IN THE COURT OF APPEALS OF THE STATE OF ARIZONA

DIVISION ONE

WHITE MOUNTAIN HEALTH CENTER, INC., and Arizona non-profit corporation, Plaintiff-Appellee, v. COUNTY OF MARICOPA, et al., Defendants-Appellants. --- STATE OF ARIZONA ex rel. THOMAS C. HORNE, Attorney General in his official capacity, Intervenor – Defendant – Appellant.	Court of Appeals No. 1 CA-CV 12-0831 Maricopa County Superior Court No. CV 2010-015452 Trial Judge: Hon. Michael D. Gordon

BRIEF OF *AMICUS CURIAE* JUDICIAL WATCH, INC.

Todd Feltus (#019076)
KERCSMAR & FELTUS PLLC
6263 N. Scottsdale Road, Suite 320
Scottsdale, Arizona 85250
(480) 421-1001
tfeltus@kflawaz.com

Counsel for Amicus Curiae
Judicial Watch, Inc.

TABLE OF CONTENTS

TABLE OF CITATIONS

CASES **PAGE**

CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS

OTHER AUTHORITIES

INTEREST OF *AMICUS CURIAE*

Judicial Watch, Inc. ("Judicial Watch") is a non-partisan educational organization that seeks to promote transparency, accountability and integrity in government and fidelity to the rule of law. Judicial Watch regularly files *amicus curiae* briefs as a means to advance its public interest mission and has appeared as *amicus curiae* in numerous courts across the nation.

Amicus believes that Arizona's Medical Marijuana Act ("AMMA"), which purports to authorize and regulate medical marijuana in Arizona, is in direct conflict with federal law and therefore preempted by federal law. In the view of *Amicus*, conflicting laws create not just uncertainty in the law, but undermine the rule of law. In this case, the AMMA openly flouts federal law and in turn fosters a casual tolerance for law breaking. As a result, it undermines the very system of laws that protect our liberty.

As required under Rule 16(a), Arizona Rules of Civil Appellate Procedure, Judicial Watch has obtained the written consent of all parties. Those consents are contained in the Appendix.

INTRODUCTION

The purported legalization of medical marijuana in Arizona stands in sharp contrast to federal law. Federal law is unambiguous in that marijuana is a controlled substance regulated under a comprehensive statutory and regulatory

scheme. As such, the production, sale, and use of marijuana, other than as part of a federally authorized research program, is a violation of federal law regardless of any state law permitting such activities even in a limited manner.

The trial court's decision in this case notwithstanding, the unequivocal mandate set forth in federal law regarding marijuana cannot be overemphasized or overlooked. No state law can license and regulate that which is proscribed by federal law. Just as no state can license or regulate bank robbery, Arizona cannot license or regulate marijuana, even if for some limited, purportedly desirable purpose. Federal law forecloses any such possibility.

ARGUMENT

I. The AMMA Is Preempted By Federal Law and Treaty.

A. The Controlled Substances Act Regulates Marijuana.

The Controlled Substances Act ("CSA"), 21 U.S.C. § 801 *et seq.*, makes it unlawful to "manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense" any controlled substance, "[e]xcept as authorized by [21 U.S.C. § 801-904]." 21 U.S.C. § 841(a)(1). The CSA similarly makes it unlawful to possess any controlled substance except as authorized by the CSA. 21 U.S.C. § 844(a). Persons who violate the CSA are subject to criminal and civil penalties, and ongoing or anticipated violations may be enjoined. 21 U.S.C. §§ 841-863, 882(a).

Since 1961, the United States has been party to the Single Convention on Narcotic Drugs ("Single Convention"), an international agreement binding, *inter alia*, all signatories to control persons and enterprises engaged in the manufacture, trade, and distribution of specified drugs. 21 U.S.C. § 801(7); Single Convention, Mar. 30, 1961, 18 U.S.T. 1407, 520 U.N.T.S. 204. Marijuana (cannabis) is one of the drugs specified under the Single Convention on Narcotic Drugs.[1] The Single Convention places the same restrictions on cannabis cultivation that it does on, for example, opium cultivation. As the Single Convention is not a self-executing treaty, domestic legislation was necessary so that the U.S. could satisfy its international legal obligations under the treaty. *United States v. Feld*, 514 F. Supp. 283, 288 (E.D.N.Y. 1981) ("The Single Convention is not self-executing, but works through the constitutional and legal systems of its signatory nations."). Enacted in 1970, Section 841(a)(1) of the CSA is the method by which Congress effectuated the American obligation under that treaty. *See United States v. Noriega*, 746 F. Supp. 1506, 1515 (S.D. Fla. 1990) ("The United States has an

