

ARIZONANS FOR
Responsible
LEGALIZATION

March 31, 2015

Marijuana Policy Project
c/o Rob Kampia, Executive Director
2370 Champlain Street NW, Suite 12
Washington, D.C. 20009
rkampia@mpp.org

Re: Cooperation Between the Marijuana Policy Project and Arizonans for Responsible Legalization

Dear Rob,

I received your e-mail of March 29, 2015 in which you indicated that, regardless of whether Arizonans for Responsible Legalization (“ARL”) proceeds with its planned initiative, the Marijuana Policy Project (“MPP”) will proceed with a competing initiative and, if I remain affiliated with ARL after it introduces its planned initiative, you would take action to damage me and my employer due to our affiliation with ARL. I am writing to urge you to reconsider this path, and to work with us in advancing an initiative that will be supported by a majority of Arizona voters.

Inadvisability of Competing Ballot Measures

As you know, our groups disagreed on several material points in the planned initiative campaign. The most prominent of these disagreements have included the following:

- **Number of Marijuana Dispensaries.** MPP has proposed that the initiative allow an unlimited number of marijuana dispensaries to operate in Arizona. In my judgment, this is a bad idea for two reasons. First, Arizona voters do not support such a radical departure from current law. An incremental approach, that caps the number of dispensaries at or slightly above the current number of licensed dispensaries, is the only politically feasible approach. Second, oversight and monitoring of an unlimited number of dispensaries would be impossible. If the current number of dispensaries is maintained, however, the Arizona Department of Health Services or another governmental agency will be able to provide a healthy level of supervision and ensure that Arizona laws are followed.

- **Grow-Your-Own Provisions.** MPP has proposed a dramatic deregulation of homegrown marijuana. Arizona voters will not support this proposal. When passing the Arizona Medical Marijuana Act in 2010, Arizonans approved a cautious approach to homegrown marijuana. Specifically, they approved homegrown marijuana only for individuals (a) with qualifying medical needs, (b) living more than 25 miles from a licensed medical marijuana dispensary, and (c) cultivating limited quantities of marijuana. Polling shows that Arizonans still favor such a cautious approach. And so does ARL. At this time, I believe it is inadvisable to pursue a more aggressive approach to deregulation in Arizona.

MPP may, of course, choose to pursue its more aggressive agenda by promoting its own initiative. In my judgment, this would be a mistake for both financial and political reasons. Competing measures would inevitably dilute the financial resources available to the decriminalization effort in Arizona—although I suspect MPP’s measure would disproportionately suffer the financial consequences of competing measures, because donors will almost certainly favor ARL’s incremental approach. And politically, competing measures increase voter confusion and significantly increase the risk of both initiatives failing.

Our measure will carefully regulate and tax adult use of marijuana in Arizona—and while Arizonans oppose sweeping legalization proposals, we are confident that most Arizonans support our modest approach. I invite you to join our effort; we would welcome your support.

Threats and Coercive Behavior

Your e-mail stated that, unless I abandon ARL and its planned ballot measure, you would “launch a series of actions to harm [my] business” such as distributing disparaging literature outside my place of employment. You indicated that you were “already budgeting \$10,000 (as of Friday) to pay people for 1,000 hours of time to distribute literature outside of your door, and the literature will not portray you in a kind way.” In closing, your e-mail stated that you were “not joking” and threateningly referenced a prior 90-day jail sentence you served “for marijuana.”

If you carry through on these threats, it is very likely that both MPP as an organization and you as an individual will be liable for tortiously interfering with business expectancies.¹ Intentionally threatening to damage business relations with patients and/or an employer is clearly improper under Arizona case law,² and any financial or reputational injury resulting from the

¹ Under Arizona law, to establish tortious interference, a plaintiff must show a valid business expectancy, knowledge of the expectancy on the part of defendant, intentional and improper interference with the expectancy causing a termination of the expectancy, and resulting damages. *Best Western Intern., Inc. v. Furber*, 200 WL 4182827, *11 (D. Ariz. Sept. 5, 2008).

² In determining whether interference with a contractual relationship or business expectancy is improper, a court considers seven factors. These factors include: the nature of the actor’s conduct; the actor’s motive; the interests of the other with which the actor’s conduct interferes; the interests sought to be advanced by the actor; the social interests in protecting the freedom of action of the actor and the contractual interests of the other; the proximity or remoteness of the actor’s conduct to the interference; and the relations to the parties. *See Wagenseller v. Scottsdale Mem’l Hosp.*, 147 Ariz. 370, 386-387 (Ariz. 1085).

threatened retaliation clearly would be actionable. Because your retaliation would likely injure ARL and interfering with its activities and relationships by discouraging others from supporting its ballot measure campaign, ARL may independently pursue legal claims against MPP and you if and when you carry through on your threats of retaliation.

As I understand it, MPP operates as a 501(c)(4) social welfare organization and, under that provision, is exempt from federal income taxation. Under I.R.S. regulations, however, social welfare organizations must be operated exclusively to promote social welfare, furthering the common good and general welfare of the community. Using the financial resources of a nonprofit organization to pursue a personal vendetta, or to damage an individual or her business, categorically is not social welfare activity and is a prohibited activities for MPP. Use of MPP funds or employee hours to retaliate against me or other affiliates of ARL would therefore subject MPP to investigation and an enforcement action by the I.R.S. and, potentially, other taxing authorities. Because your threatened conduct would damage ARL by deterring others from cooperating with or supporting ARL's ballot measure campaign, ARL will promptly report your activities to the I.R.S. if and when it appears that MPP has expended any organizational resources in retaliating against ARL affiliates.

Conclusion

I trust that, in light of the issues discussed above, you will reconsider your course of conduct in this matter. We are confident that ARL's incremental approach of carefully regulating and taxing adult use is consistent with the policy goals of most Arizonans, and that your threatened actions would not be legal or in the best interests of any party. We hope to cooperate with you and work together, rather than escalating tension between our two groups.

Respectfully,
Dr. Gina Berman, Chairperson
Arizonans for Responsible Legalization