

## *State v. Maestas*

**Citation:** State v. Maestas, 417 P.3d 774 (Ariz. 2018).

**Date Filed:** May 23, 2018

**Opinion's Author:** Justice Pelander

**Joined By:** Chief Justice Bales, Vice Chief Justice Brutinel, Justices Timmer and Lopez, and Judge Eckerstrom (Justice Bolick concurred).

*Practitioners: For quick reference, please see the "Issue" and "Holding" sections.*

**Facts:** The Arizona Medical Marijuana Act ("AMMA") was enacted by voters in 2010 under Proposition 203. The AMMA allows qualified AMMA cardholders to possess up to two-and-one-half ounces of "usable marijuana."<sup>1</sup> However, the AMMA prohibits the possession and/or use of medical marijuana in certain specified locations. The Arizona Legislature passed a statute in 2012 which added another prohibited location: "any public university, college, community college, or postsecondary educational institution."<sup>2</sup>

On March 2014, an Arizona State University student, Andre Lee Juwaun Maestas, was arrested after a campus officer observed him near his on-campus dormitory. The officer searched Maestas and found a valid AMMA identification card in his wallet. Maestas admitted he had marijuana in his dormitory. The officer obtained a search warrant. The officer subsequently found 0.4 grams of marijuana in Maestas' room. Maestas was charged with obstructing public thoroughfare and possession of marijuana.

**Procedural History:** This case is currently before the Arizona Supreme Court. At the trial level, the court denied the defense's motion to dismiss, and convicted Maestas on both counts. He was imposed a fine on the possession charge and placed on probation for one year. Maestas appealed.

The Arizona Court of Appeals vacated Maestas' conviction for possession of marijuana. The court concluded that section 15-108(A) was unconstitutional under the Voter Protection Act ("VPA").<sup>3</sup> The court reasoned that the VPA applies to section 15-108(A) because the statute re-criminalizes AMMA cardholders' from possessing marijuana on university campuses.<sup>4</sup> The court ruled that the constitutionality of section 15-108(A) is a justiciable question since the political question doctrine is inapplicable.<sup>5</sup> Lastly, the court concluded that section 15-108(A) violated the VPA because it eliminated some of AMMA's protections and does not further the AMMA's purposed to protect cardholders from "criminal and other penalties."<sup>6</sup>

The Arizona Supreme Court granted review of the constitutionality issue.

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<sup>1</sup> State v. Maestas, 417 P.3d 774, 776 (2018) (citing ARIZ. REV. STAT. ANN. § 36-2801(1)(a)(i) (2018)).

<sup>2</sup> *Id.* (citing ARIZ. REV. STAT. ANN. § 15-108(a) (2018)).

<sup>3</sup> *Id.* (citing State v. Maestas, 394 P.3d 21, 25 (Ariz. Ct. App. 2017)).

<sup>4</sup> *Id.* (citing *Maestas*, 394 P.3d at 24).

<sup>5</sup> *Id.* (citing *Maestas*, 394 P.3d at 23-24).

<sup>6</sup> *Id.* (citing *Maestas*, 394 P.3d at 23).

**Issues:**

1. The VPA limits the legislature's power to amend, repeal, or supersede voter initiatives. Does section 15-108(A) amend the AMMA by making AMMA-compliant possession or use of marijuana on public college and university campuses criminal?
2. The Arizona Constitution states that the legislature may constitutionally amend a voter initiative only if "the amending legislation furthers the purposes of such measure and at least three-fourths of the members in each house of the legislature . . . vote to amend such measure."<sup>7</sup> Whether the legislature furthered AMMA's purpose to protect patients' use of medical marijuana from arrest, prosecution, and other criminal penalties when it enacted §15-108(A)?

**Holdings:**

1. Yes, the legislature amended the AMMA when it enacted section 15-108(A).
2. No, section 15-108(A) does not further the purpose of AMMA.

**Disposition:** The court of appeals' decision and Maestas' conviction for possession of marijuana are vacated.

**Rule:** To comply with the Voter Protection Act, an amendment to a voter initiative by the legislature may be held unconstitutional if the amending legislation does not further the purposes of the measure.

