APPENDICES

Table of Contents for Appendices[1]

Page(s)

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[1] Excluding appendix T, which is a certified copy, each appendix or exhibit is a true and accurate copy. Appendices A through R (with appendices D through R comprising the amended motion to dismiss in the trial court) were filed in the petitions for writ of prohibition in the Missouri Court of Appeals, Eastern District and the Missouri Supreme Court. App. 237a and App. 162e; App. 262a and App. 181e; respectively. In addition, the documents filed in each respective appellate court for appendices A through R have not been included because that would result in two additional copies of the same appendix or exhibit.

[2] The page numbering of the appendices in the booklet and the electronic filing is different and thus cross-references are provided. The page numbering of the appendices in the booklet includes the letter 'a' and the electronic filing includes the letter 'e'. The appendices in the electronic filing have an appendix sticker and the page numbers are handwritten.

Page(s)

Page(s)

[3] The order denying relief is at 224a and 152e.

Page(s)

Appendix A

[El]ectronically Filed – Warren – January 5, 2018 –11:52 AM[1]

IN THE CIRCUIT COURT OF WARREN COUNTY, MISSOURI DIVISION II

STATE OF MISSOURI,	)
Plaintiff,	)
v.	)
DARRIN JOSEPH LAMASA	)
[address, dob, ssn]	)
Defendant.	)

CAUSE NO. 18BB-CR00013[2]
PA FILE NO. 219053968
OCN:
ORI:MO1100000

COMPLAINT

COMES NOW the State of Missouri, by and through its attorney Kelly L. King, Prosecuting Attorney for the County of Warren, State of Missouri, being duly sworn upon oath and upon information and belief, and states that

---

[1] Said electronic filing information appears vertically along the right side beginning at the top and in light blue lettering.

[2] Said case number appears in the top-right corner and to the left of the electronic filing information.

there is probable cause to believe that the accused committed the following crime:

COUNT I: Trafficking Drugs – 2nd Degree
Charge Code Number: 579.068-002Y20173564.0

In violation of Section 579.068, RSMo, committed the class C felony of trafficking in the second degree, punishable upon conviction under Sections 558.002 and 558.011, RSMo, in that on or about January 4, 2018, in the County of Warren, State of Missouri, the defendant, either alone or another or others, knowingly possessed 100 kilograms or more of a mixture or substance containing marijuana.

The facts that form the basis for this information and belief are contained in the attached statement of facts concerning this matter, which statement is made a part hereof and are submitted herewith as a basis upon which this court may find the existence of probable cause for the issuance of the warrant:

WHEREFORE, the Prosecuting Attorney prays that an arrest warrant be issued as provided by law.

/s/

_____
Kelly L. King[3]

[3] Signature is in blue ink.

Warren County Prosecuting
Attorney

RANGE OF PUNISHMENT:
Class C felony – a term of years not less than three years and not to exceed ten years and/or a fine not to exceed ten thousand dollars

Appendix B

[El]ectronically Filed – Warren – January 31, 2018 –10:51 AM[1]

IN THE ASSOCIATE CIRCUIT COURT
OF WARREN COUNTY
STATE OF MISSOURI

STATE OF MISSOURI,	)
Plaintiff	)
v.	)
DARRIN LAMASA,	)
Defendant	)

Cause No. 18BB-CR00013
Division No. 2

ENTRY OF APPEARANCE

Undersigned counsel hereby enters his appearance as counsel of record on behalf of Defendant in the above-captioned cause.

Respectfully submitted,

/s/ *Lou Horwitz*

Louis Horwitz,

[1] Said electronic filing information appears vertically along the right side beginning at the top and in light blue lettering.

Mo Bar No. 56155
Lou Horwitz L.L.C.
1 Mid Rivers Mall Drive, Suite 280
St. Peters, MO 63376
Tel. 636-279-1532
Fax. 636-279-1632

Certificate of Service

I certify that on this 31st day of January, 2018, a true copy of the above and foregoing was electronically served via the Missouri eFiling System to the Warren County Prosecuting Attorney's office, 104 W. Main, Suite E, Warrenton, MO 63383.

/s/ *Lou Horwitz*

_____

Louis Horwitz

Appendix C

[El]ectronically Filed – Warren – July 31, 2018 –12:46 PM[1]

IN THE CIRCUIT COURT OF WARREN COUNTY, MISSOURI DIVISION I

STATE OF MISSOURI,	)
Plaintiff,	)
v.	)
DARRIN JOSEPH LAMASA	)
[address, dob, ssn]	)
Defendant.	)

CAUSE NO. 18BB-CR00013-01
PA FILE NO. 219053968
OCN: K1027451
ORI:MO1100000

INFORMATION

The Prosecuting Attorney, of the County of Warren, State of Missouri, charges that the Defendant,

COUNT I: Trafficking Drugs – 2nd Degree
Charge Code Number: 579.068-002Y20173564.0

---

[1] Said electronic filing information appears vertically along the right side beginning at the top and in light blue lettering.

In violation of Section 579.068, RSMo, committed the class C felony of trafficking in the second degree, punishable upon conviction under Sections 558.002 and 558.011, RSMo, in that on or about January 4, 2018, in the County of Warren, State of Missouri, the defendant knowingly possessed 100 kilograms or more of a mixture or substance containing marijuana.

/s/

_____

Kelly L. King[2]
Warren County Prosecuting Attorney

[witnesses]

RANGE OF PUNISHMENT:
Class C felony – a term of years not less than three years and not to exceed ten years and/or a fine not to exceed ten thousand dollars

[2] Signature is in blue ink.

Appendix D

Table of Contents for the Amended Motion to Dismiss

Unpublished work © 2019 Lou Horwitz[1]
[El]ectronically Filed – Warren – June 17, 2019 –11:49 AM[2]

IN THE CIRCUIT COURT OF WARREN COUNTY
STATE OF MISSOURI

STATE OF MISSOURI,	)
Plaintiff	)
v.	)
DARRIN LAMASA,	)
Defendant	)

Cause No. 18BB-CR00013-01
Division No. 3

TABLE OF CONTENTS[3]

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[1] Said information appears at the top-right of all pages.

[2] Said electronic filing information appears vertically along the right side of all pages beginning at the top and in light blue lettering.

[3] Table of Contents consists of three pages.

[4] Page numbers are at the bottom, in Microsoft Word, and appear in brackets {} herein.

{ii}

Respectfully submitted,

/s/ *Lou Horwitz*

_____

Louis Horwitz,
Mo Bar No. 56155
Lou Horwitz L.L.C.
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Fax: 636-279-1632
Email: LouHorwitzLLC@att.net

Certificate of Service

I certify that on this 17th day of June, 2019, a true copy of the above and foregoing was electronically served via the Missouri eFiling System to the Warren County Prosecuting Attorney's office, 104 W. Main, Suite E, Warrenton, MO 63383.

/s/ *Lou Horwitz*

_____

Louis Horwitz

{iii}

Appendix E

Index to Exhibits for the Amended Motion to Dismiss

IN THE CIRCUIT COURT OF WARREN COUNTY
STATE OF MISSOURI

STATE OF MISSOURI,	)
Plaintiff	)
v.	)
DARRIN LAMASA,	)
Defendant	)

Cause No. 18BB-CR00013-01
Division No. 3

INDEX TO EXHIBITS[3]

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[1] Said information appears at the top-right of all pages.
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[3] Index to Exhibits consists of two pages.

Respectfully submitted,

/s/ *Lou Horwitz*

Louis Horwitz, Mo Bar No. 56155
Lou Horwitz L.L.C.
1 Mid Rivers Mall Drive, Suite 280
St. Peters, MO 63376

[4] Page numbers are at the bottom, in Microsoft Word, and appear in brackets {} herein.

[5] Exhibit L consists of two pages.

Tel: 636-279-1532
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Certificate of Service

I certify that on this 17th day of June, 2019, a true copy of the above and foregoing was electronically served via the Missouri eFiling System to the Warren County Prosecuting Attorney's office, 104 W. Main, Suite E, Warrenton, MO 63383.

/s/ *Lou Horwitz*

_____

Louis Horwitz

{v}

Appendix F

Unpublished work © 2019 Lou Horwitz[1]
[El]ectronically Filed – Warren – June 17, 2019
–11:49 AM[2]

IN THE CIRCUIT COURT OF WARREN COUNTY
STATE OF MISSOURI

STATE OF MISSOURI,	)
Plaintiff	)
v.	)
DARRIN LAMASA,	)
Defendant	)

Cause No. 18BB-CR00013-01
Division No. 3

AMENDED MOTION TO DISMISS

COMES NOW Defendant, by and through undersigned counsel of record, pursuant to the Due Process Clauses, by and through Marbury v. Madison, 5 U.S. 137 (1803), and moves to dismiss his charge of "Trafficking Drugs - 2nd Degree" based on the possession of a certain amount of marijuana because marijuana's codification as a

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Schedule I controlled substance (i.e., section 195.017.2(4)(w)) is unconstitutional, on its face and as applied. See Information.

In short, absent federal preemption, Missouri's medical marijuana law or the medical marijuana law of any state where it was enacted through the legislature – because "[l]egislators represent people, not trees or acres[]" and the Controlled Substances Act ("CSA") was enacted by Congress and the Missouri General Assembly enacted its version shortly thereafter – means marijuana no longer satisfies the statutory criteria of section 195.017.1 because of the word "no." Mo. Const. art. XIV; Reynolds v. Sims, 377 U.S. 533, 562 (1964); Comprehensive Drug Abuse Prevention and Control Act of 1970, Pub. L. No. 91-513, 84 Stat. 1236 (Oct. 27, 1970); Id. at 84 Stat. 1242, Id. (stating,

{1}[3]
"[t]his title ["Title II–Control and Enforcement"] may be cited as the 'Controlled Substances Act'."); 21 U.S.C. §§ 801-904; State v. Burrow, 514 S.W.2d 585, 589 (Mo. 1974) (stating, "[i]n 1971, the Missouri General Assembly adopted its version of the Uniform Controlled Substances Act. Laws of Mo. 1971, p. 237, et seq."); section 195.071.1(2).[4]

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[3] Page numbers are at the bottom, in Microsoft Word, and appear in brackets {} herein.

[4] Unless indicated otherwise, Missouri statutory and constitutional citations are to the electronic database published by the Missouri Revisor of Statutes, Cum.

Preliminary statements (1-8)

1. Since "[t]his Court may look to federal materials for guidance in the interpretation of section 195.017[,]" relevant state materials should be included as well because of each legislature's knowing and voluntary decision to include the words "United States" in the statutory criteria. State v. McManus, 718 S.W.2d 130, 131 (Mo. banc 1986) (internal citation omitted); section 195.017.1(2) (stating, "[h]as no accepted medical use in treatment in the United States[.]"); 21 U.S.C. § 812(b)(1)(B) (stating, "[t]he drug or other substance has no currently accepted medical use in treatment in the United States."); see also Doe v. Toelke, 389 S.W.3d 165, 166 (Mo. banc 2012) (stating, "[w]hen exercising this jurisdiction, Missouri courts routinely interpret and apply federal law[.]") (internal citation omitted).

2. Defendant submits the court has jurisdiction. See exhibit A.

3. Defendant submits he has standing. See exhibit B.

{2}

4. Defendant is not submitting a claim under the Equal Protection Clause. See United States v. Green, 222 F. Supp. 3d 267, 274 (W.D.N.Y. 2016) (stating, "this Court instinctively has trouble reconciling how the

---

Supp. 2018, as of June 10, 2019. The link or hyperlink is not listed pursuant to Rule 103.04(b). Unless otherwise indicated, all other citations are to LexisNexis 2019.

classification of a drug, in and of itself, could implicate an individual's equal protection rights."); Id. at 275 (stating, "[t]he Court does not have similar concerns about Defendants' ability to attack the scheduling of marijuana from a due process perspective[.]") (internal citations omitted); and Seeley v. State, 940 P.2d 604, 614 (Wash. 1997) (stating, "the classification of marijuana does not treat anyone differently than anyone else or draw any distinctions between persons.").

5. There have been only two United States Supreme Court opinions in this particular area – United States v. Oakland Cannabis Buyers' Coop., 532 U.S 483 (2001) and Gonzales v. Raich, 545 U.S. 1, 29 (2005) – and Defendant's three major issues were not present in either case. See major issues, infra.

In Oakland Cannabis, the Court answered the criminal question of whether "medical necessity is a legally cognizable defense to violations of the Controlled Substances Act." Oakland Cannabis, 532 U.S. at 489. The Court held "that medical necessity is not a defense to manufacturing and distributing marijuana." Id. at 494 (internal footnote omitted).

In Raich, the question was "whether Congress' power to regulate interstate markets for medicinal substances encompasses the portions of those markets that are supplied with drugs produced and consumed locally." Raich, 545 U.S. at 9. "In assessing the scope of Congress' authority under the Commerce Clause[] . . . . [w]e need not determine whether

respondents' activities, taken in the aggregate, substantially affect interstate

{3}

commerce in fact, but only whether a 'rational basis' exists for so concluding." Id. at 22 (internal citations omitted). The Court "held that Congress' authority under the Commerce Clause includes the power to prohibit intrastate cultivation and use of marijuana, even if it is in compliance with California law." Kadonsky v. Lee, 172 A.3d 1090, 1096 (N.J. Super. Ct. App. Div. 2017) (internal citation omitted).

6. Defendant is not requesting reclassification.

7. Defendant is not contesting whether there is a rational basis for the CSA and its five schedules which is why Defendant is requesting that the Due Process Clauses be extended beyond rational basis review. See major issue 2, infra.

