “clear and  
16 unambiguous”. It is expressly set forth in the section 2(G) of the initiative (to  
17 “*protect patients... from arrest and prosecution, criminal and other penalties...*).  
18  
19 The State’s proposed implicit purpose is not authorized and, even if it were, it  
20 cannot be held to supersede the initiative’s actual expressed purpose.  
21  
22  
23  
24  
25

1           **V.    CONCLUSION**

2           The AMMA protects patients from criminal prosecution and penalty.  
3  
4           Petitioner was in complete compliance with the AMMA. His indictment and  
5           prosecution is based solely on A.R.S §15-108, which was passed by the  
6           legislature and modifies the AMMA. Specifically it modifies A.R.S. 36-2802 by  
7           expanding the list of areas within which a registered medical marijuana patient  
8           may not possess marijuana. This modification is contrary to the purpose of the  
9           AMMA because the statute subjects registered patients to precisely what the  
10          initiative was meant to protect them from: arrest, prosecution and penalty.  
11

12          Although the county attorney’s office may not have acted in bad faith, the  
13          grand jury was instructed to follow a bad law, and was thereby “denied  
14          substantial procedural right”. Petitioner is entitled to immunity from prosecution  
15          and penalty under the AMMA and the Motion to Dismiss should have been  
16          granted based on the AMMA independently, without reference to Rule 12.9.  
17          Either way, the trial court judge should have granted the Motion to Dismiss,  
18          dismissing Count 2 of the indictment, Possession of Marijuana.  
19  
20

21          For the foregoing reasons, Petitioner, Andre Maestas, respectfully requests  
22          that the Court grant this Petition, reverse the ruling of the trial court, and dismiss  
23          Count 2 of the indictment (Possession or Use of Marijuana) for the reason that the  
24  
25

1 basis for that charge was a statute that is in violation of Article 4, Part 1, Section  
2 1, Subsection (6)(C) of the Arizona Constitution (the Arizona Voter Protection  
3 Act).  
4

5 DATED: (electronically filed) January 9, 2015, by:

6 / s /

7 \_\_\_\_\_  
8 Thomas W. Dean  
9 Attorney for Petitioner  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25