

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

**PETITIONER'S BRIEF IN SUPPORT OF APPLICATION FOR SPECIAL
RELIEF IN THE FORM OF A PRELIMINARY INJUNCTION**

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I. INTRODUCTION

Petitioner Damon Monyer is a United States Air Force veteran whose combat service in the Iraq War left him with post-traumatic stress disorder (“PTSD”) and severe chronic pain. Since medical marijuana became available in Pennsylvania in 2018 pursuant to the Medical Marijuana Act (“the MMA” or “the Act”),¹ Mr. Monyer has used medical marijuana on his doctor’s advice to treat these disabilities. Medical marijuana has dramatically improved his quality of life by controlling the triggers for his PTSD and reducing the severity of his pain.

After being charged with a criminal offense in 2022, Mr. Monyer applied for admission to the Veterans Treatment Court in Berks County, which is part of the 23rd Judicial District. In May 2023, the 23rd Judicial District denied Mr. Monyer’s application solely because he uses medical marijuana to treat the serious medical conditions he acquired as a result of his service to this country.

The Pennsylvania General Assembly enacted the MMA to allow individuals with certain serious medical conditions to lawfully use medical marijuana upon certification by a physician and issuance of a valid identification card. Individuals diagnosed with PTSD or severe chronic pain are eligible to obtain a medical marijuana identification card. *See* 35 P.S. §§ 10231.103, 10231.403(a)(2),

¹ Act of April 17, 2016, P.L. 84, 35 P.S. §§ 10231.101-10231.2110.

10231.501(a). The MMA recognizes medical marijuana as a “potential therapy that may mitigate suffering in some patients and also enhance quality of life.” 35 P.S. § 10231.102. The comprehensive statutory and robust regulatory scheme enacted by the General Assembly and the Pennsylvania Department of Health balances the need of patients to have access to the latest treatments with the need to promote public safety. One intent of the Act is to “[p]rovide a safe and effective method of delivery of medical marijuana to patients.” 35 P.S. § 10231.102.

In accordance with those goals, the Act broadly immunizes patients like Mr. Monyer from being “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. § 10231.2031(a) (emphasis added). The Pennsylvania Supreme Court ruled unanimously in *Gass v. 52nd Judicial District*, 232 A.3d 706 (Pa. 2020), that the Act prohibits the courts of this Commonwealth from diluting the immunity afforded to patients simply because they are subject to court supervision.

Despite that ruling, the 23rd Judicial District has enacted a policy that denies admission to and participation in the Veterans Treatment Court for any veteran who uses medical marijuana. Denying Mr. Monyer admission to Veterans Treatment Court—where he would have the opportunity to receive treatment and avoid potential jail time and the possibility of a felony conviction on his record—constitutes a denial of a privilege in violation of the MMA.

Mr. Monyer seeks relief from this Court in the form of a declaratory judgment that the 23rd Judicial District’s prohibition on the use of medical marijuana by individuals applying to or participating in Veterans Treatment Court violates the MMA. He also seeks a preliminary and permanent injunction to enjoin the 23rd Judicial District from denying him admission to Veterans Treatment Court solely for the lawful use of medical marijuana.² Absent a preliminary injunction, Mr. Monyer will suffer irreparable harm due to the 23rd Judicial District’s denial of his entry to the Veterans Court program.

II. FACTS³

Petitioner Damon Monyer suffers from serious and debilitating medical conditions resulting from his service in the United States Air Force. *Monyer Decl.* at ¶¶ 2, 4. He has been unable to successfully treat those serious medical conditions with other therapies. *Id.* at ¶¶ 8-12. In an attempt to manage his serious medical conditions, Mr. Monyer followed the proper procedures set forth in the MMA to begin using medical marijuana. *Id.* at ¶¶ 5-6. A doctor has diagnosed Mr. Monyer

² Although there are two Petitioners, only Petitioner Damon Monyer is moving for a preliminary injunction at this time.