8. In a collateral, but circumstantially persuasive context, as a bordering nation, Canada's recent legalization of marijuana should be given serious consideration and on May 9, 2019, Warren County's newspaper had a front-page article on a related issue that has received local legislative treatment similar to alcohol. See exhibit K (an October 18, 2018 Wall Street Journal article on Canada's legalization of marijuana) and exhibit L ("Warrenton lowers marijuana buffer," Warren County Record, stating, "aldermen said the new setback distance matches the city's regulation for liquor stores.").

Major issues (1-3)

1. Whether Missouri's medical marijuana law (Mo. Const. art. XIV) is preempted by the federal statute;

2. If not, since there is no verdict director for the statutory criteria under section 195.017.1, whether the Due Process Clauses, by and through Marbury v. Madison, 5 U.S. 137 (1803), may be extended beyond rational basis review; and

{4}

3. If so, whether Missouri's medical marijuana law or the medical marijuana law of any state where it was legislatively enacted means marijuana, because of the word "no" in the statutory criteria, no longer satisfies the statutory criteria and therefore section 195.017.2(4)(W) is unconstitutional.

Defendant states the following ninety-seven grounds:

First major issue (grounds 1-27)

Whether Missouri's medical marijuana law (Mo. Const. art. XIV) is preempted by the federal statute.

Background (grounds 1-2)

1. "[B]oth the Federal Government and the States wield sovereign powers, and that is why our system of government is said to be one of 'dual sovereignty.'" Murphy v. NCAA, 138 S. Ct. 1461, 1475 (2018) (internal citation omitted).

2. "Nothing could be more fertile for discord, however, than a failure to define the boundaries of authority." Cloverleaf Butter Co. v. Patterson, 315 U.S. 148, 169 (1942).

Framework (grounds 3-8)

3. "The relative importance to the State of its own law is not material when there is a conflict with a valid federal law, for the Framers of our Constitution provided that the federal law must prevail. Article VI, Clause 2." Free v. Bland, 369 U.S. 663, 666 (1962).

Despite stating this truism, Raich was a Commerce Clause case and there was no discussion of preemption. Raich, 545 U.S. at 29 (stating, "[t]he Supremacy Clause unambiguously provides that if there is any conflict between federal and state law, federal law shall prevail."); see also Id. at 5, 15, 22. Oakland Cannabis also did not discuss

{5}

preemption. Oakland Cannabis, 532 U.S 483 (2001).

4. "Consideration under the Supremacy Clause starts with the basic assumption that Congress did not intend to displace state law." Maryland v. Louisiana, 451 U.S. 725, 746 (1981) (internal citation omitted).

5. "[T]he traditional pre-emption analysis [] requires an actual conflict between state and federal law, or a congressional expression of intent to pre-empt, before we will conclude that state regulation is pre-empted." Cal. Coastal Com v. Granite Rock Co., 480 U.S. 572, 594 (1987).

> 6. First, "the purpose of Congress is the ultimate touchstone in every pre-emption case." Second, "[i]n all pre-emption cases, and particularly

> in those in which Congress has 'legislated . . . in a field which the States have traditionally occupied,' . . . we 'start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress.'"

Wyeth v. Levine, 555 U.S. 555, 565 (2009) (internal citations omitted).

7. "The States traditionally have had great latitude under their police powers to legislate as to the protection of the lives, limbs, health, comfort, and quiet of all persons." Metro. Life Ins. Co. v. Mass., 471 U.S. 724, 756 (1985) (internal citations omitted) (internal quotation marks omitted).

8. "In the final analysis, there can be no one crystal clear distinctly marked formula." Hines v. Davidowitz, 312 U.S. 52, 67 (1941); see also Burbank v. Lockheed Air Terminal, Inc., 411 U.S. 624, 638 (1973) (stating, "[o]ur prior cases on pre-emption

{6}

are not precise guidelines in the present controversy, for each case turns on the peculiarities and special features of the federal regulatory scheme in question.") (internal citations omitted).

The CSA and preemption (grounds 9-10)

> 9. No provision of this title shall be construed as indicating an intent on the part of the Congress to occupy

> the field in which that provision operates, including criminal penalties, to the exclusion of any State law on the same subject matter which would otherwise be within the authority of the State, unless there is a positive conflict between that provision of this title and that State law so that the two cannot consistently stand together.

21 U.S.C. § 903.

10. "Through this statutory provision, Congress has eliminated field preemption—but it has preserved the supremacy of the CSA where its provisions conflict with state law in a way that makes compliance with the requirements of both impossible." Bourgoin v. Twin Rivers Paper Co., LLC, 187 A.3d 10, 14 (Me. 2018) (internal citations omitted).

Missouri's pre-CSA drug statutes and Mo. Const. art. XIV (grounds 11-14)[5]

11. As early as 1939, Missouri's intent regarding preemption was clear: "No person shall be prosecuted for a violation of any provision of this article if such person has been acquitted or convicted under the Federal Narcotic Laws of the same act or

{7}

omission which, it is alleged, constitutes a violation of this article." Section 9852, R. S. 1939 or exhibit C, p. 15.

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[5] Exhibit C contains some of the relevant pre-CSA drug statutes from 1939 to 1969.

12. By 1971, the 1969 version of section 9852, R. S. 1939 was gone. Section 195.210, RSMo 1969 or exhibit C, p. 25.

13. Marijuana was not classified as a narcotic drug in Missouri in 1949, but it was classified as a narcotic by 1959. Section 195.010, RSMo 1949 and section 195.010, RSMo 1959 or exhibit C, p. 17 (definition 14) and p. 20 (definition 17).

14. On November 6, 2018, the Missouri Constitution was amended with an initiative petition to include medical marijuana that passed as a ballot measure. See exhibit D – 2018 election information; Mo. Const. art. XIV.

Caselaw: various contexts (grounds 15-25)

Employment

15. "[U]nder Oregon's employment discrimination laws, employer was not required to accommodate employee's use of medical marijuana." Emerald Steel Fabricators, Inc. v. Bureau of Labor & Indus., 230 P.3d 518, 520 (Or. 2010).

> To be sure, the two laws are logically inconsistent; state law authorizes what federal law prohibits. However, a person can comply with both laws by refraining from any use of marijuana, in much the same way that a national bank could comply with state and federal law in *Barnett Bank* by simply refraining from selling insurance.

Id. at 528.

"Affirmatively authorizing a use that federal law prohibits stands as an obstacle {8} to the implementation and execution of the full purposes and objectives of the Controlled Substances Act. *Michigan Canners*, 467 U.S. at 478." Id. at 529.

> In sum, whatever the wisdom of Congress's policy choice to categorize marijuana as a Schedule I drug, the Supremacy Clause requires that we respect that choice when, as in this case, state law stands as an obstacle to the accomplishment of the full purposes of the federal law. Doing so means that ORS 475.306(1) is not enforceable.

Id. at 533-534.

The dissent's interpretation was that Oregon's law did "not affect enforcement of the Controlled Substances Act." Id. at 540 (Walters, J., dissenting).

16. Similarly, "medical marijuana [was not] an accommodation that must be provided for by the employer under the New Mexico Human Rights Act." Garcia v. Tractor Supply Co., 154 F. Supp. 3d 1225, 1228 (D. N.M. 2016). "To affirmatively require Tractor Supply to accommodate Mr. Garcia's illegal drug use would mandate Tractor Supply to permit the very conduct the CSA proscribes." Id. at 1230.

17. In addition, "where an employer is subject to an order that would require it to

subsidize an employee's acquisition of medical marijuana—there is a positive conflict between federal and state law, and as a result, the CSA preempts the MMUMA as applied here." Bourgoin v. Twin Rivers Paper Co., LLC, 187 A.3d 10, 12 (Me. 2018) (internal citation omitted).

"Most importantly, however, the magnitude of the *risk* of criminal prosecution is immaterial in this case. Prosecuted or not, the fact remains that Twin Rivers would be

{9}

forced to commit a federal crime if it complied with the directive of the Workers' Compensation Board." Id. at 21-22 (internal footnote omitted) (internal citation omitted).

One dissenting opinion stated,

> Here, there is no positive conflict between the CSA and the MMUMA because there is no state law that requires the employer—or any person or entity—to possess, manufacture, or distribute marijuana. In other words, compliance with both the federal law and the Workers' Compensation Board (WCB) order is possible: reimbursement does not require the employer to physically manufacture, distribute, dispense, or possess marijuana, and, as a result, no physical impossibility exists between the federal law and the WCB order in this case.

Id. at 24 (Jabar, J., dissenting).

Supervised release or probation[6]

18. "A sentencing court may therefore prohibit the possession of marijuana as a condition of supervised release even if such possession is permitted under state law, and even if such possession one day becomes legal under federal law." United States v. Hicks, 722 F. Supp. 2d 829, 835 (E.D. Mich. 2010).

19. "Although some medical marijuana is legal in Minnesota as a matter of state law, the state's law conflicts with federal law." United States v. Schostag, 895 F.3d 1025, 1028 (8th Cir. 2018). "Accordingly, we conclude the district court had no discretion to

{10}

allow Schostag to use medical marijuana while on supervised release." Id.

20. "Persons released from prison subject to this Court's supervised release—as with all Pennsylvanians—may not use, possess or distribute marijuana under federal law." United States v. Bey, 341 F. Supp. 3d 528, 529 (E.D. Pa. 2018).

21. "We therefore hold that any probation term that threatens to revoke probation for medical marijuana use that complies with the terms of AMMA is unenforceable and illegal under AMMA." Reed-Kaliher v. Hoggatt, 347 P.3d 136, 140 (Ariz. 2015).

---

[6] There was no discussion of preemption in grounds 18-20.

City ordinances

22. A "city[] ordinance impos[ed] criminal penalties for the operation of a medical marijuana dispensary[.]" Qualified Patients Assn. v. City of Anaheim, 187 Cal. App. 4th 734, 741 (Cal. Ct. App. 2010). Plaintiffs claimed state law "preempted the city's ordinance[]" and the city claimed "the Controlled Substances Act (21 U.S.C. § 812 et seq.) preempted California's decision in the CUA and the MMPA to decriminalize specific medical marijuana activities under state law." Id. at 742, 741.

On the federal preemption issue, the court said, "because the CUA and the MMPA do not mandate conduct that federal law prohibits, nor pose an obstacle to federal enforcement of federal law, the enactments' decriminalization provisions are not preempted by federal law." Id. at 757. "Because regulation of medical practices and state criminal sanctions for drug possession are historically matters of state police power, we must take a narrow view of any asserted federal preemption in these areas." Id. at 757-758 (internal citation omitted). "No positive conflict exists because neither the CUA nor the MMPA requires anything the CSA forbids." Id. at 759.

{11}

23. Another city's zoning ordinance provided that "[u]ses not expressly permitted under this article are prohibited in all districts. Uses that are contrary to federal law, state law or local ordinance are prohibited." Beek v. City of Wyo., 846 N.W.2d 531, 534 (Mich. 2014). The medical marijuana law had a provision that

"immunize[d] registered qualifying patients from 'penalty in any manner' for specified MMMA-compliant medical marijuana use." Id.

"[I]n assessing whether § 4(a) of the MMMA is preempted by the CSA, the relevant inquiry is whether there is a 'positive conflict' between the two statutes such that they 'cannot consistently stand together.'" Id. at 537.

"First, we do not find it impossible to comply with both the CSA and § 4(a) of the MMMA." Id. at 537. "Such impossibility results when state law requires what federal law forbids, or vice versa." Id. (internal citations omitted).

> Section 4(a) of the MMMA does not require anyone to commit that offense, however, nor does it prohibit punishment of that offense under federal law. Rather, the MMMA is clear that, if certain individuals choose to engage in MMMA-compliant medical marijuana use, § 4(a) provides them with a limited *state-law* immunity from "arrest, prosecution, or penalty in any manner"—an immunity that does not purport to prohibit federal criminalization of, or punishment for, that conduct.

Id. (internal citation omitted).

"We likewise hold that § 4(a) does not stand as an obstacle to the accomplishment and execution of the full purposes and objectives of

the CSA." Id. at 538.

{12}

> The CSA, meanwhile, by expressly declining to occupy the field of regulating marijuana, 21 USC 903, "explicitly contemplates a role for the States" in that regard, *Oregon*, 546 US at 251, and there is no indication that the CSA's purpose or objective was to require states to enforce its prohibitions. Indeed, as noted, Congress lacks the constitutional authority to impose such an obligation. As a result, we fail to see how § 4(a) creates, as the City claims, "significant and unsolvable obstacles to the enforcement of the" CSA, such that the former is preempted by the latter.

Id. at 539.

> *Return of property*
>
> 24. The state's medical marijuana amendment, article XVIII, section 14(2)(e) of the Colorado Constitution, requires law enforcement officers to return medical marijuana seized from an individual later acquitted of a state drug charge. The federal Controlled Substances Act ("CSA") prohibits the distribution of marijuana, with limited exceptions. 21 U.S.C. §§ 801-971 (2012). The question in this

> case is whether the return provision of section 14(2)(e) is preempted by the federal CSA.

People v. Crouse, 388 P.3d 39, 40 (Colo. 2017).

"Because compliance with one law necessarily requires noncompliance with the other, there is a 'positive conflict' between section 14(2)(e) and the CSA such that the two cannot consistently stand together." Id. at 42. "[T]he return provision of section 14(2)(e) . . . [was] preempted by the federal Controlled Substances Act." Id. at 43.

{13}

Out-of-state prescription

25. The issue was whether "the district court abused its discretion by refusing to admit their respective medical marijuana prescriptions from the State of Washington as a lawful defense under North Dakota's Uniform Controlled Substances Act." State v. Kuruc, 846 N.W.2d 314, 322 (N.D. 2014).

"Because the Washington medical marijuana prescriptions are contrary to federal law, we conclude the district court properly construed the North Dakota statute and precluded Larson and Kuruc from introducing their prescriptions as a valid defense." Id. at 324 (internal citation omitted).

