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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

**Damon Monyer and the
Pennsylvania Cannabis Coalition,**

Petitioners,

v.

23rd Judicial District, Berks County,

Respondent.

**No. 283 MD 2023
Original Jurisdiction**

NOTICE TO PLEAD

To the 23rd Judicial District, Berks County: You are hereby notified to file a written response to the Petitioner Damon Monyer’s enclosed Application for Special Relief in the Nature of a Preliminary Injunction and Brief in Support Thereof within twenty (20) days from service hereof, or such other time as the Court prescribes, or judgment may be entered against you.

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days, or within the time set by order of the court, after this petition for review and notice are served, by entering a written appearance personally or by attorney and filling in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for

any money claimed in the complaint or for any other claims or relief requested by the plaintiff. You may lose money or property or other rights important to you. You should take this paper to your lawyer at once. If you do not have a lawyer or cannot afford one, go to or telephone the office set forth below to find out where you can get legal help.

Berks County Bar Association Lawyer
544 Court Street
P.O. Box 1058
Reading, PA 19603
(610) 375-4591

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23rd Judicial District, Berks County,

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No. 283 MD 2023

Original Jurisdiction

**PETITIONER DAMON MONYER’S APPLICATION FOR SPECIAL
RELIEF IN THE NATURE OF A PRELIMINARY INJUNCTION**

Petitioner Damon Monyer, by counsel, pursuant to Rule 1532(a) of the Pennsylvania Rules of Appellate Procedure, hereby applies for special relief in the form of a preliminary injunction enjoining the Respondent, 23rd Judicial District, including the Court of Common Pleas, Veterans Treatment Court and Berks County Adult Probation & Parole, from enforcing against Mr. Monyer the prohibition on medical marijuana use in the 23rd Judicial District’s Veterans Treatment Court Policy on Narcotic Medications and Prohibited Substances (“the Policy”), until final resolution of this litigation.

In support of Mr. Monyer’s application, Mr. Monyer hereby incorporates the Petition for Review Addressed to the Court’s Original Jurisdiction filed in this action on June 20, 2023, along with the exhibits filed in support of the Petition for

Review and the accompanying Brief in Support. Petitioner Monyer further states the following:

BACKGROUND

1. The Pennsylvania Supreme Court ruled unanimously in *Gass v. 52nd Judicial District*, 232 A.3d 706 (Pa. 2020), that the Medical Marijuana Act (“MMA”)¹ prohibits the courts of this Commonwealth from diluting the immunity afforded to medical marijuana patients simply because they are subject to court supervision.

2. As set forth more fully in the Petition for Review and Brief in Support of Petitioner Damon Monyer’s Application for Special Relief in the Nature of a Preliminary Injunction, filed in conjunction with this Application, the Policy violates the express terms of Section 2103(a) of the MMA, 35 P.S. § 10231.2103(a).

3. The details of the Policy are described in greater detail in the Petition for Review. The Policy includes a prohibition on the use of medical marijuana by individuals who participate in the Berks County Veterans Treatment Court. The Policy provides no exceptions.

¹ Act of April 17, 2016, P.L. 84, unofficially codified as amended at 35 P.S. §§ 10231.101-10231.2110.

4. Mr. Monyer has been directly injured by the 23rd Judicial District's Policy. As a result of the Policy, Mr. Monyer has been denied admission to Veterans Treatment Court solely due to his lawful use of medical marijuana. *See Declaration of Damon Monyer ("Monyer Decl.")* at ¶¶ 28-29. A true and correct copy of the Monyer Decl. is incorporated herein and attached hereto as Exhibit "1."

5. Absent a preliminary injunction, Mr. Monyer will continue to be harmed as application of the Policy will result in denial of his reapplication for admission to the Veterans Treatment Court on July 20, 2023.

6. Mr. Monyer is a United States Air Force veteran who served in combat in the Iraq War. As a result of his military service, he has serious medical conditions, including post-traumatic stress disorder ("PTSD") and severe chronic pain. *Monyer Decl.* at ¶¶ 2, 4.

