

Case No. 22504-6-III

Case No. 22466-0-III

**IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON**

STATE OF WASHINGTON,
Respondent,

v.

GARY D. ACKERSON,
Appellant.

STATE OF WASHINGTON,
Respondent,

v.

LEE FINKELMAN
Appellant.

**MOTION FOR LEAVE TO FILE AMICUS CURIAE
MEMORANDUM IN SUPPORT OF APPELLANT'S MOTION FOR
DISCRETIONARY REVIEW**

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A. IDENTITY AND INTEREST OF AMICUS

The American Civil Liberties Union of Washington ("ACLU") is a statewide, non-partisan, non-profit organization with over 20,000 members dedicated to the preservation and defense of civil liberties. The ACLU has particular expertise and interest in the issues of drug policy reform and criminal justice. The Supreme Court of Washington has accepted our amicus briefs and memoranda in other cases involving these issues. See, for example, *Seeley v. State*, 132 Wn.2d 776, 940 P.2d 604 (1997); *State v. Shepherd*, 110 Wn. App. 544, 552, 41 P.3d 1235 (2002) (amicus memorandum submitted in support of petition for review by the Supreme Court of Washington). The ACLU endorsed Washington's Medical Use of Marijuana Act ("the Act"), which was approved as ballot measure I-692 by 60% of the state's voters in 1998.¹ The ACLU also has special expertise in the broad policy issues that affect the hundreds of seriously ill individuals throughout the state who treat debilitating and terminal illnesses with medical marijuana. We provide the public with information regarding the Act, in our website brochure entitled "The Washington Medical Use of Marijuana Act: A Guide for Patients, Caregivers, Physicians, Law Enforcement, and the Public" and regularly consult with patients, caregivers, government officials and defense attorneys concerning medical marijuana issues.

B. ISSUES TO BE ADDRESSED BY AMICUS

Amicus asks this Court to grant appellant's motion for discretionary review pursuant to RAP 2.3(b) (1) and (2) for the following reasons:

¹ The Act is codified at RCW 69.51A.

1. The superior court committed obvious error by requiring proof beyond what is required by the Medical Use of Marijuana Act (Chapter 69.51A RCW), and as a result barred medical marijuana patients from presenting to a jury admissible evidence of their statutory defense, frustrated the explicitly stated purpose of the statute, and rendered further proceedings useless.

2. The superior court committed probable error and the decision of the superior court substantially altered the status quo or limited the freedom of the petitioners to act by barring the petitioners from presenting proof of their protected status to a jury, where petitioners made an offer of proof addressing each element of the medical marijuana statute relevant to the statutory defense for patients.

C. WHY AMICUS BRIEFING WILL ASSIST THE COURT

The ACLU's amicus memorandum discusses reasons supporting discretionary review which supplement the grounds found in the appellants' motions. The amicus memorandum provides compelling authority showing that the trial court committed probable and obvious error in excluding the treating physicians' testimony and barring the medical marijuana defense in its entirety. The amicus memorandum also demonstrates why the trial court committed error warranting discretionary review regarding the statutory requirements for proving a medical marijuana patient's 60-day supply of medication. Discretionary review is warranted not only because of the seriousness of the errors and their impact on the case at bar, but also because trial courts, prosecutors, police and medical marijuana patients throughout the state are in need of this Court's prompt guidance on the issues raised here. The Court's consideration of amicus' statutory analysis and authority would facilitate a decision of the case on the merits. RAP 1.2(a)

D. FAMILIARITY WITH ISSUES

The ACLU is fully familiar with the record and the parties' briefs in these cases, as well as the parties' motions for discretionary review in both cases.

E. CONCLUSION

For the reasons discussed above, pursuant to RAP 1.2(a), 10.6, and 2.3(b), the

ACLU requests leave to file the attached amicus memorandum for the Court's consideration.

Respectfully submitted this 1st day of June, 2005.

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