**Reasoning:**

- **Separation of powers:** The court began its discussion section with a brief examination of justiciability and separation of powers.<sup>8</sup> The court noted that the Arizona Constitution entrusts some particular matters to specific branches of the government.<sup>9</sup> The court then went on to explain that from the basic principle of separation of powers, a non-justiciable political question occurs when "there is a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it."<sup>10</sup> However, the court concluded that neither of those issues were present and therefore the issue presented was justiciable.<sup>11</sup>
- **The VPA's limitations on legislative interference:** The VPA limits the legislature's power to amend, repeal, or supersede vote initiatives.<sup>12</sup> The court noted that the AMMA specifies certain circumstances for when the legislature may impose penalties on a person possessing or using marijuana.<sup>13</sup> The court then listed specific locations

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<sup>7</sup> ARIZ. CONST. art. IV, pt. I, § 1(6)(C).

<sup>8</sup> *Maestas*, 417 P.3d at 776-77.

<sup>9</sup> *Id.* at 777 (citing *Ariz. Indep. Redistricting Comm'n v. Brewer*, 275 P.3d 1267, 1271 (2012)).

<sup>10</sup> *Id.* (citing *Kromko v. Ariz. Bd. of Regents*, 165 P.3d 168, 170 (2007)).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 778 (citing ARIZ. CONST art. IV, pt. 1, § 1(6)(B)-(C), (14)).

<sup>13</sup> *Id.* (citing ARIZ. REV. STAT. ANN. § 36-2802(B) (2018)).

where possession or use of marijuana is not allowed.<sup>14</sup> The court concluded that because AMMA sets forth locations where the legislature *may* impose penalties and because that list does not include university campuses, the voters did not intend to criminalize AMMA-compliant possession or use of marijuana on university campuses.<sup>15</sup>

- **Knowledge of amendment process:** The court noted that the legislature presumably understood that section 15-108(A) would amend the AMMA if enacted.<sup>16</sup> The phrase “in addition to the limitations prescribed in” implies that section 15-108(A) would amend the locations listed in the AMMA.<sup>17</sup> Further, in the legislative history of the statute, the bill noted that it would need the “affirmative vote of at least three-fourths of the members of each house of the Legislature’ to be enacted.”<sup>18</sup> The court notes that this language means that the bill’s sponsor “presumably understood” that the bill would amend the AMMA.<sup>19</sup>
- **The purpose of the AMMA:** The AMMA “permits those who meet the statutory conditions to [possess and] use medical marijuana.”<sup>20</sup> The court noted that the language of Proposition 203 plainly states that the purpose is to protect patients who engage in the medical use of marijuana from penalties.<sup>21</sup> The court reasoned that criminalizing AMMA-compliant possession or use on a university campus clearly does not further the purpose of the act.<sup>22</sup>
- **AMMA’s anti-discrimination provision:** A.R.S. section 36-2813(A) states that a “school’ may ‘penalize a person solely for his status as a cardholder’ only if ‘failing to do so would cause the school . . . to lose [federal funding]’”.<sup>23</sup> The court held that the AMMA’s anti-discrimination provision does not authorize the legislature to criminalize AMMA-compliant marijuana possession or use on public university campuses for two reasons.<sup>24</sup> First, the statute authorizes a “school” to penalize a cardholder, not the legislature.<sup>25</sup> Further, a school is not authorized to enact criminal laws.<sup>26</sup> Second, even if the statute did authorize the legislature to take action to preserve federal funding, the State did not show that “penalize[ing] a person solely for his status as a cardholder would cause’ a school to lose federal funding.”<sup>27</sup> The court reasoned that a university would be able to comply with federal funding

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<sup>14</sup> *Id.* (citing ARIZ. REV. STAT. ANN. § 36-2802(B)(1)–(3) (2018)).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* (citing Ariz. H.B. Summary for H.B. 2349, 50th Leg., 2d Reg. Sess. (Ariz. 2012)).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* (citing Reed–Kaliher v. Hoggatt, 347 P.3d 136, 139 (Ariz. 2015)).

<sup>21</sup> *Id.* at 779 (citing Proposition 203 § 2(G) (2002)).

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* (citing ARIZ. REV. STAT. ANN. § 36-2813(A) (2018)).

requirements simply by adopting “a program to prevent the use of illicit drugs”,<sup>28</sup> without having to guarantee prosecution for violations of its program.<sup>29</sup>

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<sup>28</sup> *Id.* (citing 20 U.S.C.A. § 1011i(a) (Westlaw through Pub. L. No. 115-223)).

<sup>29</sup> *Id.*