DLD-179 **NOT PRECEDENTIAL**

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 21-1192

AMRO ELANSARI,
Appellant

v.

MAITE RAGAZZO, (Individual Capacity);
15TH JUDICIAL DISTRICT; CHESTER COUNTY

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civil Action No. 2-20-cv-06170)
District Judge: Honorable Joel H. Slomsky

Submitted on Appellee's Motion for Summary Affirmance
May 13, 2021
Before: JORDAN, KRAUSE, and PHIPPS, Circuit Judges

(Opinion filed: May 24, 2021)

OPINION*

PER CURIAM

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* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

Appellant Amro Elansari, proceeding pro se and in forma pauperis, appeals from an order by the United States District Court for the Eastern District of Pennsylvania dismissing his complaint for failure to state a claim. For the reasons that follow, we will summarily affirm.

I.

Because we write primarily for the benefit of the parties, we recite only the important facts and procedural history. Elansari was arrested and convicted in 2015 for various marijuana-related offenses. He was again arrested in 2017 and was sentenced to probation, which he began serving in Centre County, Pennsylvania. At some point in 2018, Elansari moved, and his probation was transferred to Chester County, Pennsylvania. Elansari alleged that after he moved, defendant Maite Ragazzo, a Chester County probation officer, told him that the office was going to continue to drug test probationers regardless of Pennsylvania's 2016 law legalizing the use of medical marijuana. Elansari states that he moved to Philadelphia because of this conversation.

In December 2020, Elansari filed a complaint under 42 U.S.C. § 1983 alleging that his equal protection rights were violated by Ragazzo's comments and that the county maintained an unconstitutional policy as to probationers who used marijuana for medical purposes.[1] Elansari seeks declaratory judgment, compensatory and punitive damages, and injunctive relief against Ragazzo, the 15th Judicial District, and Chester County.[2]

[1] In June 2020, the Supreme Court of Pennsylvania held that a state parole office's policy of prohibiting probationers from the active use of medical marijuana violated

Counsel for defendants filed a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim. Elansari opposed the motion and filed a motion to amend the complaint to add unnamed supervisors to the action. The District Court dismissed Elansari's complaint pursuant to § 1915(e)(2)(B)(ii) explaining that his claims for declaratory and injunctive relief were moot, that the 15th Judicial District and Chester County were entitled to Eleventh Amendment immunity, that Elansari had failed to state an equal protection claim, and that the claim against Ragazzo was time-barred.[3] The District Court denied Elansari's motion to amend his complaint, except to the extent that he moved to strike claims related to comments made by a state court judge, and concluded that further amendment would be futile. Elansari timely filed his notice of appeal.

II.

We have jurisdiction pursuant to 28 U.S.C. § 1291. Our review of the District Court's dismissal under § 1915(e)(2)(B)(ii) is plenary. See Allah v. Seiverling, 229 F.3d

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Pennsylvania law. Gass v. 52nd Judicial Dist., Lebanon Cty., 232 A.3d 706, 715 (Pa. 2020).

[2] Elansari subsequently filed a state court action against Ragazzo to recover compensatory damages for his move to Philadelphia. He alleged that his filing and court proceedings made the state court judge "furious" and stated that the judge informed him that he was going to report the matter to the Centre County probation authorities. Elansari's § 1983 complaint initially alleged that the state court's actions were impermissible retaliation that violated the Pennsylvania Human Relations Act. Elansari subsequently moved to strike any aspect of his complaint related to the state court proceedings, and the District Court granted the motion.

[3] The District Court also found that it did not have jurisdiction over any state law claims, although those appear to have been dismissed pursuant to Elansari's motion.

220, 223 (3d Cir. 2000). Dismissal is appropriate where a complaint has not alleged "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). We accept all factual allegations in the complaint as true and construe those facts in the light most favorable to the plaintiff, Fleisher v. Standard Ins. Co., 679 F.3d 116, 120 (3d Cir. 2012), and because Elansari is proceeding pro se, we construe his complaint liberally, see Erickson v. Pardus, 551 U.S. 89, 94 (2007) (per curiam). We may summarily affirm if the appeal fails to present a substantial question. See Murray v. Bledsoe, 650 F.3d 246, 247 (3d Cir. 2011) (per curiam); 3d Cir. L.A.R. 27.4; I.O.P. 10.6.

III

We agree with the District Court's assessment that Elansari's complaint was insufficient to state a civil rights action against defendants. As the District Court explained, Elansari's claims for unspecified prospective relief against the 15th Judicial District and Chester County were mooted by his move to Philadelphia and the corresponding transfer of his parole, as he "no longer has any present interest affected by [their] polic[ies]." Weinstein v. Bradford, 423 U.S. 147, 148 (1975). Moreover, because Elansari has not alleged that he intends to move back to Chester County or that the parole office has continued its alleged policy following the Pennsylvania Supreme Court's 2020 decision, he cannot demonstrate that the alleged wrong is "capable of repetition yet evading review." Hamilton v. Bromley, 862 F.3d 329, 335 (3d Cir. 2017) (capable-of-

repetition doctrine is narrow mootness exception that "applies only in exceptional situations" where "(1) the challenged action is in its duration too short to be fully litigated prior to cessation or expiration, and (2) there is a reasonable expectation that the same complaining party will be subject to the same action again.") (quoting Spencer v. Kemna, 523 U.S. 1, 17 (1998)).

We further agree with the District Court that the claims for damages against the Fifteenth Judicial Circuit and Chester County are barred by the Eleventh Amendment. See Haybarger v. Lawrence Cty. Adult Prob. & Parole, 551 F.3d 193, 198 (3d Cir. 2008) ("Pennsylvania's judicial districts, including their probation and parole departments, are entitled to Eleventh Amendment immunity.") (citing Benn v. First Judicial Dist. of Pa., 426 F.3d 233, 240-41 (3d Cir. 2005)); Lavia v. Pa. Dep't of Corr., 224 F.3d 190, 195 (3d Cir. 2000) ("The Pennsylvania legislature has, by statute, expressly declined to waive its Eleventh Amendment immunity.").

Additionally, we agree with the District Court that Elansari's allegations regarding defendant Ragazzo's comments failed to establish either a constitutional violation or a plausible equal protection claim. See Kaucher v. County of Bucks, 455 F.3d 418, 423 (3d Cir. 2006) ("To state a § 1983 claim, a plaintiff must demonstrate the defendant, acting under color of state law, deprived him or her of a right secured by the Constitution or the laws of the United States."). Setting aside Elansari's failure to allege that he obtained a medical marijuana card, the ability to access medical marijuana is not a "right secured by the Constitution or the laws of the United States." Id. (citing Am. Mfrs. Mut. Ins. Co. v.