³ The facts in this section are taken from the Petition for Review and Mr. Monyer’s Declaration (attached Exhibit 1 to Petitioner Damon Monyer’s Application for Special Relief (hereinafter “*Monyer Decl.*”), which are incorporated herein by reference.

with PTSD and severe chronic pain, two of the serious medical conditions for which medical marijuana is approved by the MMA. *Id.* at ¶¶ 4-5. Based on the doctor's professional opinion and review of past treatments, the doctor certified with the Pennsylvania Department of Health that Mr. Monyer is likely to receive therapeutic or palliative benefit from the use of medical marijuana and that Mr. Monyer will remain under the doctor's continuing care. *Id.* As a result of that doctor's decision, Mr. Monyer possesses a valid identification card issued by the Pennsylvania Department of Health that entitles him to use medical marijuana. *Id.* at 5.

Mr. Monyer served in the Air Force for five years on active duty, including two back-to-back combat tours in Iraq, and he was honorably discharged in 2010. *Monyer Decl.* at ¶ 2. He earned multiple awards, including the Air Force's Good Conduct Medal for his exemplary service, the German Schützenschnur (a badge of marksmanship), Certificate of Appreciation, Army Commendation Medal, and the Army Achievement Medal. *Id.* at ¶ 3.

As a result of Mr. Monyer's years of service to this country, the VA assigned him a 100% disability rating, which signifies a total disability and entitles him to compensation. *Monyer Decl.* at ¶ 4. He is diagnosed with PTSD, in connection to his combat tours, and has further physical ailments, including nerve damage and chronic joint pain. *Id.* at ¶¶ 4, 8. Mr. Monyer is currently receiving

treatment from the Berks County Veteran's Affairs Outpatient Clinic in Wyomissing, Pennsylvania for his medical issues, including for the PTSD and chronic pain. *Id.* at 6.

Mr. Monyer has tried other medications to alleviate his PTSD symptoms and severe chronic pain, but none work as well for him as medical marijuana. *Monyer Decl.* at ¶¶ 8-11, 32. Using medical marijuana has allowed him to stop using other medications for pain management, including opioids that he was prescribed following a prior surgery related to his military service. *Id.* at ¶ 9. He has been using medical marijuana legally in Pennsylvania since medical marijuana became available under the MMA in 2018. *Id.* at ¶ 5.

On April 13, 2022, Mr. Monyer was arrested and subsequently charged with: (1) Carrying a Firearm Without a License, (2) Disorderly Conduct, and (3) Public Drunkenness. As this was Mr. Monyer's first arrest, he applied for ARD, which was denied. Mr. Monyer then sought reconsideration of that decision, and the Berks County District Attorney's office advised him that applying for Veterans Treatment Court would be a better fit than ARD for Mr. Monyer's situation.

The Veterans Treatment Court is considered a "problem-solving court." Problem-Solving Courts, Unified Judicial System of Pennsylvania, <https://www.pacourts.us/judicial-administration/court-programs/problem-solving->

courts. The Supreme Court of Pennsylvania officially recognized problem-solving courts in 2006. *Id.*

The goal of problem-solving courts is to supervise the treatment and rehabilitation of carefully screened and selected defendants to try to change their behavior. Instead of a jail sentence, defendants are given counseling, treatment for their addictions or illnesses, educational assistance and healthcare support. . . . Defendants who complete their court-supervised programs and graduate may have the charges that brought them to court dismissed and/or their term of supervision reduced. Their criminal records may be expunged.

Id.

The mission of the 23rd Judicial District’s Veterans Treatment Court is to “divert our combat veterans from the traditional criminal justice system and provide them with comprehensive rehabilitative services that address substance abuse, mental health, or adjustment issues that have occurred in correlation with their military service.” *See* Exhibit A at 1.⁴ “The goals of the program are to honor the service of our veterans, reduce recidivism, improve community relations, and restore our military heroes to productive, successful, law-abiding lives.” *Id.*

Twenty-five Pennsylvania counties have Veterans Treatment Courts. *See* Veterans Treatment Courts, Unified Judicial System of Pennsylvania, <https://www.pacourts.us/judicial-administration/court-programs/veterans-courts>.

⁴ Unless otherwise indicated, references herein to Exhibits refer to the exhibits attached to Petitioners’ Petition for Review in this matter.

Veterans Treatment Courts assist veterans charged with crimes who are struggling with addiction, mental illness or co-occurring disorders and come in contact with the criminal justice system [P]articipants come before judges on a regular basis, receive support and guidance from veteran mentors, are supervised by specialized probation officers and receive treatment and support from the Veterans Administration to address underlying problems often caused by post-traumatic stress disorders.

