

## Will Medical Marijuana Use on Campus Cause Federal Funding to Go Up in Smoke?

### **Facts:**

This case stems from a March 2014 incident in which ASU police discovered an ASU student, Andre Maestas, sitting in the middle of the road at night after watching an episode of Game of Thrones. Upon further investigation police discovered that Maestas was an Arizona Medical Marijuana card carrier. After an inquiry, Maestas told police there was medical marijuana in his dorm room on campus. After executing a search warrant, police found various smoking paraphernalia and roughly half gram of marijuana—barely enough to roll a joint. Despite his legal designation to purchase and use medical marijuana, Maestas was charged with obstructing a highway or other public thoroughfare and possession or use of marijuana, a class 6 felony in Arizona.

### **Issue:**

Under ARS 36-2802, the original Arizona Medical Marijuana Act from 2010, card carrying users are free to possess marijuana anywhere in the state without the threat of criminal penalties except “on a school bus, on the grounds of any primary or secondary school, or in correctional facilities.” However in 2013, the act was amended by the legislature to include ARS 15-108, which also criminally banned the possession of medical marijuana on “the campus of any public university, college, community college, or post secondary institution.” Maestas argues the 2013 amendment to the law is in violation of the Voter Protection Act. The VPA is a section of the Arizona Constitution which states that any amendment to a voter approved initiative, like the Arizona Medical Marijuana Act, can only “further the purposes” of the voter’s intent for the original measure.

### **Arguments:**

After being denied dismissal by the Arizona Superior Court, Maestas was convicted on the count of obstructing a public thoroughfare and a lesser misdemeanor drug possession charge. On appeal of the drug conviction, Maestas argued that the AMMA was intended to protect cardholders from criminal

penalties, and that the 2013 amendment to increase prohibited areas is unconstitutional because it clearly did not “further the purposes” of the AMMA, as mandated by the VPA. The court agreed the amendment was unconstitutional and vacated Maestas’ drug conviction. Because the original act expressly listed places where medical marijuana was criminally banned, the list was considered intentionally exhaustive. This means opening up card holders to criminal charges in additional spaces is obviously not a furtherance of the protective intent of the AMMA. Even though the court ruled the amendment adding criminal penalties unconstitutional, it made very clear that the legislature can create civil laws limiting medical marijuana to protect federal funding, and that ASU still holds the right to ban medical marijuana on its campuses while distributing its own non-criminal discipline.

In its arguments for review by the Arizona Supreme Court, the state claims the AMMA actually allows additional criminal penalties on card holders under ARS 36-2813, which is a section of the original AMMA that allows schools and landlords to discriminate against a AMMA card holder, if failing to do so would cause the school or landlord to lose federal funding. As we see today, while states are quickly enacting statutes legalizing marijuana use, even medical use is still banned under federal law. Under federal law, a school can lose its federal funding if it doesn’t “prohibit the unlawful possession of illicit drugs on the institution’s property.” The state maintains that creating criminal penalties for possession on university property is simply an extension of the discrimination provision to protect federal funding, and not an amendment to the law that would be subject to VPA scrutiny.

While the practical ends of possessing medical marijuana on university property probably won’t be altered, this case sets an interesting undertone for the continued federalism battle occurring between states and the federal government on marijuana legalization. In the past, courts have seemed to side with the federal government in regulating and controlling drug use, especially among the youth. However, as more and more states vote to legalize marijuana, it creates the need for a more fluid regulatory regime that can’t be achieved through strict federal and criminal enforcement.