Federal rider

26. "In December 2014, Congress enacted a rider in an omnibus appropriations bill prohibiting the Department of Justice from expending funds to prevent a state from implementing its medical marijuana laws."

United States v. Moore, 274 F. Supp. 3d 1032, 1035 (N.D. Cal. 2017); cf. United States v. Stacy, 696 F. Supp. 2d 1141, 1145 (S.D. Cal. 2010) (stating, "[t]he mere enforcement of the CSA against individuals who are in compliance with California law does not interfere with the state's scheme for legalizing medical marijuana.").

Missouri was included in the rider that was enacted in 2014 and has been included in every rider since 2014. See Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. No. 113-235, § 538, 128 Stat. 2130 (2014); Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, § 542, 129 Stat. 2242 (2015); Consolidated Appropriations Act, 2017, Pub. L. No. 115-31, § 537, 131 Stat. 135 (2017); Consolidated

{14}

Appropriations Act, 2018, Pub. L. No. 115-141, § 538, 132 Stat. 348 (2018); and Consolidated Appropriations Act, 2019, Pub. L. No. 116-6, § 537, 133 Stat. 13 (2019).

"We therefore conclude that, at a minimum, § 542 prohibits DOJ from spending funds from relevant appropriations acts for the prosecution of individuals who engaged in conduct permitted by the State Medical Marijuana Laws and who fully complied with such laws." United States v. McIntosh, 833 F.3d 1163, 1177 (9th Cir. 2016).

> Thus, if the Department of Justice spends money in a manner explicitly prohibited by statute—here the prosecution of a criminal

> action for conduct purportedly in compliance with state law—the Department violates the Appropriations Clause and the maintenance of the criminal action constitutes a violation of the separation of powers.

United States v. Trevino, 355 F. Supp. 3d 625, 628 (W.D. Mich. 2019).

"To be clear, § 542 does not provide immunity from prosecution for federal marijuana offenses." McIntosh, 833 F.3d at 1179 n.5. "Under the Supremacy Clause of the Constitution, state laws cannot permit what federal law prohibits. U.S. Const. art VI, cl. 2." Id.

Argument (reasons 1-6)

27. One, the General Assembly's removal of the pre-CSA preemption provision raises an inference against preemption. See grounds 11 and 12, supra. If the provision had not been removed, said provision would be compelling evidence "that the two cannot consistently stand together." 21 U.S.C. § 903 (stating, "unless there is a positive conflict between that provision of this title and that State law so that the two cannot consistently

{15}

stand together."). In addition, Mo. Const. art. XIV does not have a statement on either federal preemption or the CSA. See Mo. Const. art. XIV.

Two, the Kuruc court was powerless to hold another state's medical marijuana law preempted and unenforceable. Kuruc, 846

N.W.2d at 324 (stating, "[b]ecause the Washington medical marijuana prescriptions are contrary to federal law[] . . . .") (internal citation omitted); ground 25, supra.

Three, to extend the Emerald Steel court's reasoning from the civil employment context to the criminal felony context, the Raich court's statement, "[t]he CSA designates marijuana contraband for any purpose[,]" – a statement made in a Commerce Clause case where preemption was not discussed – has to be controlling and not dictum. Emerald Steel, 230 P.3d at 529 (stating, "[a]ffirmatively authorizing a use that federal law prohibits stands as an obstacle to the implementation and execution of the full purposes and objectives of the Controlled Substances Act.") (citing Michigan Canners & Freezers Ass'n v. Agricultural Marketing & Bargaining Bd., 467 U.S. 461, 478 (1984)); ground 15, supra; Raich, 545 U.S. at 27; Id. at 5, 15, and 22; ground 3, supra.

It seems reasonable to assume "compliance with both state and federal law is [not] impossible[]" because all one has to do is not violate the law. Michigan Canners, 467 U.S. at 469 (internal citation omitted); see also Emerald Steel, 230 P.3d at 528 (stating, "a person can comply with both laws by refraining from any use of marijuana[.]").

The Michigan Canners court said, "[i]n conclusion, because the Michigan Act authorizes producers' associations to engage in conduct that the federal Act forbids, it 'stands as an obstacle

to the accomplishment and execution of the full purposes

{16}

and objectives of Congress.'" Michigan Canners, 467 U.S. at 478 (quoting Hines v. Davidowitz, 312 U.S. 52, 67 (1941)).

In applying the Raich court's statement, the argument for preemption becomes since "marijuana [is] contraband for any purpose[,]" and because state legalized medical marijuana laws "authorize[] [users] to engage in conduct that the federal Act forbids, [state legalized medical marijuana laws] '"stand[] as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'" Raich, 545 U.S. at 27; Michigan Canners, 467 U.S. at 478 (quoting Hines v. Davidowitz, 312 U.S. 52, 67 (1941)).

Thus, the reasonable inference must be that the Raich court's statement, "marijuana [is] contraband for *any* purpose[,]" is not controlling and dictum because otherwise all state legalized medical marijuana laws, absent a federal anti-preemption provision, would have already been preempted in any and all circumstances.

To date, no state's legalized medical marijuana law has been preempted in toto. And, when there has been any preemption, the context has never been a pretrial criminal case. See grounds 15-25, supra.

Further, said statement is also dictum because it was not necessary for the holding. "In assessing the scope of Congress' authority under the Commerce Clause, we stress that the task

before us is a modest one. We need not determine whether respondents' activities, taken in the aggregate, substantially affect interstate commerce in fact, but only whether a 'rational basis' exists for so concluding." Raich, 545 U.S. at 22 (internal citations omitted).

{17}

Additional support that the statement is dictum may be found based on the fact that the statement appears in the portion of the opinion that addressed two other Commerce Clause cases. Id. at 23 (stating, "[t]o support their contrary submission, respondents rely heavily on two of our more recent Commerce Clause cases. In their myopic focus, they overlook the larger context of modern-era Commerce Clause jurisprudence preserved by those cases.").

Four, "[i]f Congress thought [state legalized medical marijuana laws] posed an obstacle to its objectives, it surely would have enacted an express pre-emption provision at some point during the [CSA's near 50]-year history." Wyeth v. Levine, 555 U.S. 555, 574 (2009).

Five, "[t]he test, therefore, is whether the matter on which the State asserts the right to act is in any way regulated by the Federal Act. If it is, the federal scheme prevails though it is a more modest, less pervasive regulatory plan than that of the State." Rice v. Santa Fe Elevator Corp., 331 U.S. 218, 236 (1947). Under this test, assuming the federal rider is not a regulation because it is not part of the CSA but part of separate legislation, state legalized medical

marijuana laws are not regulated by the CSA and that weighs against preemption. See ground 26, supra.

Six, the federal rider, which Missouri was a part of before 2018, is additional legislative acknowledgment, recognition, and support for the efficacy of marijuana's medical benefits and uses and that also weighs against preemption. Id.

Thus, for the grounds and reasons stated herein, Missouri's medical marijuana law (Mo. Const. art. XIV) is not preempted by the CSA.

{18}

Second major issue (grounds 28-42)

Whether the Due Process Clauses, by and through Marbury v. Madison, 5 U.S. 137 (1803), may be extended beyond rational basis review.

Background (grounds 28-30)

28. "[N]or shall any State deprive any person of life, liberty, or property, without due process of law . . . ." U.S. Const. amend. XIV. "That no person shall be deprived of life, liberty or property without due process of law." Mo. Const. art. I, § 10. "This Court treats the state and federal due process clauses as providing the same protection." New Garden Rest., Inc. v. Dir. of Revenue, 471 S.W.3d 314, 316 n.2 (Mo. banc 2015) (internal citation omitted).

29. "It is emphatically the province and duty of the judicial department to say what the law is." Marbury v. Madison, 5 U.S. 137, 177 (1803).

30. "Under the traditional rational basis test, it is not necessary to examine the actual

justification and supporting facts for the challenged classification." United States v. Wilde, 74 F. Supp. 3d 1092, 1097 (N.D. Ca. 2014).

The Rule (grounds 31-32)

31. "The day is gone when this Court uses the Due Process Clause of the Fourteenth Amendment to strike down state laws, regulatory of business and industrial conditions, because they may be unwise, improvident, or out of harmony with a particular school of thought." Williamson v. Lee Optical of Oklahoma, Inc., 348 U.S. 483, 488 (1955); accord Ferguson, 372 U.S. 726, 731-732 (1963) (quoting Williamson). Cases cited in Williamson were "Nebbia v. New York, 291 U.S. 502; West Coast Hotel Co. v.

{19}

Parrish, 300 U.S. 379; Olsen v. Nebraska, 313 U.S. 236; Lincoln Union v. Northwestern Co., 335 U.S. 525; Daniel v. Family Ins. Co., 336 U.S. 220; Day-Brite Lighting, Inc. v. Missouri, 342 U.S. 421." Williamson, 348 U.S. at 488.

32. "We have returned to the original constitutional proposition that courts do not substitute their social and economic beliefs for the judgment of legislative bodies, who are elected to pass laws." Ferguson, 372 U.S. at 730.

The Exception to the Rule (ground 33)

33. Absent preemption, Defendant's criminal felony context is good cause for an exception to be made to the combined holdings of Williamson and Ferguson in order to extend the Due Process Clauses beyond rational basis review. See grounds 1-27, supra.

Closer scrutiny (grounds 34-41)

34. Ferguson v. Skrupa, 372 U.S. 726 (1963). "[A] Kansas statute [made] it a misdemeanor for any person to engage 'in the business of debt adjusting' except as an incident to 'the lawful practice of law in this state.'" Id. at 726-727.

"We conclude that the Kansas Legislature was free to decide for itself that legislation was needed to deal with the business of debt adjusting. Unquestionably, there are arguments showing that the business of debt adjusting has social utility, but such arguments are properly addressed to the legislature, not to us." Id. at 731.

35. Williamson v. Lee Optical of Oklahoma, Inc., 348 U.S. 483 (1955). The law "forbid the optician from fitting or duplicating lenses without a prescription from an ophthalmologist or optometrist." Id. at 486.

36. Nebbia v. New York, 291 U.S. 502 (1934). "The Legislature of New York

{20}

established . . . a Milk Control Board with power, among other things, to 'fix minimum and maximum . . . retail prices to be charged by . . . stores to consumers for consumption off the premises where sold.'" Id. at 515.

"But if, as must be conceded, the industry is subject to regulation in the public interest, what constitutional principle bars the state from correcting existing maladjustments by legislation touching prices? We think there is no such principle." Id. at 531-532.

37. West Coast Hotel Co. v. Parrish, 300 U.S. 379 (1937). "This case presents the question of the constitutional validity of the minimum wage law ["for women and childred[]"] of the State of Washington." Id. at 386, Id.

38. Olsen v. Nebraska, 313 U.S. 236 (1941). The law "fix[ed] the maximum compensation which a private employment agency might collect from an applicant for employment[.]" Id. at 241 (internal footnote omitted).

39. Lincoln Federal Labor Union v. Northwestern Iron & Metal Co., 335 U.S. 525 (1949). The laws "'provide[d] that no person in those states shall be denied an opportunity to obtain or retain employment because he is or is not a member of a labor organization.'" Id. at 527-528.

> This Court beginning at least as early as 1934, when the *Nebbia* case was decided, has steadily rejected the due process philosophy enunciated in the *Adair-Coppage* line of cases. In doing so it has consciously returned closer and closer to the earlier constitutional principle that states have power to legislate against what are found to be injurious practices in their internal
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> {21}
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> commercial and business affairs, so long as their laws do not run afoul of some specific federal

> constitutional prohibition, or of some valid federal law.

Id. at 536 (citing Nebbia and Parish).

40. Daniel v. Family Sec. Life Ins. Co., 336 U.S. 220 (1949). "A South Carolina statute provides that life insurance companies and their agents may not operate an undertaking business, and undertakers may not serve as agents for life insurance companies." Id. at 220-221. "Any person violating any of the provisions of this Act shall be deemed guilty of a misdemeanor[.]" Id. at 221 n.1.

"We cannot say that South Carolina is not entitled to call the funeral insurance business an evil. Nor can we say that the statute has no relation to the elimination of those evils. There our inquiry must stop." Id. at 224 (internal footnote omitted).

41. Day-Brite Lighting, Inc. v. Missouri, 342 U.S. 421 (1952). An employee may leave work "for four hours between the opening and closing of the polls without penalty, and that any employer who among other things deducts wages for that absence is guilty of a misdemeanor." Id. at 421-422 (internal footnote omitted).

"Our recent decisions make plain that we do not sit as a superlegislature to weigh the wisdom of legislation nor to decide whether the policy which it expresses offends the public welfare." Id. at 423; see exhibit H, ground 9.

> The judgment of the legislature that time out for voting should cost the employee nothing may be a debatable one. It is indeed conceded

> by the opposition to be such. But if our recent cases mean anything, they leave debatable issues as respects business, economic, and social affairs to
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> {22}
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> legislative decision. We could strike down this law only if we returned to the philosophy of the *Lochner*, *Coppage*, and *Adkins* cases.

Id. at 425.

Argument (reasons 1-3)

42. One, since there is no verdict director for the statutory criteria under section 195.071.1, the Due Process Clauses, by and through Marbury, are the only means by which the merits of Defendant's constitutional challenge may be reached pretrial. See Lisenba v. California, 314 U.S. 219, 236 (1941) (stating "[a]s applied to a criminal trial, denial of due process is the failure to observe that fundamental fairness essential to the very concept of justice.").

Two, none of the cases cited involved a felony. See grounds 34-41, supra. Three of the cases involved misdemeanors. See Ferguson, 372 U.S. at 726-727; Daniel, 336 U.S. 220, 221 n.1 (1949); and Day-Brite Lighting, 342 U.S. at 421-422. None of the three misdemeanor cases involved a drug offense. Id. And the context for the offenses in these three cases hardly seems comparable to Defendant's criminal felony drug case. Id.