Id.

The 23rd Judicial District is one of only five of those courts that unlawfully bar participants from using medical marijuana. The 23rd Judicial District’s Veterans Treatment Court Policy on Narcotic Medications and Prohibited Substances (“Policy”) prohibits the use of medical marijuana with no exceptions. *See* Exhibit A at 14. It further provides that, “[i]f a prescribing physician recommends that a client must be continuously maintained on prohibited prescriptions in order to sustain a certain quality of life, the client may no longer participate in Treatment Court.” *Id.*

Mr. Monyer qualifies for admission to the Veterans Treatment Court in all other respects. *See* Exhibit H. On January 12, 2023, Berks County Probation Officer Rudy Leon sent Mr. Monyer an email stating, “I believe you will be getting accepted into Veterans Court. You should be getting an order indicating when you will need to report to court for admission.” *See* Exhibit F. On March 23, Berks County Assistant District Attorney Kenneth Kelecic sent an email to Alexander Lassoff, Mr. Monyer’s criminal defense attorney, stating that Mr. Monyer “is still

pending admission into treatment court.” *See* Exhibit H. According to Mr. Kelecic, Mr. Monyer “is basically ready for admission from a legal and treatment plan standpoint. The only holdup is his use of medical marijuana. As Mr. Monyer is entering Veteran’s Court and his treatment is through the VA, he is required to abide by the VA’s rules regarding medical marijuana, which do not allow him to use.” *Id.* Mr. Kelecic then stated that Mr. Monyer would need to submit to drug tests to ensure that “his levels are coming down before we do the formal admission. . . . Once we have a few tests where his levels are diminishing, we can set a date for formal admission.” *Id.*

Contrary to Mr. Kelecic’s email, “Veteran participation in state marijuana programs does not affect eligibility for VA care and services. VA providers can and do discuss marijuana use with Veterans as part of comprehensive care planning, and adjust treatment plans as necessary.” *See* Exhibit L. Mr. Monyer has had no problems receiving medical care from the VA, and his doctors there are aware of his medical marijuana use. *Monyer Decl.* at ¶ 6. The only entity purporting to require Mr. Monyer to stop using medical marijuana is the 23rd Judicial District.

Nevertheless, based on instructions from staff involved with Veterans Treatment Court, Mr. Monyer was willing to stop using medical marijuana so that he could participate in the program. *Monyer Decl.* at ¶¶ 16, 22. He was first told

that he would be able to wean off of medical marijuana *after* he was admitted into Veterans Treatment Court, only to be told months later that he must stop his use *before* he would be admitted to Veterans Treatment Court. *Id.* at ¶ 23. Based on his prior experience with stopping the use of medical marijuana, and on the advice of his doctor, he could only safely stop using medical marijuana if he first started using other medications that would treat his serious medical conditions. *Id.* at ¶¶ 12, 22, 26.

Accordingly, in consultation with staff from the Veterans Treatment Court, Mr. Monyer saw a VA psychiatrist at the Berks County Veteran’s Affairs Outpatient Clinic on April 26, 2023, to explore different medication options. *Monyer Decl.* at ¶ 26. Mr. Monyer informed his veterans outreach officer that the psychiatrist had prescribed medication that would be mailed to him. *Id.* at ¶ 27. But rather than giving Mr. Monyer the opportunity to see if the new medication would help with his symptoms enough to allow him to stop using medical marijuana, the court denied his application the same day that he received the new medication. *Id.* at ¶ 28, 30.

On May 3, 2023, the Berks County Court of Common Pleas judge who oversees the Mental Health and Veterans Treatment Courts for the 23rd Judicial District issued an order denying Mr. Monyer’s application for admission to Veterans Treatment Court due to “failure to comply with pretrial services.” *See*

Exhibit I. The only reason for this denial was because Mr. Monyer had not stopped using medical marijuana. *See* Exhibit H; *Monyer Decl.* at ¶ 29.