Sullivan, 526 U.S. 40, 49–50 (1999)); see Gonzales v. Raich, 545 U.S. 1, 22 (2005) (Controlled Substances Act provisions criminalizing manufacture, distribution, or possession of marijuana to intrastate growers and users of marijuana for medical purposes did not violate Commerce Clause); United States v. Oakland Cannabis Buyers' Cooperative, 532 U.S. 483, 490 (2001) (holding that there is no medical-necessity exception to the Controlled Substances Act's prohibitions on manufacturing and distributing marijuana); Raich v. Gonzales, 500 F.3d 850, 866 (9th Cir.2007) (no fundamental right to use marijuana prescribed by a physician to alleviate pain).[4]

We also agree with the District Court that Elansari's claim fails under a traditional theory of equal protection because he has not shown that he obtained a medical marijuana card or, even if he had, that an individual who uses medical marijuana is a member of a protected class. See Keenan v. City of Phila., 983 F.2d 459, 465 (3d Cir. 1992). Moreover, the District Court correctly determined that Elansari's claim fails under a class-of-one theory because he has not demonstrated that he qualified for or obtained a medical marijuana card, was not charged with violating his probation for using marijuana for medical reasons, and did not allege he was treated differently from other probationers who obtained or intended to obtain a medical marijuana card. See Phillips v. Cty. of

[4] This Court has rejected Elansari's arguments in prior cases alleging similar violations of his rights arising out of his use of marijuana. See Elansari v.United States, 823 F. App'x 107, 111 (3d Cir. 2020) (per curiam) (marijuana users are not members of a protected class); Elansari v. United States, 615 F. App'x 760, 762 (3d Cir. 2015) (per curiam) (Elansari unlikely to show success on claim that marijuana prohibition is unconstitutional).

Allegheny, 515 F.3d 224, 244 (3d Cir. 2008) (To prevail under a class-of-one theory, plaintiff bears the burden of showing he "was intentionally treated differently from others similarly situated . . . and that there is no rational basis for the difference in treatment."). The District Court did not abuse its discretion in denying Elansari leave to amend his complaint where the court aptly evaluated his response to the defendants' motion to dismiss and his proposed amended complaint and concluded that it would not cure the defects from his complaint. See Grayson v. Mayview State Hosp., 293 F.3d 103, 108 (3d Cir. 2002).[5]

Because the appeal does not present a substantial question, we grant the motion for summary affirmance and will affirm the judgment of the District Court.

[5] The District Court also correctly determined that the claims against Ragazzo were time-barred and that Elansari did not raise a particularized claim against the unknown supervisors alleged in his proposed amended complaint. Elansari's state law claims were dismissed upon Elansari's own motion to strike, given that the claims were rooted in the dismissed allegations.

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Third Circuit Court of Appeals

Notice of Docket Activity

The following transaction was filed on 07/21/2021
Case Name: Amro Elansari v. Maite Ragazzo, et al
Case Number: 21-1192
Document(s): https://ecf.ca3.uscourts.gov/docs1/003013912008?uid=f412cccab553aa2d

Docket Text:
ORDER (SMITH, Chief Judge, MCKEE, AMBRO, CHAGARES, JORDAN, HARDIMAN, GREENAWAY JR., SHWARTZ, KRAUSE, RESTREPO, BIBAS, PORTER, MATEY and PHIPPS, Circuit Judges) denying Petition En Banc and Panel Rehearing filed by Appellant Amro A. Elansari. Krause, Authoring Judge. (TMM)

Notice will be electronically mailed to:

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Document Description: Court Order Filed
Original Filename: order_court_072121.pdf
Electronic Document Stamp:
[STAMP acecfStamp_ID=1107201326 [Date=07/21/2021] [FileNumber=4844472-0]
[721ff257a7b7f3a4fad2af2ecab505c85c36139f57fe6819ea48c784728449bc3f68850468ae00ef3cf2206b9c2b70648e9061ab69d1e7f826ddf20c7a6d4c31]]

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

AMRO ELANSARI,	:	
Plaintiff,	:	
	:	
v.	:	**CIVIL ACTION NO. 20-CV-6170**
	:	
MAITE RAGAZZO, *et al.*,	:	
Defendants.	:	

MEMORANDUM

SLOMSKY, J. **JANUARY 29, 2021**

Plaintiff Amro Elansari, a frequent litigator in this Court,[1] filed this *pro se* civil action pursuant to 42 U.S.C. § 1983, against Probation Officer Maite Ragazzo, "15th Judicial District" and Chester County. The Court understands Elansari to be claiming that the 15th Judicial District, which administered his probation for a time, maintained an unconstitutional policy as to probationers who used marijuana for medical purposes. He seeks leave to proceed *in forma pauperis*. The Court will grant Elansari leave to proceed *in forma pauperis* and dismiss his Complaint for the following reasons.

I. FACTUAL ALLEGATIONS AND PROCEDURAL HISTORY

In 2015, Elansari was arrested for and convicted of various marijuana-related offenses in Pennsylvania. *See Commonwealth v. Elansari*, CP-14-CR-0000408-2015 (C.P. Centre). It appears his probation was revoked in 2017, apparently as a result of a conviction on new drug charges, and a new sentence was imposed. *Id.*; *see also Commonwealth v. Elansari*, CP-14-CR-

[1] *See Elansari v. Commonwealth of Pa.*, Civ. A. No. 21-0141, 2021 WL 288792 (E.D. Pa. Jan. 28, 2021).

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0001625-2016 (C.P. Centre). Elansari's claims in the instant civil action concern his sentence of probation, the administration of which had been transferred from Centre County to Chester County for a period of time. (ECF No. 2 at 3.)[2]

Elansari notes that, in 2016, Pennsylvania legalized use of marijuana for medical purposes and began issuing "medical cannabis cards" in 2018. (*Id.* at 1.) He alleges that he had a conversation in 2018 with Defendant Ragazzo, a probation officer in Chester County. (*Id.*) At the time, Elansari was on probation. (*Id.*) He claims that Ragazzo told him "we no care what the law is – we gonna do what we want" which Elansari interpreted as meaning that "they (probation) didn't care whether or not the pot cards were coming out – the were still going to drug test and fail people for pot no matter what." (*Id.*) Elansari alleges this was a violation of his equal protection rights, and that he moved to Philadelphia as a result. (*Id.*)

Elansari "filed an action to recover compensatory damages for the move." (*Id.*) On December 22, 2020, a Magisterial District Judge rejected Elansari's claims and entered judgment in favor of the Defendants.[3] *Elansari v. Ragazzo*, MJ-15101-CV-0000083-2020 (Chester Cty.). Elansari alleges that the Judge "was furious" that Elansari "had 'outsmarted the system'" and was going to report the matter to Centre County probation because he thought Elansari had defrauded the system by moving to Philadelphia. (ECF No. 2 at 1.) Elansari describes this as retaliation. (*Id.* at 2.)

Elansari asserts two claims. The first is pursuant to § 1983 for a violation of his equal protection rights based on the conversation he had with Officer Ragazzo and what he alleges was

[2] The Court adopts the pagination supplied by the CM/ECF docketing system.