Three, federal preemption was not an issue in any of the cases cited. See grounds 34-41, supra.

Therefore, unless and until Ferguson and Williamson are extended to cover Defendant's case, there is ample room for an exception to be made in order to allow the Due Process Clauses to be extended beyond rational basis review to reach the merits.

Whether said cases should be overruled is also not an issue based on Defendant's dissimilarity to cases such as Lochner v. New York, 198 U.S. 45 (1905); Adair v. United

{23}

States, 208 U.S. 161 (1908); Coppage v. Kansas, 236 U.S. 1 (1915); Adkins v. Children's Hospital, 261 U.S. 525 (1923); and Jay Burns Baking Co. v. Bryan, 264 U.S. 504 (1924).

A state "statute necessarily interferes with the right of contract between the employer and employe[e], concerning the number of hours in which the latter may labor in the bakery of the employer." Lochner, 198 U.S. at 53. In Adair, a "federal law prohibiting interstate railroad employers from discharging or discriminating against employees based on their membership in labor organizations[]" was invalidated. Epic Sys. Corp. v. Lewis, 138 S. Ct. 1612, 1634 (2018) (Ginsburg, J., dissenting). "*Coppage* declared unconstitutional as violative of due process a state statute which made it a misdemeanor for an employer to require an employee to agree not to join or remain a member of a union during his employment." Dean v. Gadsden Times

Publishing Corp., 412 U.S. 543, 544 (1973). "Whether Congress can establish minimum rates of wages for women in the District of Columbia with due provision for special circumstances, or whether we must say that Congress has no power to meddle with the matter at all." Adkins v. Children's Hospital, 261 U.S. 525, 567 (1923) (Holmes, J., dissenting). "The purpose of the Nebraska standard-weight bread law is to protect buyers from short weights and honest bakers from unfair competition." Jay Burns Baking Co. v. Bryan, 264 U.S. 504, 517 (1924) (Brandeis, J., dissenting).

Unlike Defendant's case, none of the above cases involved a criminal felony, a misdemeanor drug offense, or preemption. Said cases seem primarily concerned with regulating, in some manner, businesses in general or a particular business environment as opposed to regulating activity that would seem to be fundamentally criminal.

{24}

Third major issue (grounds 43-97)

Whether Missouri's medical marijuana law or the medical marijuana law of any state where it was legislatively enacted means marijuana, because of the word "no" in the statutory criteria, no longer satisfies the statutory criteria and therefore section 195.017.2(4)(W) is unconstitutional.

Missouri's medical marijuana law (grounds 43-46)

43. On November 6, 2018, the Missouri Constitution was amended with an initiative

petition to include medical marijuana that passed as a ballot measure. See exhibit D – 2018 election information; Mo. Const. art. XIV.

> 44. This section is intended to permit state-licensed physicians to recommend marijuana for medical purposes to patients with serious illnesses and medical conditions. The section allows patients with qualifying medical conditions the right to discuss freely with their physicians the possible benefits of medical marijuana use, the right of their physicians to provide professional advice concerning the same, and the right to use medical marijuana for treatment under the supervision of a physician.

Mo. Const. art. XIV, § 1.1.

> 45. "Qualifying medical condition" means the condition of, symptoms related to, or side-effects from the treatment of: (a) Cancer; (b) Epilepsy; (c) Glaucoma; (d) Intractable migraines unresponsive to other treatment; (e) A chronic medical condition that causes severe, persistent pain or persistent muscle spasms, including but not limited to those associated with multiple
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> {25}
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> sclerosis, seizures, Parkinson's disease, and Tourette's syndrome;

> (f) Debilitating psychiatric disorders, including, but not limited to, posttraumatic stress disorder, if diagnosed by a state licensed psychiatrist; (g) Human immunodeficiency virus or acquired immune deficiency syndrome; (h) A chronic medical condition that is normally treated with a prescription medication that could lead to physical or psychological dependence, when a physician determines that medical use of marijuana could be effective in treating that condition and would serve as a safer alternative to the prescription medication; (i) Any terminal illness; or (j) In the professional judgment of a physician, any other chronic, debilitating or other medical condition, including, but not limited to, hepatitis C, amyotrophic lateral sclerosis, inflammatory bowel disease, Crohn's disease, Huntington's disease, autism, neuropathies, sickle cell anemia, agitation of Alzheimer's disease, cachexia, and wasting syndrome.

Mo. Const. art. XIV, § 1.2(15).

> 46. In carrying out the implementation of this section, the department shall have the authority to: . . . . Promulgate rules

> and emergency rules necessary for the proper regulation and control . . . of marijuana for medical use and enforcement of this section so long as patient access is not restricted unreasonably and such rules are reasonably necessary for patient safety or to restrict access to only licensees and qualifying patients.

Mo. Const. art. XIV, § 1.3(1)(b).

{26}

Additional state information (grounds 47-50)

47. In 1996, California became the first state to pass a medical marijuana law. People v. Mower, 49 P.3d 1067, 1070 (Cal. 2002) (stating, "[a]t the General Election held on November 5, 1996, the electors approved an initiative statute designated on the ballot as Proposition 215 and entitled Medical Use of Marijuana. In pertinent part, the measure added section 11362.5, the Compassionate Use Act of 1996.") (internal citation omitted).

48. In 2000, Hawaii became the first state to enact medical marijuana through its legislature. S.B. 862, 20th Leg., Reg. Sess. (Haw. 2000).

49. Over half of our states, thirty-three to date, have legalized medical marijuana. See exhibit E.

50. At least eleven states, including Hawaii (ground 48, supra), have enacted medical marijuana through their legislature. See exhibit F.

Whether to reach the merits
(grounds 51-56)
Side A

51. "It is emphatically the province and duty of the judicial department to say what the law is." Marbury v. Madison, 5 U.S. 137, 177 (1803); see also Asbury v. Lombardi, 846 S.W.2d 196, 200 (Mo. banc 1993) (stating, "[t]he quintessential power of the judiciary is the power to make final determinations of questions of law. This power is a nondelegable power resting exclusively with the judiciary.") (internal citations omitted).

52. "[T]he final determination of questions of law and the final interpretation of the meaning of statutes is a part of that judicial function vested by the Constitution in the

{27}

courts." Howlett v. State Social Sec. Com., 347 Mo. 784, 790 (Mo. 1941).

53. "Courts regularly pass upon the constitutionality of acts enacted by the General Assembly and signed by the Governor. This is a proper function of the judicial branch of government and does not violate the separation of powers provision in the Constitution." State ex rel. Cason v. Bond, 495 S.W.2d 385, 389 (Mo. banc 1973).

54. "Constitutional interpretation is a function of the judicial, and not the legislative, branch." Poertner v. Hess, 646 S.W.2d 753, 756 (Mo. banc 1983).

Side B

55. "'[T]he judiciary may not sit as a superlegislature to judge the wisdom or desirability of legislative policy determinations made in areas that neither affect fundamental rights nor proceed along suspect lines[]'" and "judicial self-restraint is especially appropriate where as here the challenged classification entails legislative judgments on a whole host of controversial medical, scientific, and social issues." United States v. Fogarty, 692 F.2d 542, 547 (8th Cir. 1982) (quoting New Orleans v. Dukes, 427 U.S. 297, 303 (1976) and Dukes cites to Day-Brite Lighting, Inc. v. Missouri, 342 U.S. 421, 423 (1952), ground 41, supra); Id. (internal citations omitted).

Argument

56. Interpreting the statutory criteria and "judg[ing] the wisdom or desirability of legislative policy determinations" associated with the statutory criteria would seem to be two distinctly separate inquiries. Dukes, 427 U.S. at 303 (1976) (internal citation omitted). The former is an actual judicial function. See grounds 52-54, supra.

{28}

The Fogarty court's reasoning for not reaching the merits is tantamount to saying the statutory criteria is surplusage. See ground 55, supra; grounds 57-62, infra. Further, the Fogarty court's reasoning is not relevant because 1) it predates 1996, the year when California became the first state to pass medical marijuana and 2) there are now several states that have

legislatively passed judgment – "the challenged classification entails legislative judgments on a whole host of controversial medical, scientific, and social issues[]" – by enacting medical marijuana. See ground 47, supra; exhibit F; Fogarty, 692 F.2d at 547 (internal citations omitted).

Also, in 1988, when developing a standard for "accepted," it could be argued that the Administrator wanted additional statutory interpretation from the court. 53 Fed. Reg. 5,516 (Feb. 22, 1988) (stating, "[t]he Court did not provide any further parameters for the Administrator in reconsidering his decision, stating that it would not infringe on the Administrator's authority to develop such a standard."); see grounds 75-87, infra.

"It is emphatically the province and duty of the judicial department to say what the law is." Marbury v. Madison, 5 U.S. 137, 177 (1803). Thus, under these circumstances, it seems appropriate to reach the merits.

Surplusage (grounds 57-62)

57. "Statutes are presumed constitutional and will be found unconstitutional only if they clearly contravene a constitutional provision." State v. Vaughn, 366 S.W.3d 513, 517 (Mo. banc 2012) (internal citation omitted).

58. "The primary rule of statutory interpretation is to give effect to legislative intent as reflected in the plain language of the statute." State ex rel. Burns v.

Whittington, 219 S.W.3d 224, 225 (Mo. banc 2007) (internal citations omitted).

59. "A fundamental canon of statutory construction is that, unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning." Perrin v. United States, 444 U.S. 37, 42 (1979) (internal citation omitted); see also State ex rel. Missouri State Bd. of Registration for Healing Arts v. Southworth, 704 S.W.2d 219, 224 (Mo. banc 1986) (stating "[w]ords used in a statute must be accorded their plain and ordinary meaning.").

60. "Every word, clause, sentence and section of a statute should be given meaning, and under the rules of statutory construction statutes should not be interpreted in a way that would render some of their phrases to be mere surplusage." State v. Graham, 149 S.W.3d 465, 467 (Mo. App. E.D. 2004) (internal citations omitted).

61. "We concede that it is not the province of the judiciary to disregard the plain meaning of a statute on the ground that it seems unwise or inexpedient, or fails to effect the purpose which the court may believe to have been in view." Rosenblatt v. Heman, 70 Mo. 441, 451 (Mo. 1944).

62. "[C]ourts reject interpretations that render statutory language 'mere surplusage' because '[p]resumably, the legislature does not insert superfluous language in a statute[.]'" Doe v. St. Louis Cmty. Coll., 526 S.W.3d 329, 342 (Mo. App. E.D. 2017) (internal citation omitted).

Statutory criteria (grounds 63-65)

63. The department of health and senior services shall place a substance in Schedule I if it finds that the substance: (1) Has high potential for abuse; and

{30}

(2) Has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision.

Section 195.071.1.

64. The findings required for each of the schedules are as follows: (1) SCHEDULE I. (A) The drug or other substance has a high potential for abuse. (B) The drug or other substance has no currently accepted medical use in treatment in the United States. (C) There is a lack of accepted safety for use of the drug or other substance under medical supervision.

21 U.S.C. § 812 (b)(1).

65. The statutory criteria for the other schedules are not listed because Defendant is not seeking reclassification. See preliminary statement 6.

Statutory analysis (grounds 66-91)

66. Missouri's caselaw is provided as an exhibit. See exhibit G.

67. Additional caselaw is provided as an exhibit. See exhibit H.

68. Cases that do not mention the statutory criteria should be deemed irrelevant. See exhibit I.

69. "The federal statute lists three separate requirements without joining them by a conjunctive word. Missouri's statute separates the first and second factor with an 'and' while joining the second and third factors with an 'or.'" State v. McManus, 718 S.W.2d 130, 131 (Mo. banc 1986).

It could be interpreted that the McManus court interpreted the word "or" to mean "and." Id. at 131 (stating, "[h]e does not claim that the second phrase of section

{31}

195.017.1(2) referring to the substance's safety for use in treatment applies in this case[,]" and "[b]ecause both factors in section 195.017.1 are necessary to make a Schedule I substance and appellant does not contest the potential for abuse finding, this Court need determine only whether marijuana has an accepted medical use within the meaning of the statute.").

No (grounds 70-74)

70. Assuming that interpreting the word "no" "out of the statute" does not constitute an interpretation of the word "no," no majority opinion has interpreted the word "no." Morales v. TWA, 504 U.S. 374, 385 (1992); see exhibits G and H.

71. "No" is defined as "not any < ~ parking >". Webster's Ninth New Collegiate Dictionary 800 (1988) (definition 1a of entry number two of three). "No" is also defined as "hardly any: very

little < finished in ~ time >". Id. (definition 1b of entry number two of three).

> 72. The criteria used in scheduling substances under this bill are improper and inappropriate and lead to illogical results. For example, the wording of the above-quoted criteria results in marihuana being classified in the same schedule as heroin, merely because marihuana is capable of being abused and at the present time has no accepted medical usefulness.

Part 2, Drug Abuse Control Amendments—1970: Hearings on H.R. 11701 and H.R. 13743 Before the Subcomm. On Public Health and Welfare of the H. Comm. on Interstate and Foreign Commerce, 91st Cong., 2d Sess., Serial No. 91-46, 850 (1970) (statement of Neil L. Chayet, lecturer in legal medicine at the Boston University School of Law,

{32}

Boston University School of Medicine, Tufts University School of Medicine, and Tufts University School of Dental Medicine).

> 73. I have been unable to find any scientific colleague who agrees that the scheduling of drugs in the proposed legislation makes any sense, nor have I been able to find anyone who was consulted about the proposed schedules. This unfortunate scheduling, which

> groups together such diverse drugs as heroin, LSD and marihuana, perpetuates a fallacy long apparent to our youth. These drugs are not equivalent in pharmacological effects or in the degree or danger they present to individuals and to society.