---

[1] Marijuana is defined under the CSA to include all parts of the cannabis plant and anything made therefrom, except for the mature stalks, fiber produced from the stalks, sterilized seeds, and oil from the seeds. 21 U.S.C. § 802(16). Marijuana has been found to contain at least 483 separate chemicals, among which delta9-tetrahydrocannabinol (delta9-THC) is the primary psychoactive component. 66 Fed. Reg. 20,041 (2001).

affirmative duty to enact and enforce legislation to curb illicit drug trafficking under the Single Convention on Narcotic Drugs.") (citation omitted).

The restrictions that the CSA places on the manufacture, distribution, and possession of a controlled substance depend upon the schedule in which the drug has been placed. 21 U.S.C. §§ 821-829. Marijuana and tetrahydrocannabinols have been classified as "Schedule I" controlled substances. *See* Comprehensive Drug Abuse Prevention and Control Act of 1970, Pub. L. No. 91-513, § 202, 84 Stat. 1249 (Schedule I (c)(10) and (17)); 21 U.S.C. § 812(c) (Schedule I(c)(10) and (17)). A drug is listed in Schedule I, the most restrictive schedule, if it has "has a high potential for abuse," "no currently accepted medical use in treatment in the United States," and "a lack of accepted safety for use . . . under medical supervision." 21 U.S.C. §§ 812(b)(1)(A)-(C). In addition to marijuana, other Schedule I drugs include lysergic acid diethylamide (commonly known as LSD) and Methylenedioxymethamphetamine (commonly known as MDMA or ecstasy).

As recently as January 2013, an attempt to reclassify marijuana to a less restrictive schedule was rejected by the U.S. Court of Appeals for the D.C. Circuit. *See Americans for Safe Access v. Drug Enforcement Admin.*, No. 11-1265, 2013 U.S. App. LEXIS 1407 (D.C. Cir. Jan. 22, 2013). The court upheld a decision by the Drug Enforcement Administration ("DEA") that marijuana has no "currently accepted medical use" based on the lack of "adequate and well-controlled studies

proving efficacy." *Id.* at 5. The DEA's decision was itself based on a binding scientific and medical evaluation conducted by the U.S. Department of Health and Human Services. That agency had concluded that "research on the medical use of marijuana ha[d] not progressed to the point that marijuana [could] be considered to have a 'currently accepted medical use' or a 'currently accepted medical use with severe restrictions.'" *Id.* at 33-34 (citing 76 Fed. Reg. 40,560).

Notably, at the same time Arizona is contemplating licensing and regulating marijuana usage, the *Americans for Safe Access* decision affirms the unambiguous federal policy that no usage of marijuana – medical or otherwise – is permitted anywhere in the United States. As set forth in the CSA and the DEA's decision, marijuana remains a Schedule I drug proscribed under federal law. *See also Alliance for Cannabis Therapeutics v. DEA*, 15 F.3d 1131, 1133 (D.C. Cir. 1994) (tracing back unsuccessful efforts to reschedule marijuana since 1972).

Furthermore, under the CSA, it is unlawful to manufacture, distribute, dispense, or possess a Schedule I drug, except as part of a strictly controlled research project that has been registered with the DEA and approved by the Food

and Drug Administration ("FDA").[2] 21 U.S.C. 841(a)(1), 823, 844(a); *United States v. Oakland Cannabis Buyers' Coop.*, 532 U.S. 483, 489-490, 492 (2001). The only federally approved research facility for marijuana is located at the University of Mississippi. *See* Notice of Registration, 69 Fed. Reg. 11662 (March 11, 2004) (renewing University of Mississippi's registration as a bulk manufacturer of marijuana); Claudia Dreifus, "Growing Marijuana With Government Money," N.Y. TIMES (Dec. 23, 2008). This research facility, which has been in operation since 1968, studies the chemical structure of marijuana and maintains a farm that grows nearly one hundred varieties of marijuana plants. *Id.* Marijuana grown at the facility is available only to federally approved researchers with special permits. *Id.* Significantly, no federally approved research facility is located in Maricopa County or elsewhere in Arizona.