7. At the recommendation of a medical doctor, Mr. Monyer obtained a medical marijuana identification card issued by the Commonwealth of Pennsylvania, Department of Health. Mr. Monyer uses medical marijuana to treat his PTSD and severe chronic pain. Mr. Monyer does not use marijuana other than as recommended by medical professionals and authorized by Pennsylvania law. *Id.* at ¶¶ 5-10.

8. The MMA protects patients from any form of punishment, or the denial of any rights or privileges, stemming from their use of medical marijuana. The MMA protects not only patients, but also doctors, caregivers, and others involved in the medical marijuana program. None of these actors “shall be subject to arrest, prosecution or penalty in any manner, or denied any right or privilege . . . solely for lawful use of medical marijuana.” 35 P.S. § 10231.2103(a).

9. The 23rd Judicial District’s Policy does exactly what this provision prohibits: It denies individuals the privilege of participating in Veterans Treatment Court solely for lawful use of medical marijuana. The clear terms of the MMA justify an injunction enjoining enforcement of the prohibition on medical marijuana use the Policy.

INJUNCTIVE RELIEF

10. Petitioner Damon Monyer petitions this Court for an Order declaring that the Policy is prohibited by Section 2103(a) of the Medical Marijuana Act, 35 P.S. § 10231.2103(a). To effectuate that ruling, Mr. Monyer now seeks a preliminary injunction restraining enforcement of the prohibition on medical marijuana use in the Policy, pending final determination of the case.

11. Pursuant to Pennsylvania Rule of Appellate Procedure 1532(a), this Court may order special relief, including a preliminary or special injunction “in the interest of justice and consistent with the usages and principles of law.”

Preliminary injunctive relief may be granted at any time following the filing of a Petition for Review. *See* Pa. R.A.P. 1532(a).

12. The factors for the Court to consider before issuing a preliminary injunction are: (1) whether the injunction is necessary to prevent immediate and irreparable harm; (2) whether petitioners are likely to prevail on the merits; (3) whether greater injury would result from refusing the injunction than from granting it, and whether granting it will not substantially harm other interested parties; (4) whether the injunction will adversely affect the public interest; (5) whether the injunction will properly restore the parties to their status immediately prior to the alleged wrongful conduct; and (6) whether the injunction is reasonably suited to abate the offending activity. *See Summit Towne Ctr., Inc. v. Shoe Show of Rocky Mt., Inc.*, 828 A.2d 995, 1001 (Pa. 2003).

13. All of these factors favor entering a preliminary injunction in this case.

14. **First**, an injunction is necessary to prevent immediate and irreparable harm to Mr. Monyer. Absent an injunction, Mr. Monyer will suffer irreparable harm in at least two ways: (1) a clear violation of the MMA, *see Wolk v. School District of Lower Merion*, 228 A.3d 595, 610 (Pa. Commw. Ct. 2020) (“For purposes of injunctive relief, statutory violations constitute irreparable harm *per se.*”), and (2) either denial of the privilege of Veterans Treatment Court, leading to

criminal prosecution with possible felony conviction and incarceration, or substantial medical harm if Mr. Monyer ceases using medical marijuana in order to be accepted into Veterans Treatment Court, *see Cedarbrook Realty, Inc. v. Nahill*, 387 A.2d 127, 129 (Pa. Commw. Ct. 1978) (noting that individual's incarceration would constitute irreparable injury); *Fischer v. Dep't of Pub. Welfare*, 439 A.2d 1172, 1174 (Pa. 1982) (acknowledging that denial of a medically necessary procedure was sufficient to show irreparable harm); *Chruby v. Dep't of Corr.*, 4 A.3d 764, 770 (Pa. Commw. Ct. 2010) (affirming *ex parte* preliminary injunction by trial court, which found denial of prisoner's medical need for dialysis constituted immediate and irreparable injury); *Am. Booksellers Ass'n, Inc. v. Rendell*, 481 A.2d 919, 928 (Pa. Super. Ct. 1984) (book distributors who either had to refrain from exercising their First Amendment rights or face arrest and prosecution under pornography statute demonstrated irreparable injury).