Following that denial, at the suggestion of ADA Kelecic, Mr. Monyer’s criminal defense attorney filed a reapplication for Veterans Treatment Court. A court hearing on that request is scheduled for July 20, 2023. Mr. Monyer expects that his request for admission will be denied because he continues to use medical marijuana⁵ and the Respondent’s policy plainly prohibits the use of medical marijuana.

III. ARGUMENT

The 23rd Judicial District’s Policy bars Mr. Monyer and all other veterans charged with crimes in Berks County from being admitted to or participating in Veterans Treatment Court if they lawfully use medical marijuana to treat serious medical conditions. The 23rd Judicial District thus denies those veterans the privilege of participating in a diversionary program that enables them to get treatment, allows them to avoid potential incarceration, and holds open the possibility of an expungement. The MMA specifically prohibits medical marijuana patients from being denied any “right or privilege” as a result of their lawful

⁵ While Mr. Monyer has attempted to use Thorazine—the medication he received on May 3—it only partially addressed his symptoms, and continued use of medical marijuana in conjunction with Thorazine proved necessary to fully treat his PTSD and chronic pain symptoms. *Monyer Decl.* at ¶ 32.

medical marijuana usage. 35 P.S. § 10231.2103(a). Interpreting this language, the Pennsylvania Supreme Court in *Gass v. 52nd Judicial District* unanimously held that a court policy denying individuals who lawfully use medical marijuana the privilege of probation was “contrary to the immunity accorded by Pennsylvania’s Medical Marijuana Act” and could not be enforced. 232 A.3d 706, 715 (Pa. 2020). That decision is controlling. This Court should preliminarily enjoin the 23rd Judicial District from conditioning admission to and participation in Veterans Treatment Court on abstaining from lawful medical marijuana use.

Pursuant to Pennsylvania Rule of Appellate Procedure 1532(a), this Court may order special relief, including a preliminary injunction, “in the interest of justice and consistent with the usages and principles of law.” The purpose of a preliminary injunction is to “put and keep matters in the position in which they were before the improper conduct of the defendant commenced.” *Hill v. Dep’t of Corr.*, 992 A.2d 933, 936 (Pa. Commw. Ct. 2010) (quoting *Little Britain Twp. Appeal*, 651 A.2d 606, 611 (Pa. Commw. Ct. 1994)).⁶ A preliminary injunction is warranted if: (1) it is necessary to prevent immediate and irreparable harm;

⁶ The standard for obtaining a preliminary injunction under Rule 1532(a) is the same as that for a grant of a preliminary injunction pursuant to the Pennsylvania Rules of Civil Procedure. *See Shenango Valley Osteopathic Hosp. v. Dep’t of Health*, 451 A.2d 434, 441 (Pa. 1982).

(2) petitioners are likely to prevail on the merits; (3) greater injury would result from refusing the injunction than from granting it, and granting it will not substantially harm other interested parties; (4) the injunction will not adversely affect the public interest; (5) the injunction will properly restore the parties to their status immediately prior to the issuance of the order; and (6) the injunction is reasonably suited to abate the offending activity. *See Summit Towne Ctr., Inc. v. Shoe Show of Rocky Mount, Inc.*, 828 A.2d 995, 1001 (Pa. 2003); *Cutler v. Chapman*, 289 A.3d 139, 150 (Pa. Commw. Ct. 2023). Petitioner satisfies each of these elements.

A. A Preliminary Injunction Is Necessary to Prevent the Immediate and Irreparable Harm to Petitioner that Will Occur if He Is Criminally Prosecuted Instead of Admitted to Veterans Treatment Court.

The Pennsylvania Supreme Court has held that the MMA protects medical marijuana patients under court supervision from being denied any right or privilege due to their lawful use of medical marijuana, including termination from probation. *Gass*, 232 A.3d at 715. As interpreted in *Gass*, the MMA also prohibits the 23rd Judicial District from barring Mr. Monyer from entering Veterans Treatment Court because he lawfully uses medical marijuana. This is a straightforward statutory violation. As this Court recently reiterated, “[f]or purposes of injunctive relief,

statutory violations constitute irreparable harm *per se.*” *Wolk v. School District of Lower Merion*, 228 A.3d 595, 610 (Pa. Commw. Ct. 2020).