Controlled Dangerous Substances, Narcotics and Drug Control Laws: Hearings on Legislation to Regulate Controlled Dangerous Substances and Amend Narcotics and Drug Laws Before the H. Comm. on Ways and Means, 91st Cong., 2d Sess. 485 (1970) (statement of Leo E. Hollister, M.D., medical investigator, Veterans Administration Hospital, Palo Alto, Cal.).

Argument (reasons 1-3)

74. One, based on the two examples provided in ground 71, the definition "not any" or its equivalent, depending on the particular dictionary, is the appropriate definition to apply because Congress or the Missouri General Assembly could have used words such as "very little" as opposed to "no," but neither one did.

Two, since no statute is surplusage, Congress' and the Missouri General Assembly's knowing and voluntary decision to use the word "no" eliminates any want,

{33}

need, or requirement for any expert debate about marijuana's medical usefulness. See grounds 57-62, supra; section 195.071.1(2) and 21 U.S.C. § 812 (b)(1)(B).

Three, the CSA's legislative history (additional legislative history is provided as an exhibit) provides support for the argument that the word "no" should not be interpreted "out of the statute." Morales v. TWA, 504 U.S. 374, 385 (1992); grounds 72-73, supra; exhibit J.

Accepted (grounds 75-87)

75. "Until the 12th revision of the United States Pharmacopeia in 1942, marijuana was listed as a chemical with medical usefulness. It was suddenly deleted, said Dr. Osmond of Princeton, []rather in the way that Stalin rewrote history." 116 Cong. Rec. 2,219 (1970) (Stuart Auerbach, Study Discloses Medical Uses of Synthetic Pot, Wash. Post, Feb. 3, 1970).

76. Alabama's "Therapeutic Research Act" was the context for what seems to be the first case to interpret "accepted." Isbell v. State, 428 So. 2d 215, 216 (Ala. Crim. App. 1983). "While marijuana may be useful in the treatment of some medical conditions it has not achieved accepted medical use or safety in its prescription and application." Id. at 217.

Under the circumstances, because of the word "may," the word "no" may not have been deliberately left out of the court's interpretation, but it may have been the beginning of that precedent. Id. at 217; Id. at 216.

77. The next two occasions that addressed "accepted" were on October 14, 1986. 51 Fed. Reg. 36,552 (Oct. 14, 1986) and State v. McManus, 718 S.W.2d 130 (Mo. banc

{34}

[Oct. 14] 1986).

"The phrase 'currently accepted medical use in treatment in the United States' as used in 21 U.S.C. 812, means that the Federal Food and Drug Administration has determined that a drug or other substance can be lawfully marketed in the United States." 51 Fed. Reg. 36,552, 36,554 no.9 (Oct. 14, 1986). The context was "placing the drug 3,4-methylenedioxymethamphetamine (MDMA) into Schedule I of the Controlled Substances Act (CSA)." 51 Fed. Reg. 36,552 (Oct. 14, 1984). In addition, contrary to marijuana, "MDMA was not, at that time, a controlled substance." Id. And there was no explanation in 51 Fed. Reg. 36,552 (Oct. 14, 1986) as to why the word "no" was interpreted "out of the statute." 21 U.S.C. § 812 (b)(1)(B); Morales v. TWA, 504 U.S. 374, 385 (1992).

According to the McManus court, it seems reasonable to infer that "accepted" meant that a drug cannot be in the "investigational stage[s]" or the "medical community as a whole[]" has to be in agreement. McManus, 718 S.W.2d at 131 (stating,

> This analysis fails to consider the meaning of the word "accepted" in section 195.017.1. All the evidence, including expert testimony, shows that the medical uses for the THC in marijuana are still in the investigational stage. 47 Fed. Reg. 28,151 (1982). Appellant's expert witness admitted that the medical community as a whole, does not

> accept the medical usefulness of marijuana.

); see also exhibit G, ground 6.

{35}

78. "The Court found [in Grinspoon v. Drug Enforcement Admin., 828 F.2d 881 (1st Cir. 1987)] that the Administrator applied an incorrect standard in determining the meaning of the phrases 'currently accepted medical use in treatment in the United States' and 'lack of accepted safety for use under medical supervision.'" 53 Fed. Reg. 5,516 (Feb. 22, 1988).

79. Grinspoon v. Drug Enforcement Admin., 828 F.2d 881 (1st Cir. 1987). The case was a civil appeal of a final rule not involving marijuana. Id. at 884 (stating, "[t]he Administrator's final rule, effective November 13, 1986, placed MDMA into Schedule I. Dr. Grinspoon appeals from this final rule under the CSA, 21 U.S.C. § 877.").

> [T]he Administrator held that the phrases "currently accepted medical use in treatment in the United States" and "accepted safety for use . . . under medical supervision" as used in the CSA, 21 U.S.C. § 812(b)(1), both mean that the FDA has evaluated the substance for safety and approved it for interstate marketing in the United States pursuant to the Federal Food, Drug, and Cosmetic Act of 1938 ("FDCA"), 21 U.S.C. § 355.

Id.

"Our review of the sources identified by the litigants convinces us that Congress neither expressed nor implied an affirmative intent regarding how the second and third Schedule I criteria should be interpreted." Id. at 885; Id. at 892 (stating, "we have found nothing to indicate how Congress affirmatively intended these two ambiguous statutory phrases to be construed and applied.").

{36}

"We find this language to be further evidence that the Congress did not intend 'accepted medical use in treatment in the United States' to require a finding of recognized medical use in every state or, as the Administrator contends, approval for interstate marketing of the substance." Id. at 886. "Our conclusion is that the term 'accepted' does not cure the statute's ambiguity." Id.

"[W]e conclude that the Administrator erroneously applied an interpretation of the 'accepted medical use in treatment in the United States' and 'accepted safety for use . . . under medical supervision' criteria of section 812(b)(1) that directly conflicts with congressional intent." Id. at 891.

> Hence, to avoid unduly infringing upon the Administrator's legitimate discretion to develop a legally acceptable standard -- i.e., one that does not conflict with the intentions of Congress, and makes sense in light of the statutory

> language, the legislative history, and the purposes of the entire legislative scheme -- we remand the rule to the Administrator for reconsideration and for further proceedings not inconsistent with this opinion.

Id. at 892.

80. "The Court did not provide any further parameters for the Administrator in reconsidering his decision, stating that it would not infringe on the Administrator's authority to develop such a standard." 53 Fed. Reg. 5,516 (Feb. 22, 1988). The Administrator interpreted the issue as "[w]hat cons[]titutes 'currently accepted medical use in treatment in the United States' within the purview of 21 U.S.C. 812(b)?" Id.

{37}

Again, there was no explanation in 53 Fed. Reg. 5,516 (Feb. 22, 1988) as to why the word "no" was interpreted "out of the statute." 21 U.S.C. § 812 (b)(1)(B); Morales v. TWA, 504 U.S. 374, 385 (1992).

81. A new test with eight factors was created. 53 Fed. Reg. 5,156, 5,157-5,158 (Feb. 22, 1988).

82. Alliance for Cannabis Therapeutics v. Drug Enforcement Admin., 930 F.2d 936 (D.C. Cir. 1991). The context was a petition and rescheduling. Id. at 937 (stating, "[t]his is a petition for review of a final order of the Administrator of the Drug Enforcement Administration (DEA)."); Id. (stating, petitioners

"claim that marijuana should be reclassified in Schedule II[.]").

According to the court, the word "no" was included in the phrase to be interpreted. Id. at 938 (stating, "[t]his case turns on the appropriate definition and application of th[e] phrase[,]" "'no currently accepted medical use in treatment in the United States.'"). The court must have reversed itself because the court adopted the Administrator's interpretation whereby the word "no" was interpreted "out of the statute." Id. (stating, "[i]n a prior proceeding, the Administrator had employed an additional eight factor test to further elaborate the characteristics of a drug that he thought had a 'currently accepted medical use[.]'"); Morales v. TWA, 504 U.S. 374, 385 (1992).

> The Administrator rejected the ALJ's recommendation, however, determining that the phrase "currently accepted medical use" required a greater showing than that a minority - even a respectable minority - of physicians accept the usefulness of a given drug. In a prior proceeding, the
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> {38}
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> Administrator had employed an additional eight factor test to further elaborate the characteristics of a drug that he thought had a "currently accepted medical use"

Alliance for Cannabis Therapeutics, 930 F.2d at 938.

The case was remanded "to the agency for an explanation as to how [] three of the[] [eight] factors were utilized by the Administrator in reaching his decision." Id. at 940 (internal footnote omitted).

83. "[T]he narrow question on remand centers exclusively on this Agency's legal interpretation of a statutorily-created standard." 57 Fed. Reg. 10,499 (Mar. 26, 1992). The Administrator "conclude[d] that marijuana has no currently accepted medical use and must remain in Schedule I." Id.

84. A new test was created. Id. at 10,506 (stating, "[t]ogether these five elements constitute prima facie evidence that a drug has currently accepted medical use in treatment in the United States."). The Administrator found "[m]arijuana fail[ed] all five points of the test." Id. at 10,507.

85. Alliance for Cannabis Therapeutics v. Drug Enforcement Admin., 15 F.3d 1131 (D.C. Cir. 1994). The context was the petition for review of the order denying rescheduling after remand in Alliance for Cannabis Therapeutics v. Drug Enforcement Admin., 930 F.2d 936 (D.C. Cir. 1991). Id. at 1134. "Because our previous disposition of this matter in *Alliance for Cannabis Therapeutics v. DEA*, 289 U.S. App. D.C. 214, 930 F.2d 936 (D.C. Cir. 1991) ('ACT') constitutes the law of the case, we decline to reconsider this claim." Id. at 1133.

{39}

86. "Whether the medical purposes for which marijuana is being used is 'accepted' continues to be debated." United States v. Green, 222 F. Supp. 3d 267, 280 (W.D.N.Y. 2016).

Argument (reasons 1-7)

87. One, "[t]he federal government has classified marijuana as a Schedule I controlled substance under the Federal Controlled Substances Act since 1970[]" and at that time "accepted" was not defined. United States v. Trevino, 355 F. Supp. 3d 625, 627 (W.D. Mich. 2019).

Two, there has been no explanation as to why "no" has been consistently interpreted "out of the statute." Morales v. TWA, 504 U.S. 374, 385 (1992); see grounds 77, 80, and 82, supra.

Three, "accepted" is not being debated by the various state legislature that enacted medical marijuana. See exhibit F.

Four, as the Grinspoon court said, "[o]ur conclusion is that the term 'accepted' does not cure the statute's ambiguity." Grinspoon, 828 F.2d at 886.

Five, the test with eight factors that was created after Grinspoon had to be revised and no longer consists of eight factors. See 53 Fed. Reg. 5,156, 5,157-5,158 (Feb. 22, 1988); 57 Fed. Reg. 10,499, 10,506 (Mar. 26, 1992). In developing the new test, the Administrator acknowledged that "[r]egrettably, the Controlled Substances Act does not speak directly to what is meant by "currently accepted medical use." 57 Fed. Reg. 10,499, 10,503 (Mar. 26, 1992).

Six, when the McManus court interpreted "accepted," it did not state that marijuana "[h]as no accepted medical use[.]" McManus, 718 S.W.2d at 131 (stating, "[a]ll the evidence, including expert testimony, shows that the medical uses for the THC in marijuana are still in the investigational stage. Appellant's expert witness admitted that the medical community as a whole, does not accept the medical usefulness of marijuana.") (internal citation omitted); Section 195.071.1(2).

Seven, what "cure[s] the statute's ambiguity[]" is the word "no." Grinspoon, 828 F.2d at 886; see grounds 70-74, supra. Framing the interpretative frame without the word "no" makes the issue debatable because of the word "accepted."

For example, assuming arguendo that the word "no" was not in the statute, then the phrase becomes "[h]as []accepted medical use in treatment in the United States" and the question becomes what does "accepted medical use" mean? Section 195.071.1(2). Setting aside the specific claim and context, if the issue is debatable, then one cannot conclude that marijuana has been accepted and thus it is reasonable to interpret the statute as if the word "no" had not been left out by the General Assembly. Green, 222 F. Supp. 3d at 280 (stating, "[w]hether the medical purposes for which marijuana is being used is 'accepted' continues to be debated.").

However, when the interpretative frame includes the word "no" – as is written in the

statute – the word "accepted" is no longer a problem. "No" means "not any." See ground 71, supra. Congress and the Missouri General Assembly each made a knowing and voluntary decision to use the word "no" as opposed to words such as "very little." See grounds 71 and 74, supra. Consequently, in its application, a standard that includes

{41}

the word "no" would seem to be considerably more demanding than our "beyond a reasonable doubt" standard. In re Winship, 397 U.S. 358, 361 (1970) (stating, "[t]he requirement that guilt of a criminal charge be established by proof beyond a reasonable doubt dates at least from our early years as a Nation.").

United States (grounds 88-89)

88. Regarding the first phrase of 195.071.1(2), "United States" means any state may be considered. Grinspoon, 828 F.2d at 886 (stating, "[w]e find this language to be further evidence that the Congress did not intend 'accepted medical use in treatment in the United States' to require a finding of recognized medical use in every state or, as the Administrator contends, approval for interstate marketing of the substance.").

Argument

89. Regarding the second phrase of section 195.071.1(2) which does not include "United States," any state may be considered because the legislature used "United States" in the first phrase. Section 195.071.1(2). Based on the interpretation of "United States" in the first

phrase, it would seem inconsistent to interpret the second phrase to mean something different such as either every state or, in this case, just Missouri. Further, the third criteria under the federal statute also does not include "United States," but if Congress had meant something other than "United States" or for "United States" to mean all states, it would have said so. 21 U.S.C. § 812 (b)(1)(C).