15. **Second**, Mr. Monyer is likely to prevail on the merits. The Pennsylvania Supreme Court has already ruled in *Gass* that judicial district restrictions on the use of medical marijuana by individuals under court supervision violate the MMA. Mr. Monyer's case is materially no different.

16. **Third**, greater injury would result from refusing the injunction than granting it. As set forth above, Mr. Monyer will suffer real and irreparable harm

absent an injunction. On the other hand, with an injunction, it is difficult to imagine even a theoretical injury to the 23rd Judicial District.

17. **Fourth**, enjoining the prohibition on medical marijuana use in the Policy will promote the public’s interest by following the General Assembly’s intent in enacting the MMA. *See Dep’t of Licenses & Inspections, Bd. of License & Inspection Review v. Weber*, 147 A.2d 326, 327 (Pa. 1959) (when a statute “proclaims a course of regulation and control which brooks no municipal intervention,” local policies to the contrary “die away as if they did not exist”); *Costa v. Cortes*, 143 A.3d 430, 442 (Pa. Commw. Ct. 2016) (“[T]he public interest is best served by . . . respecting the power conferred by the electorate on the General Assembly.”).

18. **Fifth**, the injunction will restore the parties to their status prior to the 23rd Judicial District’s enforcement of the Policy against Mr. Monyer. The requested injunction seeks only to return Mr. Monyer to the status quo before the Policy was enforced against him.

19. **Sixth**, the injunction is reasonably suited to abate the offending activity at issue: the continued operation of the prohibition on medical marijuana use in the Policy and the resulting physical and mental harm to Mr. Monyer.

INJUNCTION BOND

20. Pennsylvania Rule of Civil Procedure 1531(b) requires the petitioner seeking preliminary injunction to post a bond, and Mr. Monyer respectfully requests that the Court impose a nominal bond of \$100.

21. The purpose of an injunction bond is to “cover damages that are reasonably foreseeable” should an enjoined party be harmed by an injunction that is later found to have been improper. *Greene Cty. Citizens United by Cumpston v. Greene Cty. Solid Waste Authority*, 636 A.2d 1278, 1281 (Pa. Commw. Ct. 1994). The court has broad discretion to set the “proper amount” of the bond. *Broad & Locust Assocs. V. Locust-Broad Realty Co.*, 464 A.2d 506, 509 (Pa. Super. Ct. 1983). As set forth above, and in the accompanying Brief in Support, the Respondent here does not face any harm—much less monetary harm—based on imposition of the injunction sought here.

22. In exercising its discretion in setting the bond amount, the Court must “balance the equities involved,” which include “such factors as the inability of a plaintiff ‘to provide sufficient security where damages could be great.’” *Id.* (quoting *Christo v. Tuscan, Inc.*, 533 A.2d 461, 467 (Pa. Super. Ct. 1987)). If it is unlikely “that damage would be done to the injunctee,” that weighs against a large bond. *Id.* at 509. In cases where the “plaintiff is impecunious” and simply unable to

pay, the Court is empowered to balance the equities and decide that “the injunction should nevertheless issue” with a nominal bond. *Christo*, 533 A.2d at 567.

23. This is not a commercial case or one involving money damages. It is a cause brought in the public interest to secure the rights afforded to Mr. Monyer and other veterans to use medical marijuana in accordance with state law. Moreover, Mr. Monyer is unemployed and has limited financial means. Monyer Decl. at ¶ 25. In similar circumstances, this Court has authorized a nominal bond. *See League of Women Voters v. Boockvar*, 578 MD 2019 (Pa. Commw. Ct. Oct. 30, 2019) (authorizing nominal \$500 preliminary injunction bond in case challenging constitutional amendment), *affirmed* 219 A.3d 594 (Pa. 2019); *Applewhite v. Corbett*, No. 330 MD 2012 (Pa. Commw. Ct. Oct. 2, 2019) (imposing preliminary injunction in voting case without a bond).

