

ELA

## Case Commentary



In-depth explanation and commentary on a case of interest

May 2018

### **State of Arizona v. Maestas, 394 P.3d 21 (Ariz. Ct. App. 2017): Medical Marijuana on College Campuses**

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#### **A college student is busted for possessing marijuana in his dorm room**

Andre Maestas, a student at Arizona State University, was arrested by a campus police officer for sitting in the road in front of his dormitory. Pursuant to the arrest, the officer searched Maestas and found a medical marijuana card. In response to questioning, Maestas admitted having marijuana in his room. The officer obtained a search warrant, searched Maestas' dorm room, and found 0.4 grams of marijuana, an allowable amount for a medical marijuana cardholder in the state of Arizona.<sup>1</sup>

Maestas was charged with blocking a public thoroughfare, a misdemeanor offense, and possession of marijuana, which was a felony (that charge was later reduced to a misdemeanor). Maestas moved to dismiss the marijuana charge, arguing that as a medical marijuana cardholder, he was entitled under the Arizona Medical Marijuana Act (AMMA)<sup>2</sup> to possess marijuana. Prosecutors opposed the motion, citing a state law that criminalizes marijuana possession on college or university campuses.<sup>3</sup> An Arizona trial judge denied Maestas' motion to dismiss, and Maestas was convicted on both counts.

#### **An Arizona appellate court vacates Maestas' marijuana conviction**

On appeal, an Arizona appellate court vacated Maestas' marijuana conviction on the grounds that the statute under which he was convicted violates the Arizona Constitution. The court pointed out that the Arizona Medical Marijuana Act (AMMA), which had been adopted by a voter initiative in 2010, decriminalized possession of marijuana for medicinal purposes, with the exception of the locations of school buses; correctional facilities; and the grounds of preschools, elementary schools, and secondary schools.

Two years after the AMMA was adopted, the Arizona Legislature modified the law to criminalize marijuana possession on college campuses and the premises of all postsecondary institutions.<sup>4</sup> This statutory modification, the Arizona Court of Appeals ruled, violated the Voter Protection Act,<sup>5</sup> a provision of the Arizona Constitution that prohibits the state legislature from modifying a law adopted by voters unless the amend-

ment "furthers the purposes" of a voter-approved initiative.<sup>6</sup> The AMMA permits property holders to ban the possession of marijuana on their premises, but the law does not allow the criminalization of marijuana possession by marijuana cardholders except in three designated areas: 1) school buses, 2) pre-, primary-, and secondary-school grounds; and 3) correctional facilities. By expanding criminal liability to include possession on college campuses, the state legislature violated the Voter Protection Act.

The court made clear that the legislature was free to bar the use and possession of marijuana on public college and university campuses to protect federal funding or for any other reason.<sup>7</sup> But, the legislature could not criminalize marijuana possession by a medical marijuana cardholder on a postsecondary campus.

#### **Regulating marijuana possession on college campuses: An emerging challenge**

Forty years ago, most colleges and universities took a firm stand against marijuana possession on their campuses. In *Piazzola v. Watkins*, for example, the Fifth Circuit Court of Appeals threw out criminal convictions against two Alabama college students who were imprisoned after being convicted for possessing marijuana in their dorm rooms.<sup>8</sup> The evidence against the two had been seized in a warrantless search by police acting in concert with university officials. That search, the Fifth Circuit ruled, violated the Fourth Amendment's prohibition against unreasonable searches and seizures.

However, attitudes about marijuana have changed drastically since the *Piazzola* case was decided. In *Medlock v. Indiana University*, a 2013 decision, university administrators dropped criminal charges against a student who had apparently been growing marijuana in his dorm room.<sup>9</sup> Although the student was suspended for a time, the university allowed him to re-enroll and eventually obtain his university degree.

Today, eight states have legalized recreational use of marijuana: Alaska, California, Colorado, Maine, Massachusetts, Nevada, Oregon, and Washington. Twenty-nine states have legalized medical marijuana, along with the District of Columbia, Puerto Rico, and Guam.<sup>10</sup> Seventeen states have approved Cannabidiol (CBD), a marijuana extract that has

medicinal applications. Thus, college and university administrators attempting to keep their campuses free of drugs must confront the fact that some students lawfully possess marijuana based on medical needs.

Medical marijuana laws vary from state to state. As the *Maestas* case made clear, the Arizona legislature is free to pass legislation banning students from possessing marijuana on public university campuses, even those students who hold medical marijuana cards. The legislature may not, however, criminalize the possession of medical marijuana on college and university premises.

College and university leaders who wish to regulate marijuana possession on their campuses must consult the medical marijuana laws in their respective states. Without question, the authority to ban marijuana in student housing will be affected by the fact that a majority of states have adopted laws permitting the possession of marijuana for medicinal purposes. Like it or not, college and university administrators and their legal counsel will have to deal with the legal and policy implications of medical marijuana laws that allow individuals to possess marijuana for medicinal use.

## ENDNOTES

- <sup>1</sup> *Maestas v. State of Arizona*, 394 P.3d 21 (Ariz. Ct. App. 2017).
- <sup>2</sup> ARIZ. REV. STAT. §§ 36-2801 to 2819 (2010),
- <sup>3</sup> ARIZ. REV. STAT. § 15-108 (2013).
- <sup>4</sup> *Id.*
- <sup>5</sup> ARIZ. CONST., art. 4, pt. 1, § 1(6).
- <sup>6</sup> ARIZ. CONST. art. 4, pt. 1, § 1(6)(C) states: “The legislature shall not have the power to amend an initiative measure approved by a majority of the votes cast thereon, or to amend a referendum measure decided by a majority of the votes cast thereon, unless the amending legislation furthers the purposes of such measure and at least three-fourths of the members of each house of the legislature, by a roll call of ayes and nays, vote to amend such measure.”
- <sup>7</sup> *Maestas*, 394 P.3d at 24.
- <sup>8</sup> 442 F.2d 284 (5th Cir. 1971).
- <sup>9</sup> 738 F.3d 867 (7th Cir. 2013).
- <sup>10</sup> *Voters In Eight States Approve Marijuana Law Reform In Unprecedented Election Victories*, NORML.org, (Nov. 10, 2016), <http://norml.org/news/2016/11/10/voters-in-eight-states-approve-marijuana-law-reform-in-unprecedented-election-victories> (last visited April 26, 2018).

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*State of Arizona v. Maestas*: Medical Marijuana on College Campuses