Missouri's two phrases (grounds 90-91)

> 90. [W]hile we are satisfied that Congress intended to preclude reliance on the absence of FDA approval in assessing whether a substance has an
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> {42}
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> "accepted medical use" and "accepted safety for use . . . under medical supervision," we have found nothing to indicate how Congress affirmatively intended these two ambiguous statutory phrases to be construed and applied.

Grinspoon, 828 F.2d at 892.

Argument

91. Surplusage does not mean that each phrase has to have a different meaning. See grounds 57-62, supra. Whether the two phrases are ambiguous and whether "or" means "or" or "and," the two phrases seem to be one conditional statement based on considering what the reasonable interpretation would be if the

statutory criteria included one of the phrases but not both. See ground 69, supra.

If a controlled substance had "accepted safety for use in treatment[,]" then there could not be "no accepted medical use" for it. Section 195.071.1(2). Likewise, if a controlled substance did not have "no accepted medical use," then there would have to be "accepted safety for [its] use in treatment[.]" Id. It seems reasonable to assume that no legislature in the United States would knowingly allow a controlled substance to expose these conditional statements as false by finding a controlled substance to have "accepted medical use" without any concern or regard for its safety in treatment. Id.

State legislative findings (grounds 92-96)

> 92. Studies published since the 1999 Institute of Medicine report continue to show the therapeutic value of cannabis in treating a wide array of debilitating medical conditions. These include relief of the neuropathic pain caused by multiple sclerosis, HIV/AIDS, and other illnesses that often fail
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> {43}
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> to respond to conventional treatments and relief of nausea, vomiting, and other side effects of drugs used to treat HIV/AIDS and hepatitis C, increasing the chances of patients continuing on life-saving treatment regimens.

410 Ill. Comp. Stat. Ann. 130/5(b).

> 93. Cannabis has many currently accepted medical uses in the United States, having been recommended by thousands of licensed physicians to at least 600,000 patients in states with medical cannabis laws. The medical utility of cannabis is recognized by a wide range of medical and public health organizations, including the American Academy of HIV Medicine, the American College of Physicians, the American Nurses Association, the American Public Health Association, the Leukemia & Lymphoma Society, and many others.

410 Ill. Comp. Stat. Ann. 130/5(c).

94. "The purpose of the Lynn and Erin Compassionate Use Act [26-2B-1 NMSA 1978] is to allow the beneficial use of medical cannabis in a regulated system for alleviating symptoms caused by debilitating medical conditions and their medical treatments." N.M. Stat. Ann. § 26-2B-2.

95. "Modern medical research has confirmed the beneficial uses for marijuana in treating or alleviating the pain, nausea, and other symptoms associated with a variety of debilitating medical conditions, including cancer, multiple sclerosis, and HIV/AIDS, as found by the National Academy of Sciences' Institute of Medicine in March 1999." Del. Code Ann. tit. 16, § 4901A.

{44}

96. "The Legislature finds and declares that: a. Modern medical research has discovered a beneficial use for marijuana in treating or alleviating the pain or other symptoms associated with certain debilitating medical conditions, as found by the National Academy of Sciences' Institute of Medicine in March 1999[.]" N.J. Stat. Ann. § 24:6I-2; accord R.I. Gen. Laws § 21-28.6-2.

Argument in conclusion

97. Judge Shangler's dissenting opinion, over forty years ago, which reached the right result, predated all legalized medical marijuana. State v. Mitchell, 563 S.W.2d 18, 36 (Mo. banc 1978). (Charles Shangler, S.J., dissenting) (stating, "[i]t is altogether inappropriate to say of marihuana that the substance 'has no accepted medical use in treatment[.]'"); exhibit G, ground 4; ground 47, supra.

"The earliest record of man's use of marihuana is a description of the drug in a Chinese compendium of medicines, the Herbal of Emperor Shen Nung, dated 2737 B.C." 116 Cong. Rec. 35,555 (1970) (statement of the Department of Health, Education, and Welfare via report: Marihuana and Health–A Preliminary Report).

"Until the 12th revision of the United States Pharmacopeia in 1942, marijuana was listed as a chemical with medical usefulness. It was suddenly deleted, said Dr. Osmond of Princeton, []rather in the way that Stalin rewrote history." 116 Cong. Rec. 2,219 (1970)

(Stuart Auerbach, Study Discloses Medical Uses of Synthetic Pot, Wash. Post, Feb. 3, 1970).

Interestingly, apparently there was a period of time after the CSA was enacted when our federal government actually stood behind medical marijuana. See Kuromiya v.

{45}

United States, 78 F. Supp. 2d 367, 374 (E.D. Pa. 1999) (stating, "[e]ven odder is the government's having provided marijuana to a small group of people over the years in the compassionate use program without having obtained a single useful clinical result as to the utility or safety of marijuana as a medicine to alleviate the symptoms of illness.").

> While there may have been "no accepted medical use in treatment in the United States" for marijuana when the CDSA became effective, any argument suggesting that premise is still valid in the post-CUMMA era strains credulity beyond acceptable boundaries. Medical benefits from the use of marijuana not known in 1971, when the CDSA became effective, or in 1986, when *Tate* was decided, and impediments to its lawful use as a result of its Schedule I classification, are abundant and glaringly apparent now.

Kadonsky v. Lee, 172 A.3d 1090, 1096 (N.J. Super. Ct. App. Div. 2017) (internal footnote omitted).

Missouri's medical marijuana law

"The maintenance of the opportunity for free political discussion to the end that government may be responsive to the will of the people and that changes may be obtained by lawful means, an opportunity essential to the security of the Republic, is a fundamental principle of our constitutional system." Stromberg v. California, 283 U.S. 359, 369 (1931).

Missouri's medical marijuana law may not have been legislatively enacted, but the clear implication is that marijuana no longer "[h]as no accepted medical use in treatment[.]" See exhibit D; section 195.071.1(2); Mo. Const. art. XIV, § 1.2(15) (listing

{46}

eligible medical conditions). In addition, the law does not "lack[] accepted safety for use in treatment under medical supervision." Section 195.071.1(2); Mo. Const. art. XIV, § 1.1 (stating, "the right to use medical marijuana for treatment under the supervision of a physician."); Id. at § 1.2(12) (stating, "'[p]hysician' means an individual who is licensed and in good standing to practice medicine or osteopathy under Missouri law."); Id. at § 1.3(1)(b) (stating, "the department shall have the authority to: . . . . Promulgate rules . . . reasonably necessary for patient safety or to restrict access to only licensees and qualifying patients.").

If Missouri's medical marijuana law is not preempted, then the judicial branch of our

government, by and through the Due Process Clauses, by and through Marbury v. Madison, 5 U.S. 137 (1803), "may be responsive to the will of the people" as evidenced by reaching the merits of Defendant's third major issue which derivatively follows from the 2018 election results. Stromberg, 283 U.S. at 369; grounds 43-91, supra.

Legislatively enacted medical marijuana

"Legislators represent people, not trees or acres." Reynolds v. Sims, 377 U.S. 533, 562 (1964). Subject to jurisdiction, we are all equally bound by any such legislative enactments. Several states have legislatively enacted medical marijuana. See exhibit F.

Congress enacted the CSA and classified marijuana in Schedule I. Comprehensive Drug Abuse Prevention and Control Act of 1970, Pub. L. No. 91-513, 84 Stat. 1236 (Oct. 27, 1970); Id. at 84 Stat. 1242, Id. (stating, "[t]his title ["Title II–Control and Enforcement"] may be cited as the 'Controlled Substances Act'."); ground 87, reason 1, supra.

{47}

Missouri followed Congress. State v. Burrow, 514 S.W.2d 585, 589 (Mo. 1974) (stating, "[i]n 1971, the Missouri General Assembly adopted its version of the Uniform Controlled Substances Act. Laws of Mo. 1971, p. 237, et seq.").

Then, in 1981, Washington's "Controlled Substances Therapeutic Research Act of 1979[]" was the basis for a constitutional challenge. State v. Whitney, 637 P.2d 956, 960 (Wash.

1981); Id. (stating, "[a]ppellant's constitutional challenge is based on the fact that, under the statutory definition, marijuana belongs in schedule I only if it has no accepted medical use in treatment in the United States."). "[T]he Controlled Substances Therapeutic Research Act recognizes that there may be medical uses of marijuana for cancer and glaucoma sufferers and perhaps others." Id.

Most importantly, the court ruled that "[t]his provision does not manifest a legislative finding that there is an accepted medical use for the drug, but rather a finding that there may be such a use." Id. (internal citation omitted).

In 2014, in an otherwise irrelevant case, the importance of a legislative finding was also present. State v. Thiel, 846 N.W.2d 605 (Minn. Ct. App. 2014). "At the time of the offense, the legislative and executive branches of government of this state had not determined that marijuana has a medical use. The state legislature recently approved legislation that will permit use of medical cannabis in certain situations." Id. at 613; see also State v. Ennis, 334 N.W.2d 827, 835 (N.D. 1983) (stating, "we will not usurp the legislature's factfinding function.") and exhibit H, ground 11; Seeley v. State, 940 P.2d 604, 615 (Wash. 1997) (stating, "[w]e will not substitute our judgment for that of the legislature[.]") and exhibit H, ground 16.

{48}

Since United States does not mean every state, any state's legislative enactment of medical marijuana constitutes a 1) judgment

that marijuana no longer "[h]as no accepted medical use in treatment" or 2) "finding that there is an accepted medical use for the drug[.]" Section 195.071.1(2); Whitney, 637 P.2d 956, 960; ground 48, supra; ground 88, supra; grounds 92-96, supra; exhibit F; see also *Controlled Dangerous Substances, Narcotics and Drug Control Laws: Hearings on Legislation to Regulate Controlled Dangerous Substances and Amend Narcotics and Drug Laws Before the H. Comm. on Ways and Means*, 91st Cong., 2d Sess. 492 (1970) (stating, "[t]his legislation would constitute a Congressional finding that heroin and marijuana are of equal danger to society, and of equal harm to the individual.") (statement via letter of Peter Barton Hutt, chairman, Comm. on Alcohol and Drug Reform of the American Bar Association's Section on Individual Rights and Responsibilities).

Consequently, the Fogarty court's reasoning is not relevant. Fogarty, 692 F.2d at 547 (stating, "judicial self-restraint is especially appropriate where as here the challenged classification entails legislative judgments on a whole host of controversial medical, scientific, and social issues.") (internal citations omitted); ground 56, supra.

Again, given the conditional nature of the two phrases, it does not seem possible that a state legislature in the United States would enact medical marijuana knowing that it "lacks accepted safety for use in treatment under medical supervision." Section 195.071.1(2); ground 91, supra; see also N.J. Stat. Ann. § 24:6I-

3 (stating, "'[q]ualifying patient' or 'patient' means a resident of the State who has been provided with a certification by a physician pursuant to a bona fide physician-patient relationship."); Id.

{49}

(stating, "'[b]ona fide physician-patient relationship' means a relationship in which the physician has ongoing responsibility for the assessment, care, and treatment of a patient's debilitating medical condition."); Haw. Rev. Stat. § 329-122(a) (stating, "the medical use of cannabis by a qualifying patient shall be permitted only if: (1) The qualifying patient has been diagnosed by a physician or advanced practice registered nurse as having a debilitating medical condition[.]"); R.I. Gen. Laws § 21-28.6-3(10) (stating, "'[q]ualifying patient' means a person who has been diagnosed by a practitioner as having a debilitating medical condition and is a resident of Rhode Island."); Id. at 3(17) (stating,

> "Practitioner" means a person who is licensed with authority to prescribe drugs pursuant to chapters 34, 37, and 54 of title 5, who may provide a qualifying patient with a written certification in accordance with regulations promulgated by the department of health or a physician licensed with authority to prescribe drugs in Massachusetts or Connecticut.

); N.M. Stat. Ann. § 26-2B-3V (effective June 14, 2019) (stating,

> "qualified patient" means a person who has been diagnosed by a practitioner as having a debilitating medical condition and has received written certification and a registry identification card pursuant to the Lynn and Erin Compassionate Use Act [26-2B-1 NMSA 1978] on the basis of having been diagnosed, in person or via telemedicine, by a practitioner as having a debilitating medical condition; provided that a practitioner may only issue a
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> written certification on the basis of an evaluation conducted via telemedicine if the practitioner has previously examined the patient in person;

); Id. at 3S (stating, "'practitioner' means a person licensed in New Mexico to prescribe and administer drugs that are subject to the Controlled Substances Act [26-2B-1 NMSA 1978];"); Minn. Stat. § 152.22, Subd. 9 (stating, "'[p]atient' means a Minnesota resident who has been diagnosed with a qualifying medical condition by a health care practitioner and who has otherwise met any other requirements for patients under sections 152.22 to 152.37 to participate in the registry program under sections 152.22 to 152.37."); Id. at Subd. 4 (stating,

> "Health care practitioner" means a Minnesota licensed doctor of medicine, a Minnesota licensed physician assistant acting within the scope of authorized practice, or a Minnesota licensed advanced practice registered nurse who has the primary responsibility for the care and treatment of the qualifying medical condition of a person diagnosed with a qualifying medical condition.

); 410 Ill. Comp. Stat. Ann. 130/10(s) (stating,

> "Physician" means a doctor of medicine or doctor of osteopathy licensed under the Medical Practice Act of 1987 [225 ILCS 60/1 et seq.] to practice medicine and who has a controlled substances license under Article III of the Illinois Controlled Substances Act [Illinois Controlled Substances Act et seq.]. It does not include a licensed practitioner under any other Act including but not limited to the Illinois Dental Practice Act [225 ILCS 25/1 et seq.].

); Id. at 10(t) (stating, "'[q]ualifying patient' means a person who has been diagnosed by

{51}

a physician as having a debilitating medical condition.").