In summary, nowhere within this comprehensive statutory and regulatory scheme is there an exception for a state such as Arizona to set out on its own course in regard to marijuana. Federal law makes no provision for a separate state-

---

[2] By contrast, drugs listed in Schedules II through V may be dispensed and prescribed for medical use. Manufacturers, physicians, pharmacists and others who may lawfully produce, prescribe, or distribute drugs listed in schedules II through V must, however, comply with stringent statutory and regulatory provisions that control the manufacture and distribution of such drugs. 21 U.S.C. §§ 821-829; 21 C.F.R. Pts. 1301-1306.

created licensing and regulatory regime for marijuana, whether intended for medical use or otherwise.

B. The Supremacy Clause Preempts Contrary State Laws.

It cannot be doubted that the CSA preempts and is "supreme" to any contrary state law. U.S. Const. art. VI cl. 2. As the Supreme Court noted in *Gibbons v. Ogden*:

> [that as] to such acts of the State Legislatures as do not transcend their powers, but . . . interfere with, or are contrary to the laws of Congress, made in pursuance of the constitution, . . . in every such case, the act of Congress . . . is supreme; and the law of the State, though enacted in the exercise of powers not controverted, must yield to it.

22 U.S. (9 Wheat.) 1, 211 (1824); *Gonzales v. Raich*, 545 U.S. 1, 28 (2005) ("The Supremacy Clause unambiguously provides that if there is any conflict between federal and state law, federal law shall prevail.").

"It is a familiar and well-established principle that the Supremacy Clause . . . invalidates state laws that 'interfere with, or are contrary to,' federal law." *Hillsborough Cnty. v. Automated Med. Laboratories, Inc.*, 471 U.S. 707, 712 (1985). In determining whether preemption exists, "[t]he purpose of Congress is the ultimate touchstone . . . ." *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996). Preemption can occur either expressly or impliedly. "Congress may indicate pre-emptive intent through a statute's express language or through its structure and

purpose." *Altria Group, Inc. v. Good*, 555 U.S. 70 (2008). In the absence of express preemption, Congressional intent can be inferred where "it is impossible for a private party to comply with both state and federal requirements, . . . or where state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'" *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 372-73 (2000) (quoting *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941)).

As the U.S. Supreme Court has instructed:

> [I]n considering the validity of state laws in the light of treaties or federal laws touching the same subject, [we have] made use of the following expressions: conflicting; contrary to; occupying the field; repugnance; difference; irreconcilability; inconsistency, violation; curtailment; and interference. But none of these expressions provides an infallible constitutional test or exclusive constitutional yardstick."

Hines v. Davidowitz, 312 U.S. at 67. Further, "in principle, a United States treaty or international agreement may also be said to occupy a field and preempt a subject, and supersede State law or policy even though that law or policy is not necessarily in conflict with the international agreement . . . ." Restatement (Third) of Foreign Relations Law of the United States 115 cmt. e (1987).

The reasoning behind federal supremacy was succinctly explained by Justice Marshall explained in *M'Culloch v. State of Maryland*, 17 U.S. (4 Wheat.) 316 (1819):

> no principle . . . can be admissible, which would defeat the legitimate operations of a supreme government. It is the very essence of supremacy, to remove all obstacles to its action within its own sphere, and so to modify every power vested in subordinate governments, as to exempt its own operations from their own influence.

Id. at 427-28. Justice Marshall observed further that:

> we are relieved, as we ought to be, from clashing sovereignty; from interfering powers; from repugnancy between a right in one government to pull down, what there is an acknowledged right in another to build up; from the incompatibility of a right in one government to destroy, what there is a right in another to preserve.
>
> . . . .
>
> The states have no power ... to retard, impede, burden, or in any manner control, the operations of the constitutional laws enacted by Congress to carry into execution the powers vested in the general government.

Id. at 430, 436.

