

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

JASON LEE FRY,

Petitioner.

MOTION FOR LEAVE TO
FILE JOINT AMICUS CURIAE
BRIEF IN SUPPORT OF
PETITIONER
WITH WASHINGTON
ASSOCIATION OF CRIMINAL
DEFENSE LAWYERS

1. Identity and Interest of Amici

The American Civil Liberties Union of Washington (“ACLU”) is a statewide, non-partisan, non-profit organization with more than 24,000 members dedicated to the preservation and defense of civil liberties.

The Washington Association of Criminal Defense Lawyers (“WACDL”) is a statewide organization of 1,135 members. One of the stated goals of the organization is to improve the quality of justice in this state and to protect the constitutional rights of individuals accused of crimes. The issues raised in this case and accepted for review affect the rights of accused persons.

This Court requested an amicus curiae brief from the Washington Association of Criminal Defense Lawyers (“WACDL”) in this cause, and WACDL invited the ACLU to join it on the brief. The ACLU respectfully

moves the Court for leave to file a joint amicus curiae brief with WACDL pursuant to RAP 10.6.

The ACLU has been involved in the development of Washington's body of law regarding the medical use of marijuana since the mid-1990s. The organization endorsed the Medical Use of Marijuana Act¹, participated in the drafting of Senate Bill 6032 that amended the Act in 2007², and provided written comment to the Department of Health during the development of WAC 246-75-010, the rule defining a presumptive "sixty-day supply" of medical marijuana. This Court has accepted amicus curiae briefs and memoranda from the ACLU in a number of other medical marijuana cases: *Seeley v. State*, Cause No. 63534-0; *State v. Shepherd*, Cause No. 72521-7; *State v. Ackerson*, Cause No. 76152-3; and *State v. Tracy*, Cause No. 77534-6 (joint amicus curiae brief filed with WACDL). The ACLU also provides the public with information regarding the Act in its brochure entitled "Washington's Medical Use of Marijuana Act: A Guide for Patients, Providers, Physicians, Law Enforcement, and the Public"³, presents on the topic at Continuing Legal Education seminars, and regularly consults with patients, providers,

¹ The Act is codified at Chapter 69.51A RCW.

² 2007 c. 371.

³ Available for download at http://www.aclu-wa.org/library_files/Medical%20marijuana%20brochure%2011_08.pdf.

government agency staff and elected officials concerning medical marijuana issues.

2. Familiarity with Issues and Scope of Argument

Attorneys for the ACLU have reviewed all of the briefs of the parties filed with the Court and the arguments presented therein.

3. Issues to Which the ACLU's Brief Will Be Directed

A. Under Art. 1, sec. 7 of the Washington state constitution, does probable cause to search a home exist when the homeowner is a patient whose physician has authorized his use of marijuana under the Act, he presents officers with facially valid authorization as required by the Act, and the officers are presented with no evidence of activity that would fall outside the scope of activities permitted under the Act?

B. Are a patient's due process rights violated when he is denied the opportunity to present evidence at trial, in his defense against criminal charges, that he reasonably relied on his physician's mistaken authorization to engage in the medical use of marijuana?

4. Belief That Additional Argument Is Necessary on These Issues

As described in section 1 above, the ACLU is uniquely positioned to address the issues in this case, which are not addressed in detail in the briefs filed by the parties.

DATED this 26th day of November, 2008.

ACLU OF WASHINGTON

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