

NO. 87078-1

SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON

Respondent,

v.

WILLIAM ANDREW KURTZ,

Appellant.

MOTION OF THE AMERICAN CIVIL LIBERTIES UNION OF
WASHINGTON FOR LEAVE TO FILE AMICUS CURIAE BRIEF

Shawn J. Larsen-Bright, WSBA #37066
Dorsey & Whitney LLP
701 Fifth Ave., Suite 6100
Seattle, WA 98104
(206) 903-8800

Sarah A. Dunne, WSBA #34869
Mark M. Cooke, WSBA #40155
American Civil Liberties Union of Washington Foundation
901 Fifth Avenue, Suite 630
Seattle, WA 98164
(206) 624-2184

Attorneys for Amicus Curiae
American Civil Liberties Union of Washington

I. IDENTITY AND INTEREST OF AMICUS CURIAE

The American Civil Liberties Union of Washington (“ACLU”) is a statewide, nonprofit, nonpartisan organization with over 20,000 members that is dedicated to the preservation and defense of constitutional and civil liberties. It has particular interest and expertise in the areas of drug policy reform and criminal justice. The ACLU has been involved in the development of Washington’s body of law regarding the medical use of marijuana since the mid-1990s. It endorsed the Medical Use of Marijuana Act, which was approved as Initiative 692 by 59% of the state’s voters in 1998 and codified at RCW 69.51A (“Act”).¹ It also participated in the drafting of the legislation that amended the Act in 2007, provided written comment to the Department of Health during the development of administrative rules relating to the Act, and actively supported legislation that amended the Act in 2010 and 2011. Recognizing the ACLU’s involvement in this area, this Court has accepted amicus curiae briefs and memoranda from the ACLU in a number of other medical marijuana cases, including: *Roe v. Teletech Customer Care Management (Colorado) LLC*, No. 83768-6 (2011); *State v. Fry*, No. 81210-1 (2008) (joint brief with the Washington Association of Criminal Defense Lawyers); *State v. Tracy*, No. 77534-6 (2006) (joint brief with the Washington Association of Criminal Defense Lawyers); *State v. Ackerson*, No. 76152-3 (2005); *State v. Shepherd*, No. 72521-7 (2002); and *Seeley v. State*, No. 63534-0 (1997).

¹ The Medical Use of Marijuana Act name was changed to the Medical Use of Cannabis Act in 2011, RCW 69.51A.900.

The ACLU frequently provides information to the public regarding the Act and related legal principles, including through its brochure entitled “Washington’s Medical Use of Cannabis Act: A Guide for Patients, Providers, Health Care Professionals, Law Enforcement, and the Public.” It also presents on these topics at continuing legal education seminars, and regularly consults on these issues with patients, providers, government agency staff, and elected officials.

In addition, the ACLU is actively involved in criminal justice issues broadly and works to ensure that our criminal justice system comports with fundamental principles of justice, fairness, liberty, and equality. It regularly submits amicus curiae briefs in criminal justice matters implicating constitutional and civil rights and provides information to the public concerning their legal rights. It is committed to the preservation of important common law rights and defenses.

II. FAMILIARITY WITH THE ISSUES

The ACLU has reviewed the briefing submitted by the parties to this Court as well as the opinion of the Court of Appeals. It is familiar with the scope of the arguments presented by the parties and will not unduly repeat the arguments already presented.

III. ISSUE TO BE ADDRESSED BY AMICUS

Whether the common law medical necessity defense in marijuana cases was abrogated by passage of the Act despite Washington’s strong deference to the common law and the absence of any legislative intent to eliminate the established common law rights of Washington citizens.

IV. WHY AMICUS BRIEFING WILL ASSIST THE COURT

Based on its legislative and advocacy work concerning the criminal justice system, the Act, and relevant principles of Washington law, the ACLU is uniquely positioned to address some of the important legal and public policy issues in this case. In particular, this case raises issues of public interest concerning the common law rights of Washington citizens and the continued viability of this Court's longstanding deference to the common law. The ACLU's amicus curiae brief will provide the Court with additional argument and authority on these issues not contained in the briefing filed by the parties. The ACLU believes this supplemental information will be useful to the Court and is necessary to a fully informed decision.

V. CONCLUSION

For the reasons set forth herein, the ACLU respectfully requests that the Court grant leave to file the amicus curiae brief submitted herewith.

Respectfully submitted this 13th day of September, 2012.

/s/ Shawn J. Larsen-Bright
Shawn J. Larsen-Bright, WSBA #37066
Dorsey & Whitney LLP
701 Fifth Ave., Suite 6100
Seattle, WA 98104
(206) 903-8800

Sarah A. Dunne, WSBA #34869
Mark M. Cooke, WSBA #40155
American Civil Liberties Union of
Washington Foundation
901 Fifth Avenue, Suite 630
Seattle, WA 98164
(206) 624-2184

*Attorneys for Amicus Curiae
American Civil Liberties Union of
Washington*

DECLARATION OF SERVICE

I certify that on the date below, I caused the foregoing to be served on the following in the manner indicated:

Counsel for Appellant

Suzanne Lee Elliott
1300 Hoge Building
705 Second Avenue
Seattle, WA 98104
(206) 623-0291

- ☐ Via Messenger
- ☐ Via Fax
- ☒ Via U.S. Mail
- ☐ Via Personal Service
- ☒ Via E-mail (with authorization)
- ☐ Via Overnight Delivery

Counsel for Respondent

Olivia Zhou
Thurston County Prosecutor's Office
2000 Lakeridge Drive S.W.
Olympia, WA 98502
(360) 786-5540

- ☐ Via Messenger
- ☐ Via Fax
- ☒ Via U.S. Mail
- ☐ Via Personal Service
- ☒ Via E-mail (with authorization)
- ☐ Via Overnight Delivery

DATED this 13th day of September, 2012.

/s/ Shawn Larsen-Bright
Shawn Larsen-Bright, WSBA #37066