Thus, absent preemption, and assuming the Due Process Clauses may be extended beyond rational basis review, is it reasonable to

conclude that marijuana, by and through legislatively enacted medical marijuana laws, "[h]as no accepted medical use in treatment in the United States" or "lacks accepted safety for use in treatment under medical supervision[]"? Section 195.071.1(2).

In conclusion, Missouri's medical marijuana law or the medical marijuana law of any state where it was legislatively enacted means marijuana, because of the word "no" in the statutory criteria, no longer satisfies the statutory criteria and therefore section 195.017.2(4)(W) is unconstitutional.

Respectfully submitted,

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Certificate of Service

I certify that on this 17th day of June, 2019, a true copy of the above and foregoing was electronically served via the Missouri eFiling System to the Warren County Prosecuting

Attorney's office, 104 W. Main, Suite E, Warrenton, MO 63383.

/s/ Lou Horwitz

Louis Horwitz

{52}

Appendix G

Exhibit A to the Amended Motion to Dismiss

{1}[3]

Jurisdiction

The foundational issue is whether "trafficking drugs in the second degree" based on marijuana requires that marijuana be classified as a controlled substance. Section 579.068.1.

When "the court is faced with a constitutional challenge to the statute that forms the basis for the charges in the indictment[,] [t]he court has jurisdiction to hear that challenge." United States v. Pickard, 100 F. Supp. 3d 981, 996 (E.D. Ca. 2015) (internal citations omitted); see also United States v. Green, 222 F. Supp. 3d 267, 274 (W.D.N.Y. 2016) (stating, "a defendant may challenge the scheduling of marijuana through a constitutional attack brought in district court.").

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[1] Said information appears at the top-right of all pages.

[2] Said electronic filing information appears vertically along the right side of all pages beginning at the top and in light blue lettering.

[3] Exhibit sticker appears to the right and page numbers are handwritten and in brackets {} herein.

Pickard was a pretrial motion to dismiss and the charge was "conspiracy to manufacture at least 1,000 marijuana plants, in violation of 21 U.S.C. §§ 846, 841(a)(1)." Pickard, 100 F. Supp. 3d at 988-989; Id. at 989 (stating, "Mr. Pickard moved to dismiss the indictment[.]"). Green was a pretrial motion to dismiss and one of the charges was "a narcotics conspiracy to possess with the intent to distribute, and to distribute, 100 kilograms or more of a mixture and substance containing a detectable amount of marijuana, in violation of 21 U.S.C. § 841[.]" Green, 222 F. Supp. 3d at 270; Id. at 269 (stating, "[t]heir motion to dismiss was initially considered by the magistrate judge[.]").

Considering the 1) law for lesser included offenses;
2) language of the jury instructions; and 3) location of the charge in the statutes, "trafficking drugs in the second

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degree" based on marijuana requires that marijuana must be classified as a controlled substance. Section 579.068.1; see grounds 1-5, infra.

Defendant states the following eleven grounds:

1. Defendant is charged with "the class C felony of trafficking in the second degree[]" based on the possession of a certain amount of marijuana. See Information.

2. If the defendant requests that the jury be instructed on a lesser included offense consisting of all

> but one of the elements required for the greater offense, is the trial court allowed to refuse to give that instruction solely because it determines that no reasonable juror could refuse to find that the differential element had been proved beyond a reasonable doubt? The answer is no. Unless waived, the right to trial by jury means that the jury — and only the jury — will decide what the evidence does and does not prove beyond a reasonable doubt.

State v. Jackson, 433 S.W.3d 390, 402 (Mo. banc 2014).

3. "Possession of a controlled substance is a lesser included offense of trafficking drugs, second degree." State v. McNaughton, 924 S.W.2d 517, 527 (Mo. App. W.D. 1996) (internal citation omitted); see also State v. Pierce, 433 S.W.3d 424, 427, 430 (Mo. banc 2014) (stating, "Pierce claims that the trial court erred in refusing his request that the jury be instructed regarding possession as a lesser included offense of second-degree trafficking[]" and "*[t]he Trial Court Erred in Not Giving Pierce's Requested Instruction on the 'Nested' Lesser Offense of Possession*"); State v. Stewart, 17 S.W.3d 162, 163-164, 166 (Mo. App. E.D. 2000) (stating, "a jury found him guilty of trafficking in the

{3}

second degree[]" and "the trial court erred in failing to submit an instruction to the jury for the

lesser included offense of possession of a controlled substance.").

4. The jury instruction for "trafficking drugs in the second degree" considers marijuana a controlled substance. Section 579.068.1; MAI-CR3d 325.14.1[7] (stating, "(more than 30 kilograms) (100 kilograms or more) of a mixture or substance containing marijuana, a controlled substance[]"). The jury instruction for the lesser included offense also considers marijuana a controlled substance. MAI-CR3d 325.02.1 (stating, "[f]irst, that (on) (on or about) [*date*], in the (City) (County) of . . ., State of Missouri, the defendant possessed ([*name of controlled substance*]) (more than 35 grams of marijuana), a controlled substance[]").

5. The title of the chapter in which "trafficking drugs in the second degree" appears is "Controlled Substance Offenses." Section 579.068.1; see chapter 579. Within said chapter, the charge is actually the median of the thirteen sequential charges that use the words "controlled substance." See section 579.015 (stating, "[a] person commits the offense of possession of a controlled substance if . . . ."); section 579.020 (stating, "[a] person commits the offense of delivery of a controlled substance if[] . . . ."); section 579.030 (stating, "[a] person commits the offense of distribution of a controlled substance in a protected location if . . . ."); section 579.045 (stating, "[a] person commits the offense of fraudulently attempting to obtain a controlled substance if . . . ."); section 579.050 (stating, "[a] person commits the offense of

manufacture of an imitation controlled substance if . . . ."); section 579.055 (stating, "[a] person commits the offense of manufacture of a controlled substance if[] . . . ."); section 579.070 (stating, "[a] person

{4}

commits the offense of creating a danger if, while producing, or attempting to produce, a controlled substance, he or she purposely . . . ."); section 579.072 (stating, "[a] person commits the offense of furnishing materials for the production of a controlled substance if . . . ."); section 579.078 (stating, "[a] person commits the offense of possession of an imitation controlled substance if . . . ."); section 579.080 (stating, "[a] person commits the offense of delivery of an imitation controlled substance if . . . ."); section 579.084 (stating, "[a] person commits the offense of distribution of a controlled substance in violation of registration requirements if . . . ."); and section 579.086 (stating, "[a] manufacturer or distributor, or an employee of a manufacturer or distributor, commits the offense of unlawful delivery of a controlled substance when . . . .").

Thus, the location of section 579.068 in the statutes raises the reasonable inference that said section's failure to use the words "controlled substance" does not mean marijuana does not have to be classified as a controlled substance under "trafficking drugs in the second degree" based on marijuana. Section 579.068.1.

6. It has also been argued that 21 U.S.C. § 877 is a jurisdictional bar. Pickard, 100 F. Supp. 3d at 995-996 (stating, "[t]he essence of the

government's argument against jurisdiction is that section 877 bars the court from considering defendants' constitutional challenge to marijuana's scheduling.").

> 7. All final determinations, findings, and conclusions of the Attorney General under this title shall be final and conclusive decisions of the matters involved, except that any person aggrieved by a final decision of the Attorney General may obtain review of the decision in the United States Court of
>
> {5}
>
> Appeals for the District of Columbia or for the circuit in which his principal place of business is located upon petition filed with the court and delivered to the Attorney General within thirty days after notice of the decision.

21 U.S.C. § 877.

8. "A provision conferring jurisdiction to entertain such a challenge is not required to be included in the CSA itself, nor is the statute insulated from constitutional review by Congressional delegation of authority to an agency to consider an administrative petition." Pickard, 100 F. Supp. 3d at 996 (internal citations omitted).

9. "[E]ven assuming the existence of a viable administrative remedy, application of the exhaustion doctrine to criminal cases is

generally not favored because of 'the severe burden' it imposes on defendants." United States v. Kiffer, 477 F.2d 349, 352 (2nd Cir. 1973) (internal citation omitted).

10. In addition, even though jurisdiction was not discussed in either United States v. Maiden, 355 F. Supp. 743 (D. Conn. 1973) or United States v. Wilde, 74 F. Supp. 3d 1092 (N.D. Ca. 2014), the context in each was a pretrial motion to dismiss and it is reasonable to infer the court found it had jurisdiction. Maiden, 355 F. Supp. at 744-745 (stating, "[t]his motion to dismiss an indictment raises a host of broad constitutional challenges to the criminalization of marijuana."); Wilde, 74 F. Supp. 3d at 1094 (stating, "the Court DENIES Wilde's motion to dismiss the indictment.").

Two of the charges in Maiden were "'knowingly and intentionally possessed, with intent to distribute and dispense' 500 pounds of marijuana[]" and "'knowingly and intentionally distributed and dispensed' 180 pounds of marijuana[.]" Maiden, 355

{6}

F. Supp. at 745, 745. One of the charges in Wilde was "using or possessing a firearm during and in relation to a crime of violence or a drug trafficking crime in violation of 18 U.S.C. § 924(c)(1)(A)[.]" Wilde, 74 F. Supp. 3d at 1094 (charge four).

11. "In performing the constitutional review requested here, this court is exercising one of its essential duties. *See Marbury v.*

Madison, 5 U.S. 137, 177-80, 2 L. Ed. 60 (1803)." Pickard, 100 F. Supp. 3d at 997.

Appendix H

Exhibit B to the Amended Motion to Dismiss

{7}[3]

Standing

Defendant states the following eleven grounds:

1. "Over the years, our cases have established that the irreducible constitutional minimum of standing contains three elements." Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992). The three elements are: "(1) injury-in-fact, (2) causation, and (3) redress[a]b[i]lity[.]" United States v. Pickard, 100 F. Supp. 3d 981, 992 (E.D. Ca. 2015); see also Lujan, 504 U.S. at 560-561.

2. In the context of a "declaratory judgment action[,]" standing was stated as,

> "A justiciable controversy exists where [1] the plaintiff has a legally protectable interest at stake, [2] a

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[1] Said information appears at the top-right of all pages.

[2] Said electronic filing information appears vertically along the right side of all pages beginning at the top and in light blue lettering.

[3] Exhibit sticker appears to the right and page numbers are handwritten and in brackets {} herein.

> substantial controversy exists between parties with genuinely adverse interests, and [3] that controversy is ripe for judicial determination." The first two elements of justiciability are encompassed jointly by the concept of "standing." "Prudential principles of justiciability, to which this Court has long adhered, require that a party have standing to bring an action. Standing requires that a party have a personal stake arising from a threatened or actual injury."

Schweich v. Nixon, 408 S.W.3d 769, 771 (Mo. banc 2013); Id. at 773-774 (internal citations omitted).

3. Even if there is similarity or overlap between the elements in grounds 1 and 2, supra, since Defendant did not file a motion for declaratory judgment, Lujan should be applied. {8}

Facts

4. Defendant is charged with "the class C felony of trafficking in the second degree[]" based on the possession of a certain amount of marijuana. See Information.

Law

> 5. Whenever any person has been found guilty of a felony or a misdemeanor the court shall make one or more of the following dispositions of the offender in any

> appropriate combination. The court may: (1) Sentence the person to a term of imprisonment as authorized by chapter 558; (2) Sentence the person to pay a fine as authorized by chapter 560; (3) Suspend the imposition of sentence, with or without placing the person on probation; (4) Pronounce sentence and suspend its execution, placing the person on probation;

Section 557.011.2

6. The range of punishment is "a term of years not less than three years and not to exceed ten years[]" or a fine up to $10,000 or both. See sections 558.011, 558.002, and 557.011.2.

Argument

7. In a pretrial motion to dismiss an Indictment charging "conspiracy to manufacture at least 1,000 marijuana plants, in violation of 21 U.S.C. §§ 846, 841(a)(1)[,]" the defendant had "standing to raise a constitutional challenge to the inclusion of marijuana as a Schedule I substance under 21 U.S.C. § 812(b)(1)." Pickard, 100 F. Supp. 3d at 988-989, 992.

8. Regarding the first element, Defendant's injury is the risk of not only a felony {9} conviction but possible incarceration. Id. at 991 (stating, "[d]efendants have shown concrete and imminent injury: incarceration as a result of their charged violations of the CSA, if they are convicted.") (internal citation omitted).

By law, the charge is eligible for probation. See sections 557.011.2 and 579.068. Interpreting "incarceration" and "if" under Pickard, it could be argued that Defendant must wait to see not only if he is convicted, but whether the sentence imposed involves incarceration before he is able to present his motion to dismiss. If probation was granted, Defendant would have to wait until his probation was revoked and the sentence ordered executed or if no sentence was imposed, whether the imposed sentence was ordered executed. Or, if probation was granted and Defendant completed his probation successfully, incarceration would never happen. Thus, the injury element in a criminal case is satisfied when incarceration is a sentencing option because it removes the uncertainty associated with "if" and becomes "threatened." Pickard, 100 F. Supp. 3d at 991; see also Schweich, 408 S.W.3d at 774 (stating, "[s]tanding requires that a party have a personal stake arising from a threatened or actual injury.[]") (internal citations omitted).

9. Regarding the second element, the cause of Defendant's injury is the classification of marijuana as a Schedule I controlled substance. Pickard, 100 F. Supp. 3d at 991 (stating, "inclusion of marijuana as a Schedule I controlled substance is the cause of their injury."). Based on the foundational issue in exhibit A, it could be argued that Defendant must wait and see what the outcome is before he his is able to present his motion to dismiss. See exhibit A, grounds 1-5.

{10}

There are three potential outcomes: guilty as charged, guilty on the lesser included offense, or not guilty. In addition to the reasons provided in exhibit A, it would seem to be a subversion of justice and disingenuous, not to mention a "waste of jurors' time[,]" if Defendant is forced to wait and see if he is convicted of the lesser included offense before being able to present his motion to dismiss. Mercer v. Rockwell Int'l Corp., 24 F. Supp. 2d 735, 753 (W.D. Ky. 1998). Further, this question of law is not redressable in a jury trial because there is no verdict director for whether section 195.017.2(4)(w) is unconstitutional under the statutory criteria of section 195.017.1. See ground 10, infra.