Beyond this *per se* irreparable harm due to the statutory violation, Mr. Monyer will also suffer irreparable harm because of the untenable “choice” the 23rd Judicial District’s policy has created. Mr. Monyer suffers from serious medical conditions that are only alleviated by the use of medical marijuana. If the Policy is not enjoined, he will either be denied the privilege of admission to Veterans Treatment Court and face the risk of criminal prosecution and possible incarceration for a felony charge, or he will have to cease using medical marijuana to be accepted into Veterans Treatment Court, which will cause him substantial medical harm. Either choice will result in immediate and irreparable harm. *See 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); *Cedarbrook Realty, Inc. v. Nahill*, 387 A.2d 127, 129 (Pa.

Commw. Ct. 1978) (noting that individual’s incarceration would constitute irreparable injury).

Gass is instructive on this point. There, the Supreme Court of Pennsylvania granted the petitioners’ request for a preliminary injunction where they faced either the medical harm associated with stopping medical marijuana use or prosecution for a probation violation. *Gass v. 52nd Judicial District, Lebanon County*, 223 A.3d 212, 212-13 (Pa. 2019) (ordering that “any enforcement or implementation of the Policy is STAYED pending further order of this Court”).⁷ The same types of irreparable harms are at issue here, and Mr. Monyer’s request for preliminary injunctive relief meets this criteria for the same reasons.

B. Petitioner Is Likely to Prevail on the Merits of His Claim that the 23rd Judicial District’s Condition on Participation in Veterans Treatment Court Violates the MMA.

When this matter is addressed on the merits, Mr. Monyer is likely to prevail in showing that the 23rd Judicial District’s Policy violates the MMA because it prevents him from being admitted to Veterans Treatment Court due to his lawful medical marijuana use. The Pennsylvania Supreme Court has already ruled in *Gass*

⁷ In *Gass*, this Court initially held that the lawsuit fell within the exclusive original jurisdiction of the Supreme Court and transferred the case. The Supreme Court ruled that the case had been properly brought in the Commonwealth Court, but it nevertheless exercised its King’s Bench authority to take the case and issued a preliminary injunction based on the papers that petitioners had filed in the Commonwealth Court. *Gass*, 223 A.3d at 212-13.

that judicial district restrictions on the use of medical marijuana by individuals under court supervision violates the MMA. Mr. Monyer's case is no different.

At this preliminary injunction stage, Mr. Monyer must show that there is a "clear right to relief" such that he "is likely to prevail on the merits." *Cutler*, 289 A.3d at 150. However, he does *not* need to "prove the merits of the underlying claim, but need only demonstrate that substantial legal questions must be resolved to determine the rights of the parties." *Id.* at 152 (quoting *SEIU Healthcare Pennsylvania v. Commonwealth*, 104 A.3d 495, 506 (Pa. 2014)). Even if "factual disputes exist between the parties," that is not a bar to injunctive relief where, as here, the claims are "more than merely viable or plausible." *Wolk v. School District of Lower Merion*, 228 A.3d 595, 611 (Pa. Commw. Ct. 2020). As long as Mr. Moyer "has met the other requirements for a preliminary injunction and the underlying cause of action raises important legal questions, the right to relief is clear," and he therefore meets the requirement of likelihood of success on the merits. *Cutler*, 289 A.3d at 152 (quoting *Lieberman Organization v. City of Philadelphia*, 595 A.2d 638, 640 (Pa. Commw. Ct. 1990)).

Here, the right to relief is clear based on a straightforward application of the MMA and the Pennsylvania Supreme Court's controlling decision in *Gass*. The 23rd Judicial District violated state law when it adopted a policy barring all qualified patients from admission to or participation in Veterans Treatment Court if

they use medical marijuana to treat a serious medical condition. The Policy undermines the MMA’s broad protections for medical marijuana patients and thwarts the will of the General Assembly. It denies military heroes the opportunity to participate in a diversionary program that provides “counseling, treatment for their addictions or illnesses, educational assistance and healthcare support” if they exercise their right under state law to use medical marijuana to treat serious medical conditions often caused by their service to this country.

1. The MMA protects medical marijuana patients under court supervision from being denied admission to or participation in treatment courts.