[3] It is unclear at this time whether the judgment in Elansari's state case precludes his claims in the instant case. *See Turner v. Crawford Square Apartments III, L.P.*, 449 F.3d 542, 548 (3d Cir. 2016) (discussing claim preclusion).

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the policy of the 15th Judicial District as to probationers who obtained a card permitting them to use medical marijuana. In support of that claim, Elansari relies on a 2020 opinion issued by the Pennsylvania Supreme Court, which he attached to his Complaint as an exhibit. (*Id.* at 3 & 8-23.) In that case, the Pennsylvania Supreme Court concluded that the policy of the Lebanon County Court of Common Pleas — which essentially prohibited marijuana use among probationers even if the probationer had a medical marijuana card and put the burden on the probationer to prove medical necessity for marijuana use to avoid a probation violation — was unenforceable because it was "contrary to the immunity accorded by Pennsylvania's Medical Marijuana Act." *Gass v. 52nd Judicial Dist., Lebanon Cty.*, 232 A.3d 706, 715 (Pa. 2020). Elansari's second claim is for retaliation in alleged violation of the Pennsylvania Human Relations Act based on the statements the Magisterial District Judge made in dismissing Elansari's state case. (*Id.* at 5.) Elansari seeks unspecified damages, declaratory relief, and injunctive relief. (*Id.* at 6.)

Counsel entered his appearance for the Defendants, although they have not yet been served, and moved to dismiss the claims against Defendant Ragazzo based on qualified immunity for her 2018 comments, and because no other conduct is attributed to her that supports a claim. (ECF No. 5-2.) Elansari responded that Defendant Ragazzo is not entitled to qualified immunity because when the law changed in Pennsylvania, "probation officers should have known to change their policy on cannabis" and failure to do so was an equal protection violation. (ECF No. 6 at 2-3.) He also clarifies that he had his discussion with Ragazzo in January 2018, at a time when he was anticipating obtaining a medical marijuana card, and that he therefore had to "move to avoid the equal protection violation for 2 years." (*Id.* at 4-5; *see also id.* at 7 ("Defendant does not deny that they told the Plaintiff they were not going to respect the pot cards

in January of 2018 when the Plaintiff informed Ragazzo of a meeting scheduled with a PA Medical Cannabis Program certified doctor to obtain a card.").)

Elansari also moved to withdraw his claims based on statements made by the Magisterial District Judge who dismissed his case in state court. (*Id.* at 8 (noting that Elansari "intends to move to strike all portions of the complaint pertaining to the most recent small claims hearing")); (ECF No. 7 (moving to "strike the parts of the Complaint pertaining to Judge Maisano/Judge Nistico").) In doing so, he clarified that the remainder of his complaint is "about (1) Ragazzo's violation in January 2018 and (2) 15th Judicial Districts unconstitutional policy as a whole." (ECF No. 7 at 1.) Elansari also moved to amend his complaint to remove the portions pertaining to the resolution of his claims in state court and the related judicial statements, and to add a discussion of the law on qualified immunity. (ECF No. 8.) His attached proposed amended complaint names as Defendants Ragazzo, the 15th Judicial District, and "Chester County John Doe 1-4 (Supervisors)." (*Id.*) He again raises an equal protection claim based on the January 2018 discussion with Ragazzo and his decision to move to Philadelphia based on that discussion. (*Id.* at 2.)

II. STANDARD OF REVIEW

The Court grants Elansari leave to proceed *in forma pauperis* because it appears that he is not capable of pre-paying the fees to commence this civil action. Accordingly, 28 U.S.C. § 1915(e)(2)(B)(ii) applies, which requires the Court to dismiss the Complaint if it fails to state a claim. The Court's screening of Elansari's Complaint under § 1915(e)(2)(B)(ii) and consideration of Ragazzo's Motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) are governed by the same standard, *see Tourscher v. McCullough*, 184 F.3d 236, 240 (3d Cir. 1999), which requires the Court to determine whether the complaint contains "sufficient factual matter,

accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quotations omitted). Conclusory allegations do not suffice. *Id.* Additionally, the Court may dismiss claims based on an affirmative defense if the affirmative defense is obvious from the face of the complaint. *See Wisniewski v. Fisher*, 857 F.3d 152, 157 (3d Cir. 2017). As Elansari is proceeding *pro se*, the Court construes his allegations liberally. *Higgs v. Att'y Gen.*, 655 F.3d 333, 339 (3d Cir. 2011).

III. DISCUSSION

The Court will grant Elansari's "Motion to Strike." Accordingly, the only claims at issue are those against Officer Ragazzo, the 15th Judicial District and Chester County based on Officer Ragazzo's statements, which led Elansari to leave Chester County for Philadelphia for at least two years because he intended to procure a card to use medical marijuana and feared that use of medical marijuana would subject him to a probation violation.

A. Claims for Declaratory and Injunctive Relief are Moot

To the extent Elansari seeks unspecified prospective relief, his claims are moot. Article III of the Constitution, which limits the power of federal courts to addressing cases and controversies, "does not permit federal courts to decide moot cases." *Rosetti v. Shalala*, 12 F.3d 1216, 1223 (3d Cir. 1993). This principle "follows from the often-repeated rule that under the case or controversy requirement, federal courts are without power to decide questions that cannot affect the rights of the litigants in the case before them." *Id.* (internal quotations omitted). "If one or more of the issues involved in an action become moot . . . , the adjudication of the moot issue or issues should be refused." *New Jersey Tpk. Auth. v. Jersey Cent. Power & Light*, 772 F.2d 25, 30 (3d Cir. 1985).

Elansari's filings make clear that he lives in Philadelphia, not Chester County, and that his probation is administered in Philadelphia. (ECF No. 2 at 3 "Plaintiff has acquired [an]address in Philadelphia and has reported to Philadelphia probation ever since after the address was approved by Centre County Probation.").) Since his probation is no longer administered by the 15th Judicial District in Chester County, there is no basis for him to seek prospective relief. Even if Elansari intended to move back to Chester County, which he does not allege, there is no plausible allegation that the 15th Judicial District would not comply with the law as set forth by the Pennsylvania Supreme Court in *Gass*, now that the law has been clarified. Accordingly, Elansari's claims for prospective declaratory and injunctive relief are dismissed as moot, leaving only his damages claims, which the Court will address below. *See Hayes v. Harvey*, 903 F.3d 32, 40 (3d Cir. 2018) (en banc) (when tenant moved from housing unit, claims seeking declaratory and injunctive relief to bar eviction were moot because he lacked a legally cognizable interest in the outcome of the case); *Bellocchio v. New Jersey Dep't of Envtl. Prot.*, 602 F. App'x 876, 879 (3d Cir. 2015) (per curiam) ("As an initial matter, Bellocchio's claims for injunctive relief against all Defendants are moot, as the Bellocchios moved from their home.").

B. Claims Against the 15th Judicial District & Chester County

Elansari's § 1983 claims for money damages against the 15th Judicial District and Chester County appear to be based on what Elansari believes is a policy of not complying with either the United States Constitution or Pennsylvania law in administering probation of those who hold medical marijuana cards. Notably, although Elansari's papers suggest that he intended to procure a medical marijuana card, it is not clear whether he ever obtained one. Nor does

Elansari allege that he was charged with violating his probation because he used marijuana on a medical basis after receiving a card.