C. The CSA Preempts the AMMA.

Within this general context of comprehensive federal preemption, the CSA directly addresses the specific question of preemption of state laws relating to controlled substances. Section 903 of Title 21 of the United States Code provides that

> no provision of this subchapter [21 U.S.C. 801-904] shall be construed as indicating an intent on the part of the Congress to occupy the field in which that provision operates, including criminal penalties, to the exclusion of any State law on the same subject matter which would

> otherwise be within the authority of the State, ***unless there is a positive conflict between that provision of this subchapter and that State law so that the two cannot consistently stand together.***

21 U.S.C. § 903 (emphasis added). In other words, where a "positive conflict" exists between the CSA and a state law such that "the two cannot consistently stand together," the CSA "shall be construed" as evidencing Congressional intent to "occupy the field" in which the CSA provision operates "to the exclusion of any State law on the same subject matter which would otherwise be within the authority of the State . . . ." 21 U.S.C. § 903.

There can be no more obvious example of statutes in conflict than where one statute specifically prohibits what the other statute affirmatively permits. Hence, the two laws "cannot consistently stand together." Section 903 makes clear that Congress did not intend to be the sole occupant of the controlled substance field if state laws on the subject were concurrent with, and not inconsistent with, the federal scheme set forth by the CSA. *See, e.g., People v. Sheppard*, 432 N.Y.S.2d 467, 468 (1980) ("Although the Drug Enforcement Administration is a federal agency, concurrent jurisdiction with the State is intended under 21 U.S.C.A., section 903."); *Hartford v. Tucker*, 621 A.2d 1339, 1341 (Conn. 1993) ("The antipreemption provision of the Controlled Substances Act, evidences the fact that

Congress specifically considered the issue of concurrent state proceedings and decided to allow them.").[3]

In this case, the AMMA can give no validity to acts prohibited by the CSA. A "positive conflict" exists and the two statutory schemes cannot "consistently stand together." The plain purpose and function of the CSA is to occupy the field and trump or preempt the non-supporting state law. H.R. Rep. No. 91-1444, at 1, 22, reprinted in 1970 U.S.C.C.A.N. 4566, 4566, 4567, 4588. While the CSA permits overlapping regulation by the States, it is only to the extent that a state provision is not more permissive. Congress itself has reiterated that any state legalization attempts conflicts with and are preempted by the CSA:

> (3) pursuant to section 401 of the Controlled Substances Act, it is illegal to manufacture, distribute, or dispense marijuana ... ; (5) marijuana ... [has] not been approved by the Food and Drug Administration to treat any disease

---

[3] A case from the U.S. Supreme Court during the era of alcohol prohibition illuminates the nature of concurrent jurisdiction in this context. In *United States v. Lanza*, the Court considered the propriety of prohibition-related liquor charges brought against defendants by both the United States and the state of Washington. 260 U.S. 377, 378-79 (1922). In *Lanza*, there was no question that the state of Washington and the federal government had concurrent jurisdiction. *Id.* at 381. In particular, with respect to prohibition, the Eighteenth Amendment specifically established concurrent jurisdiction. *See* U.S. Const. amend. XVIII, 2. Yet, according to the *Lanza* Court, the existence of concurrent power "does not enable Congress or the several states to defeat or thwart the prohibition, but only to enforce it by appropriate means." 260 U.S. at 380 (quoting the *National Prohibition Cases*, 253 U.S. 350, 387 (1920)). The *Lanza* Court further stated that "each may, without interference by the other, enact laws to secure prohibition, with the limitation that no legislation can give validity to acts prohibited by the amendment." *Id.* at 382.

> or condition; (6) the Federal Food, Drug and Cosmetic Act already prohibits the sale of any unapproved drug, including marijuana ... ; (11) Congress continues to support the existing federal legal process for determining the safety and efficacy of drugs and opposes efforts to circumvent this process by legalizing marijuana ... for medicinal use without valid scientific evidence and the approval of the Food and Drug Administration.

See Omnibus Consolidated and Emergency Supplemental Appropriations Act, Pub. L. No. 105-277 (1998), Div. F, 112 Stat. 2681, 2681-760 through 2681-761 (section entitled "Not Legalizing Marijuana for Medicinal Use").