The MMA provides broad protection for “patients,”⁸ including Mr. Monyer, from any form of punishment, or the denial of rights or privileges, stemming from their use of medical marijuana. No individual involved in lawful practice under the MMA

shall be subject to arrest, prosecution or penalty in any manner, or denied any right or privilege, including civil penalty or disciplinary action by a Commonwealth licensing board or commission, solely for lawful use of medical marijuana or manufacture or sale or dispensing of medical marijuana, or for any other action taken in accordance with this act.

⁸ The MMA broadly defines a “patient” under the MMA as a person who: 1) has a serious medical condition; (2) has met the requirements for certification under this act; and (3) is a resident of this Commonwealth. *See* 35 P.S. § 10231.103. It is undisputed that each of the Petitioners is a “patient” within the meaning of the MMA.

35 P.S. § 10231.2103(a).

These protections apply to unincarcerated individuals who are under court supervision, whether they are on parole, probation, or participating in a problem-solving court or diversionary program. *See Gass*, 232 A.3d at 713. In *Gass*, probation was considered a “privilege” that could not be denied solely for lawful use of medical marijuana. *See id.* Likewise, participation in treatment court programs like Veterans Treatment Court is a “privilege” under the MMA because of the advantages that it affords participants versus those who do not participate. *See generally Commonwealth v. McCabe*, 265 A.3d 1279, 1288 (Pa. 2021) (explaining that “targeted treatments and programing afforded by the VTC are themselves a benefit, as is the mitigating consideration of a defendant's successful participation at sentencing”).

Being under court supervision does not restrict the protections afforded by the MMA. In *Gass*, the Court rejected the judicial district’s argument that “the integral involvement of court supervision means that any punishment or denial of the privilege of probation” was not “solely for” medical marijuana use. *Id.* According to the Court, the “Legislature considered persons under court supervision and chose to impose constraints only upon a specific subcategory (those physically present in a correctional institution). . . . [H]ad the General

Assembly intended broader limitations, it would have been a straightforward matter for it to have said this.” *Id.*

Likewise, if the General Assembly intended to give problem-solving courts discretion to prohibit participants from using medical marijuana, it could have excluded such participants from the Act’s broad protections. It did not do so in the MMA, and it did not do so in the statute that authorizes the creation of veterans’ courts and other problem-solving courts. *See* 42 Pa.C.S. § 916. That it did not do so demonstrates the General Assembly’s intent to protect access to medical marijuana for the Commonwealth’s veterans, even when they participate in problem-solving courts.

Accordingly, any fears that medical marijuana use may affect an individual’s successful completion of treatment court participation must be addressed by the legislature, not the courts. *See id.* at 714-15. The Pennsylvania Supreme Court specifically considered in *Gass* “concerns that medical marijuana use by probationers may, in fact, cause difficulties with court supervision and treatment,” but it held that the responsibility for addressing any unintended consequences of the law fell to the legislature. *Id.* The same is true here, and the fact that only five of twenty-five veterans treatment courts across the state bar veterans from using

medical marijuana shows that it is possible to successfully provide the privilege of veterans treatment court without interfering with supervision and treatment.

The *Gass* Court also rejected the judicial district’s claim that its authority to restrict probationers’ use of alcohol and other mood-altering drugs accorded it the power to prohibit medical marijuana use. *Id.* at 706. Medical marijuana is different than alcohol and other drugs because “the Legislature has not implemented a remedial scheme authorizing the use of alcohol for treatment of serious medical conditions.” *Id.* While problem-solving courts can and do prohibit participants from using a wide range of legal medications and substances, those restrictions are not without limit. The MMA limits problem-solving courts’ authority to prohibit participants from using medical marijuana, just as the federal Americans with Disabilities Act requires such courts and other entities to allow individuals with substance use disorders to use opiate-based medications such as suboxone or methadone.⁹

The 23rd Judicial District has denied Mr. Monyer the privilege of participating in Veterans Treatment Court, with the potential to avoid incarceration and a felony record, solely because he uses medical marijuana in accordance with

⁹ Justice Department Issues Guidance on Protections for People with Opioid Use Disorder under the Americans with Disabilities Act, Department of Justice, April 25, 2022, <https://www.justice.gov/opa/pr/justice-department-issues-guidance-protections-people-opioid-use-disorder-under-americans>.

state law. That is a direct violation of the immunity provision of the MMA and should be enjoined.