Nevertheless, leaving these pleading issues aside, Elansari has not stated a claim against the 15th Judicial District. "To state a claim under § 1983, a plaintiff must allege the violation of a right secured by the Constitution and laws of the United States, and must show that the alleged deprivation was committed by a person acting under color of state law." *West v. Atkins*, 487 U.S. 42, 48 (1988). The Eleventh Amendment bars suits against a state in federal court when the state has not waived that immunity. *See Will v. Mich. Dep't of State Police*, 491 U.S. 58, 65-66 (1989). "Pennsylvania's judicial districts, including their probation and parole departments, are entitled to Eleventh Amendment immunity." *Haybarger v. Lawrence Cty. Adult Prob. & Parole*, 551 F.3d 193, 198 (3d Cir. 2008) (citing *Benn v. First Judicial Dist. of Pa.*, 426 F.3d 233, 240-41 (3d Cir. 2005)). In other words, "all courts and agencies of the [Pennsylvania Unified Judicial System] are part of the Commonwealth government rather than local entities[,]" and an "individual district and its probation and parole department[,]" as "arm[s] of the State," are entitled to share in the Commonwealth's immunity under the Eleventh Amendment. *See id.* The Commonwealth of Pennsylvania has not waived that immunity here. *See* 42 Pa. Cons. Stat. § 8521(b). Additionally, the Commonwealth and its agencies are not considered "persons" for purposes of § 1983. *See Will*, 491 U.S. at 69.

For these reasons, Elansari's claims against the 15th Judicial District are barred by the Eleventh Amendment. It appears Elansari has sued Chester County because that is the county in which the 15th Judicial District is located. So, to the extent his is suing Chester County separately from the 15th Judicial District, he cannot articulate a plausible basis for a claim

because Chester County is not liable for the policies of the 15th Judicial District, which are the policies of the Commonwealth.

C. Claims Against Ragazzo

Elansari's equal protection claim against Ragazzo also fails. This claim is based entirely on a conversation that Elansari had with Ragazzo in January 2018, which may be characterized as Ragazzo having represented that she would not honor Elansari's medical marijuana card should he obtain one, or implying that even if he were to obtain one, he would violate the terms of his probation if he used marijuana. Elansari describes this as an equal protection violation.[4] However, any equal protection claim is not plausible.

"The Equal Protection Clause of the Fourteenth Amendment commands that no State shall 'deny to any person within its jurisdiction the equal protection of the laws,' which is essentially a direction that all persons similarly situated should be treated alike." *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985) (quoting *Plyler v. Doe*, 457 U.S. 202, 216 (1982)). "[T]o state a claim for 'class of one' equal protection, a plaintiff must at a minimum allege that he was intentionally treated differently from others similarly situated by the defendant and that there was no rational basis for such treatment." *Phillips v. Cty. of Allegheny*, 515 F.3d 224, 243 (3d Cir. 2008). "Persons are similarly situated under the Equal Protection Clause when they are alike 'in all relevant aspects.'" *Startzell v. City of Philadelphia, Pa.*, 533 F.3d 183, 203 (3d Cir. 2008) (quoting *Norlinger v. Hahn*, 505 U.S. 1, 10 (1992)).

[4] Elansari "has no constitutional right to use or possess medical marijuana." *Elansari v. United States*, Civ. A. No. 15-01461, 2016 WL 4415012, at *4 (M.D. Pa. July 11, 2016), *report and recommendation adopted Elansari v. States*, Civ. A. No. 15-1461, 2016 WL 4386145 (M.D. Pa. Aug. 17, 2016). Additionally, users of marijuana are not members of a protected class entitled to heightened protection under the equal protection clause. *See Elansari v. United States*, 823 F. App'x 107, 111 (3d Cir. 2020) (per curiam).

As noted above, Elansari does not allege that he qualified for or obtained a medical marijuana card, nor does he allege that Ragazzo, or anyone else, charged him with violating his probation for using marijuana for medical reasons. Elansari also does not allege that he was treated differently from other probationers who obtained or intended to obtain a medical marijuana card, *i.e.*, those who could be considered similarly situated. To the extent Elansari is basing his claim on a suggestion that medical marijuana users are similarly situated to probationers who "were prescribed other medications," (ECF No. 2 at 3), that vague and generalized conclusory allegation is insufficient to state a plausible equal protection claim.

At most Elansari has alleged a violation of state law, *i.e.*, a failure to afford probationers who are users of medical marijuana (including Elansari if he ultimately qualified) the immunity afforded to them by Pennsylvania's Medical Marijuana Act. But that does not necessarily translate into a constitutional violation. *See Wyatt v. Dep't of Prob. & Parole*, No. 19-CV-5460, 2020 WL 2307351, at *7 (E.D. Pa. May 8, 2020) ("[E]ven if this Court were to assume that the statute at issue was violated, a violation of state law generally does not equate to a federal constitutional violation."). To the extent Elansari relies on the Pennsylvania Supreme Court's opinion in *Gass*, that case concerned an interpretation of Pennsylvania law; no constitutional claims were discussed. In sum, Elansari has not alleged a plausible constitutional violation.

It is also worth noting that Elansari's claim against Defendant Ragazzo, which is based entirely on a January 2018 conversation, is time-barred. Pennsylvania's two-year statute of limitations applies to this claim. *See* 42 Pa. Cons. Stat. § 5524; *Wallace v. Kato*, 549 U.S. 384, 387 (2007). A claim accrues "when a plaintiff has a complete and present cause of action, that is, when [he] can file suit and obtain relief." *Dique v. N.J. State Police*, 603 F.3d 181, 185 (3d Cir. 2010) (quotations omitted). Elansari essentially alleges that Ragazzo's statements

constituted an equal protection violation, or led him to believe his equal protection rights would be violated, so he fled for Philadelphia. At that time, he was aware of the alleged violation of his rights. Although the precise date of this conversation does not appear in Elansari's Complaint, it appears in Elansari's Response to Ragazzo's Motion to Dismiss, (ECF No. 6 at 5 (admitting he was told by Ragazzo at a meeting in January 2018 that "they were not going to honor the pot cards");(*see also id* at 7 & 9), and is therefore a judicial admission that may be considered by the Court. *See Parilla v. IAP Worldwide Servs., VI, Inc.*, 368 F.3d 269, 275 (3d Cir. 2004) (discussing judicial admissions); *Glick v. White Motor Co.*, 458 F.2d 1287, 1291 (3d Cir. 1972) ("The scope of judicial admissions is restricted to matters of fact which otherwise would require evidentiary proof."); *In re C.F. Foods, L.P.*, 265 B.R. 71, 87 (Bankr. E.D. Pa. 2001) ("Generally, factual assertions admitted by a party in an answer or response are considered judicial admissions which are conclusively binding upon the party who made them."). Despite filing numerous lawsuits in this Court, Elansari did not file his claims against Ragazzo until December 22, 2020, several months after the statute of limitations expired, so his claims against her are time-barred.[5]