Here, the law is clear. Marijuana is a Schedule I drug and federal law makes it a serious criminal offense to "manufacture, distribute, or dispense" it or "possess it with intent to manufacture, distribute, or dispense" it. 21 U.S.C. § 841(a)(1). Federal law authorizes a single entity, the DEA, to select one marijuana research facility and it has done so, it is the University of Mississippi. It is not Arizona, Maricopa County, or Plaintiff-Appellee. The AMMA is in direct conflict with federal law and thus is preempted.

II. The AMMA Conflicts with U.S. Treaty Obligations.

In addition to preemption by the CSA, Arizona's attempt to license and regulate marijuana runs afoul of United States' treaty obligations. For this independent reason, the AMMA must give way.

Treaties are unquestionably the "supreme law of the land" and trump any contrary state statutes, including the AMMA. U.S. Const. art. VI, cl.2. Not only

is the federal government obligated under this international drug treaty regime, but the individual states are as well. "As law of the United States, international law is also the law of every State, is a basis for the exercise of judicial authority by State courts, and is cognizable in cases in State courts, in the same way as other United States law." Restatement (third) of Foreign Relations Law of the United States 111 cmt. d (1986).

Notably, the U.S. Congress has recognized that:

> (7) The courts of the United States have repeatedly found that any State law that conflicts with a federal law or treaty is preempted by such law or treaty. (8) The Controlled Substances Act (21 U.S.C. 801 et seq.) strictly regulates the use and possession of drugs. (9) The United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances [Dec. 20, 1988, S. Treaty Doc. No. 101-4 (1989)] . . . similarly regulates the use and possession of drugs. (10) Any attempt to authorize under State law an activity prohibited under such Treaty or the Controlled Substances Act would conflict with that Treaty or Act.

Omnibus Consolidated and Emergency Supplemental Appropriations Act, Pub. L. No. 105-277 (1998), Div. F, 112 Stat. 2681, 2681, 2681-759. The AMMA is in conflict with the U.S. treaty obligations and federal law and is preempted.

III. The AMMA Has No Legal Effect and Cannot Stand.

The AMMA purports to authorize activity – the licensing and regulation of marijuana – that is in direct conflict with federal law. The statutory scheme set forth by the AMMA cannot "consistently stand together" with the plain mandate

set forth in federal law and U.S. treaty obligations. The AMMA is preempted by federal law. It is simply null and void. *Crow v. Wainwright*, 720 F.2d 1224, 1225 (11th Cir. 1983) (preempted state statute "null and void").

In this case, the trial court has ordered Maricopa County to certify that a proposed medical marijuana dispensary and cultivation facility complies with applicable zoning requirements. If not express, it is certainly implicit in the zoning code that in order to obtain a permit, the proposed facility must be lawful. Here, there is no question that the cultivation and dispensing of marijuana – medical or otherwise – is comprehensively regulated by federal law and that Appellee's proposed facility is directly contrary to and in violation of federal law. The AMMA cannot and does not alter this. Maricopa County cannot issue a zoning permit for a facility for the cultivation and dispensing of marijuana any more than it could issue a permit to establish a "meth lab" or a print shop for counterfeit currency. Our federal system does not permit such a result.

CONCLUSION

For the foregoing reasons, *Amicus* respectfully requests that this Court reverse the ruling of the trial court.

Dated: March 19, 2013

Respectfully submitted,

/s/ Todd Feltus
Todd Feltus (#019076)
KERCSMAR & FELTUS PLLC
6263 N. Scottsdale Road, Suite 320
Scottsdale, Arizona 85250
(480) 421-1001
tfeltus@kflawaz.com
Counsel for Amicus Curiae
Judicial Watch, Inc.

Of Counsel:

Paul J. Orfanedes
James F. Peterson
JUDICIAL WATCH, INC.
425 Third Street, S.W., Ste. 800
Washington, DC 20024
(202) 646-5172

IN THE COURT OF APPEALS OF THE STATE OF ARIZONA

DIVISION ONE

WHITE MOUNTAIN HEALTH CENTER, INC., and Arizona non-profit corporation, Plaintiff-Appellee, v. COUNTY OF MARICOPA, et al., Defendants-Appellants. --- STATE OF ARIZONA ex rel. THOMAS C. HORNE, Attorney General in his official capacity, Intervenor-Defendant-Appellant.	Court of Appeals No. 1 CA-CV 12-0831 Maricopa County Superior Court No. CV 2010-015452 Trial Judge: Hon. Michael D. Gordon

APPENDIX TO BRIEF OF *AMICUS CURIAE* JUDICIAL WATCH, INC.

