

\*MO for Amicus AND ACTUAL Amicus Brief



FILED  
JAN 23 2015

January 9, 2015

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STATE OF WASHINGTON

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Chief Justice Madsen  
Washington Supreme Court  
Temple of Justice  
P.O. Box 40929  
Olympia, Washington 98504-0929  
(via - Supreme@courts.wa.gov)

h/h  
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**Re: 90204-6 - Steve Sarich, et al. v. City of Kent, Amicus Motion and Brief in Letter Format, Pursuant to RAP 10.6**

ACLU OF WASHINGTON  
FOUNDATION  
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JEAN ROBINSON  
BOARD PRESIDENT

KATHLEEN TAYLOR  
EXECUTIVE DIRECTOR

Dear Chief Justice,

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. The ACLU is seeking to submit this amicus motion and brief in letter format, which highlights that the issue of federal preemption should not be addressed in this case. The ACLU was granted leave to file and filed an amicus brief on this issue in the Court of Appeals.

The ACLU 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 (“MUCA”).<sup>1</sup> It also participated in the drafting of the legislation that amended the MUCA in 2007, provided written comment to the Department of Health during the development of administrative rules relating to the MUCA, and actively supported legislation that amended the MUCA in 2010 and 2011. Recognizing the ACLU’s involvement in this area, the Washington Supreme Court has accepted amicus curiae briefs and memoranda from the ACLU in a number of medical marijuana cases, including: *State v. Kurtz*, No. 87078-1 (2012); *Roe v. Teletech Customer Care Management (Colorado) LLC*, No. 83768-6 (2011); *State v. Fry*, No.

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



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).

The ACLU has reviewed the briefing submitted by the parties to this Court and to the Court of Appeals as well as the orders of the trial court. It is familiar with the scope of the arguments presented by the parties and will not unduly repeat the arguments already presented. The issue addressed in this letter is that the Washington Supreme Court should not address the issue of federal preemption in this case.

The ACLU's amicus curiae brief filed in this case in the Court of Appeals explains in great detail why the issue of federal preemption should not be addressed at this time. The ACLU would like to bring the previous brief to the court's attention and briefly explain why the issue of federal preemption is not properly before this court. The ACLU believes this supplemental information will be useful to the Court and is necessary to a fully informed decision. For the reasons stated above, the ACLU respectfully requests that the Court grant leave to file this amicus curiae letter.

### ***The Issue of Federal Preemption Should Not Be Addressed In This Case***

The Court of Appeals decision in this case did not address the issue of federal preemption.<sup>2</sup> As the City of Kent notes in its Answer to Petitioners' Petitions for Discretionary Review, the case "does not implicate any constitutional right, nor does it touch on federal preemption" (emphasis added). Federal preemption was also not raised as an issue in the petitions for direct review. Nonetheless, the City of Kent has at the very end of their supplemental brief indirectly raised federal preemption as part of its rationale for ruling against the plaintiffs.<sup>3</sup> RAP 13.7 (b), states that "the Supreme Court will review only the questions raised... [in] the petition for review and the answer, unless the Supreme Court orders otherwise." As stated by the Supreme Court, it "generally reviews only those issues raised by the parties in their petition and answer. RAP 13.7(b)."<sup>4</sup>

Federal preemption is a complex issue and there are several reasons why it should not be addressed in this case. No factual record has been developed on

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<sup>2</sup> *Cannabis Action Coalition v. City of Kent*, 180 Wn.App. 455, 322 P.3d 1246 (2014), review granted 336 P.3d 1165 (2014).

<sup>3</sup> See Supplemental Brief of City of Kent, pg. 16, "To Hold That City Cannot Prohibit Uses That Constitute Violations Of The Federal Controlled Substances Act Would Place the MUCA In Direct Conflict With Federal Law."

<sup>4</sup> *Blaney v. Int'l Ass'n of Machinists & Aerospace Workers, Dist. No. 160*, 151 Wn.2d 203, 213, 87 P.3d 747 (2004).

this issue, it was not decided or discussed by the superior court, it was not adequately briefed on appeal, and it was not addressed by the Court of Appeals decision. For a more in depth explanation of why federal preemption should not be reviewed in this case, please see the ACLU's amicus brief submitted in the Court of Appeals in this case.<sup>5</sup>

For the foregoing reasons, the ACLU respectfully requests that the Court not address federal preemption in this case.

Sincerely,

By:           /s/ Sarah Dunne            
Sarah A. Dunne, WSBA #34869  
Mark M. Cooke, WSBA # 40155  
ACLU of Washington Foundation  
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By:           /s/ Jared Van Kirk            
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Attorneys for Amicus Curiae  
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<sup>5</sup> Amicus brief is available at <http://www.courts.wa.gov/content/Briefs/A08/90204-6%20COA%20Amicus%20-%20ACLU.pdf>.

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No. 90204-6

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**SUPREME COURT OF THE STATE OF WASHINGTON**

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STEVE SARICH, ET AL.,

Petitioners,

v.

CITY OF KENT, ET AL.,

Respondents

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**CERTIFICATE OF SERVICE**

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ACLU OF WASHINGTON  
FOUNDATION

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*Attorneys for Amici Curiae*

**CERTIFICATE OF SERVICE**

I, Mark Cooke, hereby certify under penalty of perjury of the laws of the State of Washington that on January 9, 2015, I served a copy of the *Amici Curiae* Motion and Brief in letter format of *Amici Curiae* American Civil Liberties Union of Washington to the parties below, in the manner noted:

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Signed this 9th day of January 2015, at Seattle, King County, Washington.

*/s/ Mark M. Cooke*  
\_\_\_\_\_  
Mark Cooke, WSBA # 40155

## OFFICE RECEPTIONIST, CLERK

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**Subject:** RE: 90204-6 - Sarich v. Kent - ACLU of Washington Amicus Motion and Brief in Letter Format

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**Sent:** Friday, January 09, 2015 12:36 PM  
**To:** OFFICE RECEPTIONIST, CLERK  
**Cc:** 'pfitzpatrick@kentwa.gov'; 'dgalazin@kentwa.gov'; 'awestaa@gmail.com'; 'Worthingtonjw2u@hotmail.com'; 'Steve@cannacare.org'; 'mann@gendlermann.com'; 'aaron@pelleylawgroup.com'; 'kathleen@pfrwa.com'; 'tim@pfrwa.com'; 'tdonaldson@wallawalla.gov'; 'pfred@ci.walla-walla.wa.us'; Sarah Dunne; Jared Van Kirk (JVanKirk@gsblaw.com); Edward Wixler  
**Subject:** 90204-6 - Sarich v. Kent - ACLU of Washington Amicus Motion and Brief in Letter Format

Greetings,

Attached for filing in Case No. 90204-6, *Steve Sarich, Et Al. v. City of Kent*, are the following documents:

- Amicus Curiae American Civil Liberties Union of Washington Motion and Brief in Letter Format
- Declaration of Service

The documents are filed by Mark Cooke, Bar No. 40155 ([mcooke@aclu-wa.org](mailto:mcooke@aclu-wa.org)). If you have any questions, please contact me.

Respectfully,

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