D. Motion to Amend

In dismissing a Complaint for failure to state a claim, a Court should consider whether amendment is appropriate and grant leave to amend "unless amendment would be inequitable or futile." *Grayson v. Mayview State Hosp.*, 293 F.3d 103, 108, 110 (3d Cir. 2002). Here, in addition to the Complaint, the Court has before it Elansari's response to Ragazzo's Motion to Dismiss and his Motion to Amend with his proposed amended complaint. Other than omitting

[5] To the extent Elansari intended to assert a retaliation claim against Ragazzo under the Pennsylvania Human Relations Act or Pennsylvania tort laws, there is no basis for this Court's subject matter jurisdiction over those claims. *See* 28 U.S.C. § 1332(a).

the allegations about the resolution of his claims in state court and adding a discussion on qualified immunity, the allegations are essentially the same as those in the initial Complaint. (ECF No. 8.) However, the proposed amended complaint also adds "John Doe 1-4 (Supervisors)" as Defendants based on Elansari's allegation that the "Defendants as an entire organization – by and through its supervisors – intentionally ignored the Pennsylvania Medical Cannabis law when it was passed and implemented and went as far as 2 years wrongfully and unjustly prosecuting cannabis card holders unequally compared to other prescription holders." (*Id.* at 6.)

The defects identified above are not cured by Elansari's proposed amended complaint. Furthermore, he has not raised any particularized allegations against the unknown supervisors that supports a plausible claim against them. *See Rode v. Dellarciprete*, 845 F.2d 1195, 1207 (3d Cir. 1988) ("A defendant in a civil rights action must have personal involvement in the alleged wrongs."). Accordingly, the Court concludes that amendment would be futile here.

IV. CONCLUSION

For the foregoing reasons, the Court will grant Elansari leave to proceed *in forma pauperis*, grant his Motion to Strike, dismiss his Complaint and deny his Motion to Amend. Having dismissed this case on other grounds, the Court declines to address Ragazzo's qualified immunity defense. An appropriate Order follows.

BY THE COURT:

/s/Joel H. Slomsky, J.
JOEL H. SLOMSKY, J.

[J-42-2020]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

SAYLOR, C.J., BAER, TODD, DONOHUE, DOUGHERTY, WECHT, MUNDY, JJ.

MELISSA GASS, ASHLEY BENNETT, AND ANDREW KOCH, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,	:	No. 118 MM 2019
Petitioners	:	Appeal from the Extraordinary Jurisdiction granted for this case which concerns a challenge to a policy (the Policy) prohibiting the use of medical marijuana by individuals under the supervision of the Lebanon County Probation Services
v.	:	
	:	ARGUED: May 19, 2020
52nd JUDICIAL DISTRICT, LEBANON COUNTY,	:	
Respondent	:	

OPINION

CHIEF JUSTICE SAYLOR **DECIDED: June 18, 2020**

This matter concerns a challenge to a local judicial district's policy prohibiting the use of medical marijuana by individuals under court supervision, such as probationers.

In 2016, the Pennsylvania General Assembly enacted the Medical Marijuana Act.[1] In a declaration of policy, it recognized that "[s]cientific evidence suggests that medical marijuana is one potential therapy that may mitigate suffering in some patients and also enhance quality of life." 35 P.S. §10231.102(1). The Legislature then

[1] Act of April 17, 2016, P.L. 84, No. 16 (codified at 35 P.S. §§10231.101-10231.2110) (the "MMA" or the "Act").

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announced its intention to provide a temporary program of access balancing patient needs with safety considerations. *See id.* §10231.102(3)(i), (4).

Under the Act, "[n]othwithstanding any provision of law to the contrary, use or possession of medical marijuana as set forth in [the] act is lawful within this Commonwealth." *Id.* §10231.303(a). Relevantly, medical marijuana may only be dispensed, however, to patients who receive certifications from qualified physicians and possess a valid identification card issued by the Pennsylvania Department of Health. *See id.* §10231.303(b)(1)(i).[2] A "patient" is a Pennsylvania resident who has an enumerated serious medical condition and has met specified requirements for certification. *Id.* §10231.103. Notably, there are many other regulatory requirements and restrictions imposed throughout the Act. *See* Class Action Petition for Review Addressed to the Court's Original Jurisdiction, 118 MM 2019 (Pa.), at ¶¶37-63 (summarizing the MMA's regulatory prescriptions).

And of particular relevance here, the MMA contains an immunity provision protecting patients from government sanctions. *See* 35 P.S. §10231.2103(a). Per the statute, no such individual "shall be subject to arrest, prosecution or penalty in any manner, or denied any right or privilege, . . . solely for lawful use of medical marijuana . . . or for any other action taken in accordance with this act." *Id.*

In September 2019, the 52nd Judicial District -- comprised of the Lebanon County Court of Common Pleas (the "District") -- announced a "Medical Marijuana Policy" under the issuing authority of the president judge. *See* Lebanon County Probation Services Policy Nos. 5.1-2019 & 7.4-2019 (Sept. 1, 2019) (the "Policy"). Centrally, the Policy prohibits "the active use of medical marijuana, regardless of

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[2] Parenthetically, the statute also allows for dispensation to qualified caregivers. *See id.* §10231.303(b)(1)(ii).

whether the defendant has a medical marijuana card, while the defendant is under supervision by the Lebanon County Probation Services Department." *Id.* at 2. The following explanation was provided:

> The medical marijuana card [issued under the MMA] is *not a prescription* for medication, but rather a recommendation by a physician as to a form of treatment. Medical marijuana has not been approved as a MAT (medically assisted treatment) by the FDA (Food and Drug Administration). The use of medical marijuana may have benefits for some medical conditions and under certain circumstances may be helpful. Individuals, however, who are involved in substance abuse and issues surrounding addiction which may have played a part in the defendant's criminal violations of law, must be dealt with in a humane but effective manner so the defendant can be rehabilitated . . . .
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> Under the Federal Controlled Substances Act (CSA) of 1970, marijuana is classified as a Schedule I substance. By definition under the law, Schedule I drugs have a high potential for abuse and dependency, with no recognized medical use or value. Any marijuana possession, cultivation, or use is a federal crime, subjecting a defendant to fines, prison time, or both. Since marijuana use (medical or recreational) is deemed illegal under Federal law, [and] the Court and the Probation Department should not knowingly allow violations of law to occur, the prohibition against such use is required.

Id. at 1 (emphasis in original).[3] As originally stated, the Policy contained no exceptions.