Todd Feltus (#019076)
KERCSMAR & FELTUS PLLC
6263 N. Scottsdale Road, Suite 320
Scottsdale, Arizona 85250
(480) 421-1001
tfeltus@kflawaz.com

Counsel for Amicus Curiae Judicial Watch, Inc.

Todd Feltus

From: Jim Peterson [JPeterson@JUDICIALWATCH.ORG]
Sent: Tuesday, March 19, 2013 1:45 PM
To: Todd Feltus
Subject: FW: White Mountain Health Care Center Inc. v. County of Maricopa, et al., CV 2012-053585 (Sup. Ct., Maricopa Co., Ariz.)

From: Irish Doug [mailto:Irishd@mcao.maricopa.gov]
Sent: Wednesday, January 02, 2013 6:03 PM
To: Paul Orfanedes
Cc: Mark Spencer; White Bruce; Muthig Klaus
Subject: RE: White Mountain Health Care Center Inc. v. County of Maricopa, et al., CV 2012-053585 (Sup. Ct., Maricopa Co., Ariz.)

Good afternoon.
This e-mail will serve as consent by the County and Mr. Montgomery to your filing an *amicus* brief in support of our appeal. You will likely need to get additional consent from the other defendants. The State defendants are represented by Charles Grube at the Attorney General's office.

By copy of this to my colleagues Bruce White and Peter Muthig, I'm asking one of them to forward to you copies of the pleadings and moving papers in this case, including our unsuccessful effort to obtain a stay by the Court of Appeals of Judge Gordon's ruling.

Douglas L. Irish
Special Assistant, Intergovernmental Relations
Civil Services Division Chief
Maricopa County Attorney's Office
222 North Central Ave, Suite 1100
Phoenix, AZ 85004
602-506-6173
Irishd@mcao.maricopa.gov

From: Paul Orfanedes [mailto:POrfanedes@JUDICIALWATCH.ORG]
Sent: Wednesday, January 02, 2013 3:49 PM
To: Irish Doug
Cc: Mark Spencer
Subject: White Mountain Health Care Center Inc. v. County of Maricopa, et al., CV 2012-053585 (Sup. Ct., Maricopa Co., Ariz.)

Dear Mr. Irish:

We understand that Maricopa County has noticed an appeal from Judge Michael D. Gordon's December 3, 2012 ruling in the above-captioned matter. Judicial Watch, Inc. is interested in filing an amicus curiae brief in support of Maricopa County. The County Attorney suggested we contact you.

We are hoping that we can obtain the parties written consent to file an amicus curiae brief. We also were hoping that your office could email us a pdf of the complaint as well as the moving papers for the County's cross-motion for summary judgment.

Thank you for your attention to this matter.

Paul J. Orfanedes
Director of Litigation
Judicial Watch, Inc.
(202) 646-5165

Todd Feltus

From: Jim Peterson [JPeterson@JUDICIALWATCH.ORG]
Sent: Tuesday, March 19, 2013 1:45 PM
To: Todd Feltus
Subject: FW: White Mountain Health Center v. County of Maricopa, No. 1 CA-CV-0831

From: Grube, Charles [mailto:Charles.Grube@azag.gov]
Sent: Monday, March 04, 2013 7:46 PM
To: Jim Peterson
Subject: RE: White Mountain Health Center v. County of Maricopa, No. 1 CA-CV-0831

Jim, on behalf of the State of Arizona ex rel. Thomas C. Horne, we are happy to consent to the filing of an amicus curiae brief by Judicial Watch. Please let me know if you need anything else.

From: Jim Peterson [mailto:JPeterson@JUDICIALWATCH.ORG]
Sent: Monday, March 04, 2013 4:15 PM
To: Grube, Charles; brian.luce@azag.gov
Subject: White Mountain Health Center v. County of Maricopa, No. 1 CA-CV-0831

Counsel,

My client, Judicial Watch, Inc., wishes to file a brief amicus curiae in support of Maricopa County and the State in the above-captioned case. In accordance with Rule 16(a), we request your written consent to file such a brief with the Court of Appeals. The County has already consented to this request. Counsel for Appellee has consented on the condition that they have an opportunity to file a brief in response. Thank you for your attention to this matter.