2. Federal law does not require military veterans to abstain from medical marijuana use to receive services from the VA.

Mr. Monyer was told his participation in Veterans Treatment Court was conditioned upon stopping use of medical marijuana because he would be treated through the VA. *See* Exhibit H. Mr. Monyer was incorrectly informed that VA rules prohibit use of medical marijuana by anyone getting treatment at the VA. *Id.* VA policy is clear that “[v]eteran participation in state marijuana programs does not affect eligibility for VA care and services.” *See* Exhibit L; Veterans Health Administration Directive 1315 (explaining that although VA doctors cannot complete paperwork for a patient to obtain medical marijuana, the doctors “should discuss with patients” their medical marijuana use as part of their treatment). Consistent with that policy, Mr. Monyer has received VA health services for five years while using medical marijuana. Both his primary care physician and his psychiatrist at the VA are aware of his medical marijuana use, yet he has faced no barriers in receiving services from the VA. Thus, Mr. Monyer receiving treatment through the VA in conjunction with Veterans Treatment Court is not a valid justification for the 23rd Judicial District’s prohibition on medical marijuana use. The indisputable fact remains that nothing other than the 23rd Judicial District’s

unlawful policy prohibiting medical marijuana use is keeping Mr. Monyer from the privilege of Veterans Treatment Court.

C. Greater Injury Would Result from Refusing to Enjoin the 23rd Judicial District's Enforcement of Its Illegal Policy than Granting the Requested Injunction.

While Mr. Monyer and other veterans will certainly suffer harm to their health and liberty if the Policy is not immediately enjoined, Respondent faces no potential injury if its unlawful Policy is enjoined. The stated goals of Veterans Treatment Court “are to honor the service of our veterans, reduce recidivism, improve community relations, and restore our military heroes to productive, successful, law-abiding lives.” *See* Exhibit A. Those goals are not furthered by the Policy; they are hampered by it. Prohibiting Mr. Monyer from using medical marijuana to treat serious medical conditions that he acquired as a result of service to this country does not honor his sacrifice or improve his chances of leading a productive, successful, law-abiding life. Instead, it penalizes him doubly: It treats him worse because he served his country and because he suffers from serious medical conditions that are ameliorated with medical marijuana.

Absent an injunction, as detailed above, Ms. Monyer will suffer very real harms because of the Policy. He will either have to abstain from the lawful use of medical marijuana, and suffer serious health consequences, to enter Veterans

Treatment Court, or be denied admission and risk being convicted of a felony and sentenced to incarceration.

On the other hand, with an injunction, it is difficult to imagine even a theoretical injury to the 23rd Judicial District. Participation in a state medical marijuana program does not affect veterans' eligibility for services under VA policy, so there is no basis to believe that veterans who use medical marijuana will be unable to obtain treatment from the VA while they participate in Veterans Treatment Court; the Veterans Treatment Court will still be able to coordinate with the VA in the same way that it does with all other veterans in its program. In addition, the 23rd Judicial District allows individuals in non-veteran Treatment Court to use medical marijuana on a "case-by-case basis." While those policies also violate the MMA, for the reasons set forth in the accompanying Petition for Review, they do nevertheless show that if individuals successfully complete non-veteran treatment court programs while using medical marijuana, then there is no reason to believe that individuals in Veterans Treatment Court will not be able to successfully complete the program while continuing to use medical marijuana. This is consistent with the fact that only five of the twenty-five veterans treatment courts in Pennsylvania bar medical marijuana use.

Finally, the General Assembly legalized the use of medical marijuana, and in doing so, explicitly chose to provide blanket immunization to patients from "arrest,

prosecution or penalty in any manner, or [denial of] any right or privilege . . . solely for lawful use of medical marijuana.” 35 P.S. § 10231.2103(a). The Policy is a direct violation of Section 10231.2103(a). To refuse an injunction here “would sanction the [Respondent]’s continued statutory violations” of the MMA, and be injurious to Mr. Monyer. *See Firearms Owners Against Crime v. Lower Merion Twp.*, 151 A.3d 1172, 1181 (Pa. Commw. Ct. 2016) (quoting *Dillon v. City of Erie*, 83 A.3d 467, 474 (Pa. Commw. Ct. 2013)). The balance of the injuries thus overwhelmingly favors granting petitioner’s injunction.