Petitioners are individuals under the supervision of the probation agency in Lebanon County. Represented by the American Civil Liberties Union, they filed a petition in the Commonwealth Court's original jurisdiction challenging the validity of the Policy, particularly in light of the MMA's facial applicability to persons under court

[3] The federal Controlled Substances Act of 170, Pub. L. No. 91-513, 84 Stat. 1242, is codified, as amended, at Sections 801 through 971 of Title 21 the United States Code. *See* 21 U.S.C. §§801-971.

supervision, as well as on account of the enactment's immunity provision. Petitioners included class-action allegations and sought declaratory and injunctive relief confirming that the Act prohibits the District from penalizing medical marijuana patients who comply with state law -- including those under court supervision -- and restraining enforcement or implementation of the Policy.

Petitioners alleged that each suffers from serious and debilitating medical conditions. After unsuccessful treatments with other therapies, Petitioners averred, they secured lawful authorization, per the MMA, to use medical marijuana. Further, the petition asserted that:

> [m]ore than sixty people with serious medical issues in Lebanon County must now decide whether to discontinue their lawful use of a medical treatment that safely and effectively alleviates their serious medical conditions, or risk revocation of their probation and possible incarceration. It is a choice between risking severe health consequences and going to jail.

Class Action Petition, 118 MM 2019 (Pa.), at ¶2. Petitioners also stressed the lack of any exceptions.

Separately, Petitioners filed an application for special relief in the nature of a preliminary injunction. Soon thereafter, the Commonwealth Court proceeded, *sua sponte*, to transfer the case to this Court, concluding that it lacked jurisdiction to grant the requested relief. The District then filed its response in this Court opposing preliminary injunctive relief. It claimed, among other things, that Petitioners were unlikely to prevail on the merits, arguing, *inter alia*, that the General Assembly didn't intend the MMA to override the courts' ability to supervise probationers and parolees.

Moreover, the District asserted that its probation services office had experienced disruptions and persistent difficulties when supervising probationers and parolees using medical marijuana. In this vein, the District elaborated as follows:

> For instance, some individuals under court supervision with medical marijuana prescriptions are unable to identify the health condition that led to the medical marijuana prescription. The Office also found a significant amount of individuals under supervision, who possess a medical marijuana card, that have a history of marijuana abuse and/or their underlying charges are related to the unlawful possession of marijuana. Additionally, drug testing for illicit use of marijuana is also rendered meaningless if an individual has a prescription for the legal use of medical marijuana as the laboratory is unable to discern between legal and illegal strands of marijuana.

Answer to Petitioners' Application for Special Relief in the Nature of a Preliminary Injunction, 118 MM 2019 (Pa.), at 2 (internal citations omitted). The District also maintained that it would be harmed if the Policy were to be restrained, particularly since some drug treatment programs refuse to accept individuals who are using medical marijuana.

Additionally, the District suggested that an October 7, 2019 revision to the Policy dissipates any concern of harm to the affected individuals, since per the amendment individuals aggrieved by the Policy may benefit from an exemption in the event they prove, at a hearing, the "medical necessity" for their ongoing use of medical marijuana.[4] *See, e.g.*, Answer to Petitioners' Application for Special Relief in the Nature of a Preliminary Injunction, 118 MM 2019 (Pa.), at 6-7 (positing that the Policy "carefully

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[4] The revised version of the Policy provides that:

> Any person on supervision who believes they are aggrieved by this policy may petition the Court for a full and fair hearing to determine whether they should be excused from its application to them. At that hearing, the Petitioner will bear the burden of establishing to the Court the medical necessity of their ongoing use of medical marijuana.

Brief for Respondent at 17 (quoting Lebanon County Probation Services Policy Nos. 5.1-2019 & 7.4-2019 (rev. Oct. 7, 2019)).

balances the need to rehabilitate offenders against the need for medical marijuana and gives individual consideration for the Petitioners' specific circumstances."). According to the District, this hearing would "[o]perationally" be part of a parole or probation revocation proceeding. *Id.* at 4.

The District further noted that the use of medical marijuana conflicts with the general conditions of probation and parole in Lebanon County, which require compliance with all state *and federal* criminal laws and prohibit the possession and use of alcohol and "any legal or illegal mind/mood altering chemical/substance." *Id.* at 3. The District attested that it has been the general experience that requiring adherence to such general conditions assists with rehabilitation and reduces the risk of recidivism.

Ultimately, although the transfer by the Commonwealth Court was improvident, this Court elected to exercise its extraordinary King's Bench jurisdiction to consider the petition. We found that the case implicates substantial legal questions concerning matters of public importance, particularly in light of the allegation that other judicial districts have adopted, or are considering adopting, similar limitations on the use of medical marijuana. The Order also stayed any enforcement or implementation of the Policy pending further order and directed the Prothonotary to establish a briefing schedule and list the case for oral argument. *See* Order, 118 MM 2019 (Pa. Oct. 30, 2019).

While there are many underlying factual matters alluded to in the petition for review, we view the central question -- namely, whether the Policy offends the MMA -- as a legal one that may be decided without the need for fact-finding.

As a threshold matter, the parties dispute the appropriate framing of the question presented. Petitioners, for their part, advance the issue of whether the Policy violates the immunity provision of the MMA. The District, on the other hand, restates the

question presented as follows: "May a judicial district inquire into the nature of medical marijuana use by a probationer?" Brief for Respondent at 5. Along these lines, the District pervasively asserts that Petitioners seek "absolute immunity" and an "all-encompassing right to medical marijuana that cannot be questioned." *Id.* at 11, 22; *see also id.* at 6 (claiming that Petitioners ask this Court to "declare that simply having a medical marijuana card shuts down any judicial inquiry" and "excuses [Petitioners] from judicial oversight"); *accord id.* at 7, 10-11, 15-16, 18, 25-26, 35, 39-40, 42-43, 46.

To the extent that we would consider the issue on the terms stated by the District, there would simply be no dispute, since Petitioners freely acknowledge that they must comply with the MMA or risk sanctions. *See, e.g.*, Class Action Petition, 118 MM 2019 (Pa.), at ¶¶37-63. And they agree that the District, through its judges and probation officers, may make reasonable inquiries to ensure their use of medical marijuana is lawful. *See, e.g.*, Reply Brief for Petitioners at 1, 3. We will therefore consider the issue presented entirely on the terms framed by Petitioners.

Petitioners stress that the General Assembly made a policy decision, in the MMA, to legalize the use of medical marijuana in the Commonwealth with the aim of providing an effective treatment for patients with serious medical conditions. *See, e.g.*, Brief for Petitioners at 22 ("Allowing courts to create additional hoops that patients must jump through to avail themselves of the benefits of the MMA would usurp the will of the legislature and open the door to additional judicially created prerequisites to patients' eligibility under the Act."). Drawing support from decisions of the highest courts of other states, they also find the conflict between the Policy and the Act's explicit immunity provision to be manifest and disabling, relative to the Policy's viability. *See, e.g.*, *Reed-Kaliher v. Hoggatt*, 347 P.3d 136, 139 (Ariz. 2015) (invalidating a probation condition restricting the use of medical marijuana); *State v. Nelson*, 195 P.3d 826, 833 (Mont.