Sincerely,

James F. Peterson
Senior Attorney
Judicial Watch, Inc.
425 Third Street, S.W., Suite 800
Washington, DC 20024
202-646-5175 (direct)

Todd Feltus

From: Jim Peterson [JPeterson@JUDICIALWATCH.ORG]
Sent: Monday, March 18, 2013 10:35 AM
To: Todd Feltus
Subject: Fwd: White Mountain Health Center v. County of Maricopa, No. 1 CA-CV-0831

Todd see below

Sent from my Verizon Wireless 4G LTE DROID

-------- Original Message --------
Subject: RE: White Mountain Health Center v. County of Maricopa, No. 1 CA-CV-0831
From: Kelly Flood <kflood@acluaz.org>
To: Jim Peterson <JPeterson@JUDICIALWATCH.ORG>,jeff@kaufmanesq.com,Daniel Pochoda <dpochoda@acluaz.org>
CC: "Emma Andersson (eandersson@aclu.org)" <eandersson@aclu.org>,"Ezekiel Edwards (eedwards@aclu.org)" <eedwards@aclu.org>

Mr. Peterson,
Plaintiff will consent to your filing without the additional stipulation.
Thank you,

Kelly J. Flood
Senior Staff Attorney
American Civil Liberties Union (ACLU) of Arizona
P.O. Box 17148
Phoenix, AZ 85011-0148
Phone: 602-650-1854 ext. 118

From: Jim Peterson [mailto:JPeterson@JUDICIALWATCH.ORG]
Sent: Friday, March 15, 2013 8:33 AM
To: Kelly Flood; jeff@kaufmanesq.com; Daniel Pochoda
Cc: Emma Andersson (eandersson@aclu.org); Ezekiel Edwards (eedwards@aclu.org)
Subject: RE: White Mountain Health Center v. County of Maricopa, No. 1 CA-CV-0831

Ms. Flood,

We will be filing our amicus brief early next week. In light of the State's submission of its brief, and White Mountain having an opportunity to respond, is it still necessary for us to inform the Court that your consent is contingent upon the

opportunity to file another brief? If it is not, then, as you know, it would not be necessary to burden the court with a motion for leave to file.

Thank you,

J. Peterson

From: Kelly Flood [mailto:kflood@acluaz.org]
Sent: Thursday, February 28, 2013 12:32 PM
To: Jim Peterson; jeff@kaufmanesq.com; Daniel Pochoda
Cc: Emma Andersson (eandersson@aclu.org); Ezekiel Edwards (eedwards@aclu.org)
Subject: RE: White Mountain Health Center v. County of Maricopa, No. 1 CA-CV-0831

Mr. Peterson,

White Mountain will consent to your client filing an amicus brief with the Court of Appeals, provided that our consent in conditioned upon having the opportunity to respond to your brief.
Because your request is coming right at the time Answering Brief is due, we request the opportunity to respond to any arguments you may make. You may make such a representation to the Court of Appeals in the motion that you will file to accompany your brief.
Thank you,

Kelly J. Flood
Senior Staff Attorney
American Civil Liberties Union (ACLU) of Arizona
P.O. Box 17148
Phoenix, AZ 85011-0148
Phone: 602-650-1854 ext. 118

From: Jim Peterson [mailto:JPeterson@JUDICIALWATCH.ORG]
Sent: Wednesday, February 27, 2013 5:32 PM
To: jeff@kaufmanesq.com; Daniel Pochoda; Kelly Flood
Subject: White Mountain Health Center v. County of Maricopa, No. 1 CA-CV-0831

Counsel,

My client, Judicial Watch, Inc., wishes to file a brief amicus curiae in support of Maricopa County in the above-captioned case. In accordance with Rule 16(a), we request your written consent to file such a brief with the Court of Appeals. Thank you for your attention to this matter.

Sincerely,

James F. Peterson
Senior Attorney
Judicial Watch, Inc.

425 Third Street, S.W., Suite 800
Washington, DC 20024
202-646-5175 (direct)