24. While there is little Pennsylvania case law on this matter, the analogous federal standards for requiring bonds attendant to an injunction show that courts should “consider the impact that a bond requirement would have on enforcement” of suits enforcing “important federal rights or ‘public interests’ . . . in order to prevent undue restriction of [them].” *Temple Univ. v. White*, 941 F.2d 201, 220 (3d Cir. 1991) (approving of the waiver of an injunction bond because it “pursued a course of litigation clearly in the public interest”). Accordingly, federal courts sitting in Pennsylvania routinely permit plaintiffs to proceed with nominal

bonds in public interest cases. *See, e.g., Victory v. Berks Cnty.*, 355 F. Supp. 3d 239, 256 n.84 (E.D. Pa. 2019); *Chamber of Commerce for Greater Phila. v. City of Phila.*, 319 F. Supp. 3d 773 (E.D. Pa. 2018); *Am. Freedom Defense Initiative v. SEPTA*, 92 F. Supp. 3d 314, 331 (E.D. Pa. 2015). When a plaintiff seeks to “protect an important federal right and he ostensibly pursues this litigation in the public’s interest as well as his own,” a nominal bond—in that case \$250—was sufficient to “protect the parties’ respective interests without imposing an undue hardship upon a plaintiff seeking vindication of his First Amendment rights to freedom of speech.” *Stilp v. Contino*, 629 F. Supp. 2d 449, 468 (M.D. Pa. 2009).

25. In addition, conditioning an injunction on the payment of an unaffordable bond would violate Article I, Section 11 of the Pennsylvania Constitution, which provides that “All courts shall be open; and every man . . . shall have remedy by due course of law, and . . . justice administered without sale, denial or delay.” Pa. Const. Art I, §11. The right to use the judicial process and avail one’s self of legal remedies if fundamental and “should not be infringed upon.” *Kelly v. Brenner*, 175 A. 845, 847 (Pa. Super. Ct. 1934). While Pennsylvania’s appellate courts have never had occasion to address the interplay between the Open Courts provision and the bond requirement in Rule 1531, a century of consistent case law demonstrates that it would be unconstitutional to require that a person post a bond that the person cannot afford. *See, e.g., Schade v.*

Luppert, 17 Pa. C. C. 460, 462 (Pa. Ct. Com. Pl. 1896) (requiring insolvent plaintiff to post security for costs violates Section 11 because to him “[t]o him the courts of justice are not open . . . the court has seen fit, by virtue of its ruling, to require of him something impossible for him to perform,” and that requirement would “render[] nugatory” the Declaration of Rights”).

26. The Court should do so in this public interest matter as well, as the public interest is best served by ensuring that preliminary injunctions are available even to people of limited means when they seek to vindicate important civil rights principles and protect the public’s interests.

WHEREFORE, for the foregoing reasons and those alleged in the Petition for Review and Brief in Support of this Application for Special Relief, Petitioner Damon Monyer respectfully requests that this Honorable Court grant his Application for Special Relief in the Nature of a Preliminary Injunction and enter an order enjoining the Respondent, 23rd Judicial District, including the Court of Common Pleas, Veterans Treatment Court and Berks County Adult Probation & Parole, from enforcing against Mr. Monyer the prohibition on medical marijuana use in the Policy, until resolution of this litigation.

Dated: June 21, 2023

Respectfully submitted,

/s/ Stephen Loney

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Counsel for Petitioners

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

/s/ Andrew Christy
Andrew Christy

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**ORDER GRANTING APPLICATION FOR SPECIAL RELIEF IN THE
NATURE OF A PRELIMINARY INJUNCTION**

AND NOW, this ____ day of _____, 2023, upon consideration of
Petitioner Damon Monyer's Application for Special Relief in the Nature of a
Preliminary Injunction, it is hereby **ORDERED** that said Application is
GRANTED.

IT IS FURTHER ORDERED that Respondent 23rd Judicial District,
including the Court of Common Pleas, Veterans Treatment Court, and Berks
County Adult Probation & Parole, and its agents, servants, and officers and others
are hereby **ENJOINED** from enforcing against Mr. Monyer the prohibition on
medical marijuana use in the 23rd Judicial District's Veterans Treatment Court
Policy on Narcotic Medications and Prohibited Substances, until resolution of this
litigation.

IT IS FURTHER ORDERED that Petitioner shall deposit with the Prothonotary of the Commonwealth Court a bond of \$100 within five (5) days of the date of this Order.

BY THE COURT:

J.