2008) (holding that the state's medical marijuana law "simply does not give sentencing judges the authority to limit the privilege of medical use of marijuana while under state supervision").

With reference to the federal Controlled Substances Act, Petitioners assert that federal law has no bearing on the Policy's validity, since the District has no legal basis to require that medical marijuana patients comply with federal prohibitions where the Pennsylvania General Assembly has specifically displaced the prior state-law analogue. According to Petitioners, reliance on federal law to supersede the MMA would undermine Pennsylvania's sovereignty. *See* Brief for Petitioners at 10-11 ("The Commonwealth has sovereign authority to allow its residents to use marijuana to treat certain serious medical conditions without fear of arrest, prosecution, or the denial of any right or benefit *by the state.*" (emphasis in original); *id.* at 11 ("That medical marijuana remains illegal under federal law neither compels nor authorizes the courts of this Commonwealth to ignore the will of the state legislature in favor of enforcing federal law.").[5]

The District, on the other hand, maintains that the Policy is grounded in salutary rehabilitative aims, as it meshes with its general conditions of probation, which both prohibit probationers from using alcohol, narcotics, and legal and illegal mind- and/or mood-altering chemical substances and require adherence to state and federal law. The District also reiterates its assertion that use of medical marijuana by probationers has fostered management difficulties in the administration of probation and substantially limits avenues for drug treatment. Centrally, the District maintains that, in enacting the

[5] Petitioners' position is supported by *amici*, Society of Cannabis Clinicians, Association of Cannabis Specialists, Drug Policy Alliance, and Americans for Safe Access Foundation, which credit Petitioners' legal arguments and offer additional policy support.

MMA, the General Assembly did not intend to limit the courts' traditional ability to supervise probationers.

With regard to the decisions from other jurisdictions, the District envisions many distinguishing factors. Chiefly, the District emphasizes that Pennsylvania is the only state, among those referenced, in which the immunity provision of a medical marijuana statute restrains punishment or denial of privileges "solely for" use of medical marijuana. 35 P.S. §10231.2103(a). Because Petitioners are not just alleged "patients" but also probationers under court supervision, it is the District's position that they are not being subject to restrictions on their use of medical marijuana *solely* because they are patients. *Accord* Brief for Respondent at 15 ("Section 2103(a)'s failure to contemplate every particular situation in the life of a 'patient' that might cause friction with the MMA does not support a blanket prohibition against judicial scrutiny of medical marijuana.").

The District further observes that Section 2103(a) shields medical marijuana users from "arrest" and "prosecution," positing that these terms demonstrate an intention to address events occurring *prior to* adjudication and sentencing by the judiciary. Under the principle of statutory construction known as *ejusdem generis*, the District posits, the ensuing catchall phrase -- "or penalty in any manner" -- must be interpreted consistent with the preceding words "arrest" and "prosecution." *See* 1 Pa.C.S. §1903(b).

In Pennsylvania, the District explains, sentencing courts and the Board of Probation and Parole always have enjoyed broad authority to ensure that probation serves effectively to rehabilitate offenders and protect the public. According to the District, the Policy strikes a reasonable balance between these objectives and Petitioners' asserted right of access to medical marijuana. *See* Brief for Respondent at 27 ("The Judicial District's Medical Marijuana Policy is entirely consistent with the

legitimate aims of probation and does not unnecessarily restrict any fundamental right of Petitioners."). Ultimately, the District asks this Court to lift the stay restraining implementation of the Policy and permit Petitioners to secure a hearing and create a "developed record that fully accounts for Petitioners' individual situations and their need for rehabilitation." *Id.* at 8-9.

In assessing whether the Policy conflicts with the immunity provision of the MMA, we view the issue as one of statutory construction. We will therefore apply conventional interpretive principles, as discussed throughout this Court's decisions. *See, e.g.*, *Norfolk S. Ry. Co. v. PUC*, 621 Pa. 312, 328, 77 A.3d 619, 629 (2013). The essential review encompasses close adherence to terms of a statute that are plain and resort to other approaches of discernment only in the presence of ambiguity or inexplicitness. *See id.* Where ambiguity or inexplicitness exists, the Court may afford weight to other considerations, including the object to be attained by the statute under consideration, the consequences of a particular interpretation, and contextual considerations. *See id.*; *see also Schock v. City of Lebanon*, ___ Pa. ___, ___, 210 A.3d 945, 955-59 (2019) (highlighting the role of contextual considerations in the construction of ambiguous statutes). *See generally* 1 Pa.C.S. §§ 1921-1939.

There is no disagreement that Petitioners are eligible to be "patients" under the MMA, who are entitled to the immunity from penalty and cannot be denied of any right or privilege solely for lawful use of medical marijuana. *See* 35 P.S. §10231.2103(a). Responding to the District's argument, however, that Petitioners do not qualify for immunity since the Policy turns on an additional factor – namely, Petitioners' status as probationers -- we find that this circumstance implicates a material ambiguity.

On the one hand, the District argues, colorably, that the integral involvement of court supervision means that any punishment or denial of the privilege of probation

occurring under the Policy is not "solely for" a petitioner's medical marijuana use. *Id.* Conversely, as Petitioners contend, given that probation is the privilege in issue, revocation on account of otherwise lawful medical marijuana use can be viewed as punishment, or the denial of the privilege of probation, solely on account of such use.

Significantly, in various respects and measures, the MMA accords specific treatment to criminal offenders. For example, under Section 614 of the Act, individuals who have been convicted of drug offenses cannot be affiliated with a medical marijuana dispensary or grower/processor. *See* 35 P.S. §10231.614. Similarly, those convicted of certain drug offenses within a prescribed window of time are ineligible to serve as "caregivers" (*i.e.*, those designated by patients to deliver medical marijuana). *See id.* §10231.502(b). Furthermore, in Section 1309, the General Assembly prohibited the use of medical marijuana in any correctional institution, including one "which houses inmates serving a portion of their sentences on parole or other community correction program." *Id.* §10231.1309(2).

Notably, individuals in each of these categories, who are subject to the above constraints, can nonetheless qualify as "patients" who are otherwise eligible to use medical marijuana outside the restricted parameters. *Accord Reed-Kaliher*, 347 P.3d at 139 (observing that the state medical marijuana law "does not deny even those convicted of violent crimes or drug offenses (so long as they are not incarcerated) access to medical marijuana if it could alleviate severe or chronic pain or debilitating medical conditions"). And, to the degree that they satisfy the Act's threshold requirements and obtain medical marijuana cards, each is entitled to the immunity afforded under Section 2103(a). *Accord id.*; *see also U.S. v. Jackson*, 388 F. Supp. 3d 505, 513 (E.D. Pa. 2019) ("The Medical Marijuana Act carves out some exceptions, such as prohibiting the use of medical marijuana in prisons, but it contains no exception

for individuals on probation or parole or under supervision. Without any such provision, the Court concludes that the Act applies to those individuals just as it applies to any other person." (citation omitted)).