D. Enjoining the Policy Will Promote the Public’s Interest by Ensuring that the Intent of the Legislature Is Followed.

Enjoining the Policy will improve public health and ensure that veterans receive the necessary treatment for their serious medical conditions. It will also vindicate the public interest by ensuring that the Pennsylvania General Assembly’s clear intent to “[p]rovide a program of access to medical marijuana which balances the needs of patients to have access to the latest treatments with the need to promote safety.” 35 P.S. § 10231.102(3)(i). In the Medical Marijuana Act, the General Assembly provided broad protections to patients, including immunity from arrest, prosecution, penalty, or denial of any right or privilege solely for the lawful use of medical marijuana. *See* 35 P.S. § 10231.2103(a).

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.” *Dep’t of Licenses & Inspections, Bd. of License & Inspection Review v. Weber*, 147 A.2d 326, 327 (Pa. 1959). Instead, the “public interest is best served by . . . respecting the power conferred by the electorate on the General Assembly.” *Costa v. Cortes*, 143 A.3d 430, 442 (Pa. Commw. Ct. 2016). Enjoining a local policy that contradicts the clear terms of legislative enactment ensures that the public interest is properly respected.

E. The Injunction Will Restore the Parties to Their Status Prior to the Enforcement of the Policy.

Petitioner’s requested injunction “will properly restore the parties to their status as it existed prior to the alleged wrongful conduct.” *Commonwealth ex rel. Corbett v. Snyder*, 977 A.2d 28, 43 (Pa. Commw. Ct. 2009). “The status quo to be maintained is the last actual and lawful uncontested status, which preceded the pending controversy.” *Id.*

The requested injunction seeks only to return Mr. Monyer to the status quo before the Policy was enforced against him. ADA Kelecic stated that Mr. Monyer was “ready for admission” to the Veterans Treatment Court “from a legal and treatment plan standpoint.” *See* Exhibit H. The only reason for not admitting him was his use of medical marijuana. *Id.* Enjoining the Policy will enable Mr. Monyer’s admission to Veterans Treatment Court to go forward while also allowing him to use medical marijuana to treat a serious medical condition. The

requested injunction will properly restore the parties to the “last actual and lawful uncontested status.” *Snyder*, 977 A.2d at 43.

F. Enjoining the 23rd Judicial District from Enforcing the Policy Is Reasonably Suited to the Petitioners’ Interest in Being Allowed to Use Medical Marijuana in Accordance with State Law.

The requested injunctive relief is reasonably suited to abate the offending activity at issue: the continued operation of the Policy and the resulting physical and mental harm to petitioner and others. *See Snyder*, 977 A.2d at 48–49 (granting preliminary injunction noting that the injunction was a reasonable way to prevent the possibility of future harm). Enjoining the Policy will protect Mr. Monyer and others from continued harm by allowing them to receive the benefits of Veterans Treatment Court while also using medical marijuana to treat their serious medical conditions. Enjoining the Policy is “reasonably tailored” to abate the offending conduct of the 23rd Judicial District because enjoining the Policy imposes no affirmative obligations on that entity and simply requires it to do that which it had already agreed—admit Mr. Monyer to Veterans Treatment Court. *See SEIU Healthcare Pa. v. Commonwealth*, 104 A.3d 495, 509 (Pa. 2014) (finding injunctive relief reasonably tailored where it instructed the Commonwealth to stop reducing the number state health centers, cease reducing public health services, and affirmatively restore public health services).

An order enjoining enforcement of the Policy is the only way to prevent irreparable injury to Mr. Monyer.

IV. CONCLUSION

For all of the foregoing reasons, petitioner respectfully requests that this Court preliminarily enjoin the 23rd Judicial District, including the Court of Common Pleas, Veterans Treatment Court and Berks County Adult Probation & Parole, from enforcing the Policy against Mr. Monyer and other veterans who use medical marijuana in accordance with the MMA who are otherwise eligible for admission to Veterans Treatment Court.

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Respectfully submitted,

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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
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