Section 1309(a) is particularly significant, in our judgment, since the Legislature considered persons under court supervision and chose to impose constraints only upon a specific subcategory (those physically present in a correctional institution). *See* 35 P.S. §10231.1309(2). As Petitioners persuasively assert, had the General Assembly intended broader limitations, it would have been a straightforward matter for it to have said this.[6]

We also respectfully differ with the District's position that it may rely on its general conditions of probation to make discretionary determinations about probationers' use of medical marijuana, beyond making inquires to determine whether the usage is lawful under the MMA. Although the District highlights that the general conditions' restrictions on alcohol and mind- and/or mood-altering drugs go hand in hand, the Legislature has not implemented a remedial scheme authorizing the use of alcohol for treatment of serious medical conditions. *Accord Nelson*, 195 P.3d at 832 ("When a qualifying patient uses medical marijuana in accordance with the MMA, he is

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[6] The District's reliance on the *ejusdem generis* principle to suggest that immunity should apply only to pre-adjudicative measures has lesser force, in our view, in light of the overarching policies underlying the Act. The General Assembly likely chose the terms "arrest" and "prosecution" precisely because these are types of actions that lead to punishment or the denial of privilege. Viewed as such, a probation revocation hearing is of the same character.

In this respect, and more broadly, we also credit an argument by Petitioners that the Act is remedial in nature, and thus, should be accorded a liberal construction. *See* 1 Pa.C.S. §1928(c).

receiving lawful medical treatment. In this context, medical marijuana is most properly viewed as a prescription drug." (citation omitted)).

As to the general conditions' prohibition against violations of federal law, while possession and use of marijuana remains illegal under federal law even for medical purposes, Petitioners correctly observe that the federal Controlled Substances Act does not (and could not) require states to enforce it. *See* Brief for Petitioners at 34 (citing *Printz v. U.S.*, 521 U.S. 898, 935, 117 S. Ct. 2365, 2384 (1997) ("Congress cannot compel the States to enact or enforce a federal regulatory program.")); *see also Ter Beek v. City of Wyoming*, 846 N.W.2d 531, 538 (Mich. 2014) (applying the *Printz* rationale to conclude that a state can both comply with the federal Controlled Substances Act and authorize the use of medical marijuana law as a matter of state law). Moreover, through a continuing series of appropriations enactments since 2014, Congress has prohibited the United States Department of Justice from utilizing allocated funds to prevent states from "implementing their own laws that authorize the use, distribution, possession, or cultivation of medical marijuana." *Jackson*, 388 F. Supp. 3d at 509 (quoting Consolidated Appropriations Act, 2019, Pub. L. No. 116-6, 133 Stat. 13 §537 (2019)).

Congress's approach evinces a respect for the core principle of federalism recognizing dual sovereignty between the tiers of government. *See United States v. Davis*, 906 F.2d 829, 832 (2d Cir. 1990) ("The states and the national government are distinct political communities, drawing their separate sovereign power from different sources, each from the organic law that established it. Each has the power, inherent in any sovereign, independently to determine what shall be an offense against its authority and to punish such offenses."). In enacting the MMA, the Pennsylvania Legislature proceeded pursuant to its independent power to define state criminal law and promote

the health and welfare of the citizenry. *See Whalen v. Roe,* 429 U.S. 589, 603 n.30, 97 S. Ct. 869, 878 n.30 (1977) (citing, *inter alia*, *Robinson v. California,* 370 U.S. 660, 664-65, 82 S. Ct. 1417, 1419-20 (1962)). While the circumstances are certainly uneasy -- since possession and use of medical marijuana remains a federal crime -- we find that the District cannot require state-level adherence to the federal prohibition, where the General Assembly has specifically undertaken to legalize the use of medical marijuana for enumerated therapeutic purposes.

We are cognizant of the District's concerns that medical marijuana use by probationers may, in fact, cause difficulties with court supervision and treatment. As we have observed previously: "The concern that unintended consequences may unfold are prevalent relative to the promulgation of experimental, remedial legislation[.]" *Williams v. City of Phila.*, 647 Pa. 126, 150, 188 A.3d 421, 436 (2018). Nevertheless, "[w]here the language of the governing statute is clear (or clear enough), . . . the solution is legislative -- and not judicial -- adjustment." *Id.* at 150-51, 188 A.3d at 436.

Along these lines, the Supreme Court of Montana has aptly observed that, "whether or not medical marijuana is ultimately a good idea is not the issue" before the courts. *Nelson*, 195 P.3d at 833. Rather, in Pennsylvania, as elsewhere, the political branch has decided to permit patients -- including probationers -- to use medical marijuana for specified, serious medical conditions, upon a physician's certification. The Policy, both in its original and amended forms, fails to afford sufficient recognition to the status of a probationer holding a valid medical marijuana card as a patient, entitled to immunity from punishment, or the denial of any privilege, solely for lawful use. *See* 35 P.S. §10231.2103(a).

As discussed in connection with our clarification of the question presented, this case does not merely concern an effort on the part of the District (or its judges or

probation officials) to reasonably inquire into the lawfulness of a probationer's use of medical marijuana. Rather, both the original and amended Policies are constructed upon a presumption that any and all use is impermissible. In terms of the amended Policy, the Court deems the affordance of a hearing -- in which probationers bear the burden of overcoming this presumption by proving medical necessity and lawfulness of use -- to be an insufficient countermeasure to the Policy's foundationally inappropriate presumption.

Certainly, judges and probation officials may make reasonable inquiries into the lawfulness of a probationer's use of medical marijuana. In this regard, the District's repeated assertions that it is rendered powerless to do so in absence of the Policy, *see, e.g.*, Brief for Respondent at 6, are not well taken. For example, the Act itself establishes a system whereby the validity of a medical marijuana card can be verified through the Department of Health. *See* 35 P.S. §10231.301(a)(4)(ii) (requiring the Department of Health to maintain a statewide database enabling it to establish the authenticity of identification cards).

Consistent with our interpretation of the MMA, however, judges and/or probation officers should have some substantial reason to believe that a particular use is unlawful under the Act before haling a probationer into court. Although ensuring strict adherence to the MMA by those possessing a valid medical marijuana card may be difficult, the alternative selected by the District of diluting the immunity afforded to probationer-patients by the Act is simply not a viable option.

The petition for declaratory and injunctive relief is GRANTED. For the reasons stated above, the Policy as stated in its original and amended forms is deemed to be

contrary to the immunity accorded by Pennsylvania's Medical Marijuana Act, and as such, the Policy shall not be enforced.

Nothing in this Opinion restrains judges and probation officials supervising probationers and others from making reasonable inquiries into whether the use of marijuana by a person under court supervision is lawful under the Act. And nothing impedes a revocation hearing or other lawful form of redress, where there is reasonable cause to believe that a probationer or other person under court supervision has possessed or used marijuana in a manner that has not been made lawful by the enactment.

The request for class-action treatment is dismissed as moot.

Justices Baer, Todd, Donohue, Dougherty, Wecht and Mundy join the opinion.