Under these circumstances, conviction of the lesser included offense should not be considered the earliest opportunity for Defendant to present his motion to dismiss. Land Clearance for Redevelopment Authority v. Kansas University Endowment Ass'n, 805 S.W.2d 173, 175 (Mo. banc 1991) (stating, "[t]he purposes of the rule requiring that constitutional issues be raised at the earliest opportunity are to prevent surprise to the opposing party, and to permit the trial court an opportunity to fairly identify and rule on the issue.") (internal citation omitted); see also Ross v. State, 335 S.W.3d 479, 480 (Mo. banc 2011) (stating, "[c]hallenges to the constitutional validity of a statute are waived if not raised at the first opportunity.") (internal citations omitted).

10. Regarding the third element, "'[i]n deciding whether a [party's] injury is redressable, courts assume that [a party's] claim has legal merit.'" Pickard, 100 F. Supp. 3d at 992 (internal citation omitted). Thus, Defendant's injury is redressable because a favorable ruling would likely result in a dismissal. Id. (stating, "[i]f defendants receive

{11}

a favorable ruling, finding the statutory classification of marijuana violative of the Constitution, the court would, in effect, decriminalize marijuana. Consequently, defendants' charge of conspiracy to manufacture marijuana, a controlled substance, would be dismissed.") (internal citation omitted); Id. at 991 (stating, "[i]f this court were to find that Congress acted unconstitutionally in placing marijuana on Schedule I, marijuana would no longer be considered a controlled substance because it is classified as a controlled substance only under Schedule I and not under any other schedule.").

Additional

11. Even though standing was not discussed in either United States v. Maiden, 355 F. Supp. 743 (D. Conn. 1973) or United States v. Wilde, 74 F. Supp. 3d 1092 (N.D. Ca. 2014), the context in each was a pretrial motion to dismiss and it is reasonable to infer the court found that each defendant had standing. Maiden, 355 F. Supp. at 744-745 (stating, "[t]his motion to dismiss an indictment raises a host of broad constitutional challenges to the criminalization

of marijuana."); Wilde, 74 F. Supp. 3d at 1094 (stating, "the Court DENIES Wilde's motion to dismiss the indictment.").

Two of the charges in Maiden were "'knowingly and intentionally possessed, with intent to distribute and dispense' 500 pounds of marijuana[]" and "'knowingly and intentionally distributed and dispensed' 180 pounds of marijuana[.]" Maiden, 355 F. Supp. at 745, 745. One of the charges in Wilde was "using or possessing a firearm during and in relation to a crime of violence or a drug trafficking crime in violation of 18 U.S.C. § 924(c)(1)(A)[.]" Wilde, 74 F. Supp. 3d at 1094 (charge four).

Appendix I

Exhibit C to the Amended Motion to Dismiss with Table of Contents

[El]ectronically Filed – Warren – June 17, 2019 –11:49 AM[1]

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Some of Missouri's relevant pre-CSA drug laws

Table of Contents

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[1] Said electronic filing information appears vertically along the right side of all pages beginning at the top and in light blue lettering.

[2] Exhibit sticker appears to the right and page numbers are handwritten and in brackets {} herein.

[3] The 1949 version also lists the section numbers from the 1939 version.

{13}

2582 [;] HEALTH, PUBLIC, AND VITAL STATISTICS[4]

[4] Said information appears across the top of the page.

Chap. 57 [;] Art. 5 [;] Art. 6[5]

ARTICLE 6.

NARCOTIC DRUG ACT.

Sec
9832. Definitions
9833. Manufacture, sale, possession, etc., of narcotic drugs unlawful except as authorized by this article.
9834. License necessary for manufacture, sale, etc.
9835. License shall be issued by board of health, when–revocation of license–appeal.
9836. Licensee may sell narcotic drugs on official written orders, to whom.
9837. Apothecary may sell narcotic drugs on written prescription–records.
9838. Who may prescribe narcotic drugs–return of unused drugs.
9839. Exemptions–conditions of exemption.
9840. Shall keep records of drugs received, administered, dispensed, or used otherwise than by prescription.
9841. Label requirements for narcotic drugs.
9842. Possession lawful only if kept in original container.
9843. Common carriers or warehousemen exempt from certain provisions of article.
9844. Common nuisance defined.

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[5] Said information appears across the bottom of the page.

Sec. 9832. Definitions.–The following words and phrases, as used in this act, shall have the following meanings, unless the context otherwise requires:

(1) "Person" includes any corporation, association, copartnership, or one or more individuals.

(2) "Physician" means a person authorized by law to practice medicine in this state and any other person authorized by law to treat sick and injured human beings in this state and to use narcotic drugs in connection with such treatment.

(3) "Dentist" means a person authorized

by law to practice dentistry in this state.

(4) "Veterinarian" means a person authorized by law to practice veterinary medicine in this state.

(5) "Manufacturer" means a person who by compounding, mixing, cultivating, growing, or other process, produces or prepares narcotic drugs, but does not include an apothecary who compounds narcotic drugs to be sold or dispensed on prescriptions.

(6) "Wholesaler" means a person who supplies narcotic drugs that he himself has not produced nor prepared, on official written orders, but not on prescriptions.

(7) "Apothecary" means a licensed pharmacist as defined by the laws of this state, and, where the context so requires, the owner of a store or other place of business where narcotic drugs are compounded or dispensed by a licensed pharmacist; but nothing in this act shall be construed as conferring on a person who is not registered nor licensed as a pharmacist any authority, right, or privilege, that is not granted to him by the pharmacy laws of this state.

{14}

NARCOTIC DRUG ACT [;] 2583[6]
Chap. 57 [;] Art. 6[7]

(8) "Hospital" means an institution for

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the care and treatment of the sick and injured, approved by the State Board of Health if operated by and for medical physicians or by the State Board of Osteopathic Registration and Examination, if operated by and for osteopathic physicians, as proper to be entrusted with the custody of narcotic drugs and the professional use of narcotic drugs under the direction of a physician, dentist or veterinarian.

(9) "Laboratory" means a laboratory approved by the State Board of Health as proper to be entrusted with the custody of narcotic drugs and the use of narcotic drugs for scientific and medical purposes and for purposes of instruction.

(10) "Sale" includes barter, exchange, or gift, or offer therefor, and each such transaction made by any person, whether as principal, proprietor, agent, servant, or employee.

(11) "Coca leaves" includes cocaine and any compound, manufacture, salt, derivative, mixture, or preparation of coca leaves, except derivatives of coca leaves which do not contain cocaine, ecgonine, or substances from which cocaine or ecgonine may be synthetized or made.

(12) "Opium" includes morphine, codeine, and heroin, and any compound, manufacture, salt, derivative, mixture, or preparation of opium, but does not include apomorphine or any of its salts.

(13) "Narcotic drugs" means coca leaves and opium and every substance neither chemically nor physically distinguishable from them.

(14) "Federal Narcotic Laws" means the laws of the United States relating to opium, coca leaves, and other narcotic drugs.

(15) "Official written order" means an order written on a form provided for that purpose by the United States Commissioner of Narcotics, under any laws of the United States making provision therefor, if such order forms are authorized and required by federal law, and if no such order form is provided, then on an official form provided for that purpose by the State Board of Health.

(16) "Dispense" includes distribute, leave with, give away, dispose of, or deliver.

(17) "Registry number" means the number assigned to each person registered under the Federal Narcotic Laws. (Laws 1937, p. 344, § 1.)

Sec. 9833. Manufacture, sale, possession, etc., of narcotic drugs unlawful except as authorized by this article.–It shall be unlawful for any person to manufacture, possess, have under his control, sell, prescribe, administer, dispense, or compound any narcotic drug, except as authorized in this article. (Laws 1937, p. 344, § 2.)

{15}

NARCOTIC DRUG ACT [;] 2589[8]
Chap. 57 [;] Art. 6 [;] Chap. 58 [;] Art. 1[9]

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Sec. 9851. Penalties for violation. Any person violating any provision of this article shall be deemed guilty of a felony, and upon conviction thereof shall be punished, for the first offense, by imprisonment in the state penitentiary for a term of two years, or by imprisonment in the county jail for a term of not more than one year or by a fine of not than $1,000.00 or by both such fine and imprisonment; and for any subsequent offense, by imprisonment in the state penitentiary for a term of not less than two years nor more than seven years, or by a fine of not more than $5,000.00 or less than $250.00. (Laws 1937, p. 344, § 20.)

Sec. 9852. Prosecution prohibited if defendant has been acquitted or convicted under federal narcotic laws for same act or omission. No person shall be prosecuted for a violation of any provision of this article if such person has been acquitted or convicted under the Federal Narcotic Laws of the same act or omission which, it is alleged, constitutes a violation of this article. (Laws 1937, p. 344,
§ 21.)

Sec. 9853. Invalidity of any provision of article shall not affect remainder.–If any provision of this article or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the article which can be given effect without the invalid provision or

application, and to this end the provisions of this article are declared to be severable. (Laws 1937, p. 344, § 22.)

Sec. 9854. Conflicting laws repealed.–All laws or parts of laws which are inconsistent with the provisions of this article are hereby repealed. (Laws 1937, p. 344, § 23.)

{16}

§194.160 [;] PUBLIC HEALTH AND WELFARE [;] 1726[10]

Chapter 195

NARCOTIC DRUG ACT

Sec.
195.010 Definitions
195.020 Manufacture, sale, possession, of narcotic drugs prohibited
195.030 License necessary for manufacture, sale
195.040 License issued by division of health–revocation–appeal
195.050 Licensee may sell narcotic drugs on official written orders, to whom
195.060 Apothecary may sell narcotic drugs on written prescription–records
195.070 Who may prescribe narcotic drugs–return of unused drugs
195.080 Exemptions–conditions of exemption

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CROSS REFERENCES

Adulteration or misbranding of drugs, prohibited, RSMo 196.015
New drugs, limitation on sale, RSMo 196.105
Regulation of sale of poisons, RSMo 338.090

195.010. Definitions.–The following words and phrases, as used in this chapter, shall have the following meanings, unless the context otherwise requires:

(1) **"Person"** includes any corporation, association, copartnership, or one or more individuals;

(2) **"Physician"** means a person authorized by law to practice medicine in this state and any other person authorized by law to treat sick and injured human beings in this state and to use narcotic drugs in connection with such treatment;

{17}
1727 [;] NARCOTIC DRUG ACT [;] §195.030[11]

(3) **"Dentist"** means a person authorized by law to practice dentistry in this state;

(4) **"Veterinarian"** means a person authorized by law to practice veterinary medicine in this state;

(5) **"Manufacturer"** means a person who by compounding, mixing, cultivating, growing, or other process, produces or prepares narcotic drugs, but does not include an apothecary who compounds narcotic drugs to be sold or dispensed on prescriptions;

(6) **"Wholesaler"** means a person who supplies narcotic drugs that he himself has not produced nor prepared, on official written orders, but not on prescriptions;

(7) **"Apothecary"** means a licensed pharmacist as defined by the laws of this state, and, where the context so requires, the owner of

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a store or other place of business where narcotic drugs are compounded or dispensed by a licensed pharmacist; but nothing in this chapter shall be construed as conferring on a person who is not registered nor licensed as a pharmacist any authority, right, or privilege, that is not granted to him by the pharmacy laws of this state;

(8) **"Hospital"** means an institution for the care and treatment of the sick and injured, approved by the division of health if operated by and for medical physicians or by the state board of osteopathic registration and examination, if operated by and for osteopathic physicians, as proper to be intrusted with the custody of narcotic drugs and the professional use of narcotic drugs under the direction of a physician, dentist or veterinarian;

(9) **"Laboratory"** means a laboratory approved by the division of health as proper to be entrusted with the custody of narcotic drugs and the use of narcotic drugs for scientific and medical purposes and for purposes of instruction;

(10) **"Sale"** includes barter, exchange, or gift, or offer therefor, and each such transaction made by any person, whether as principal, proprietor, agent, servant, or employee;

(11) **"Coca leaves"** includes cocaine and any compound, manufacture, salt, derivative, mixture, or preparation of coca leaves, except derivatives of coca leaves which do not contain cocaine, ecgonine, or substances from which cocaine or ecgonine may be synthetized or made;

(12) **"Isonipecaine"** means the substance identified chemically as 1 methyl-4pheny-

piperidene-4 carboxylic acid ethyl ester, or any salt thereof by whatever trade name identified;

(13) **"Opium"** includes morphine, codeine, and heroin, and any compound, manufacture, salt, derivative, mixture, or preparation of opium, but does not include apomorphine or any of its salts;

(14) **"Narcotic drugs"** means coca leaves, isonipecaine and opium and every substance neither chemically nor physically distinguishable from them;

(15) **"Federal narcotic laws"** means the laws of the United States relating to opium, coca leaves, and other narcotic drugs;

(16) **"Official written order"** means an order written on a form provided for that purpose by the United States commissioner of narcotics, under any laws of the United States making provision therefor, if such order forms are authorized and required by federal law, and if no such order form is provided, then on an official form provided for that purpose by the division of health;

(17) **"Dispense"** includes distribute, leave with, give away, dispose of, or deliver;

(18) **"Registry number"** means the number assigned to each person registered under the federal narcotic laws. (9832, A. L. 1945 p. 957)

195.020. **Manufacture, sale, possession, of narcotic drugs – prohibited.** – It shall be unlawful for any person to manufacture, possess, have under his control, sell, prescribe,

administer, dispense, or compound any narcotic drug, except as authorized in this chapter. (9833)

{18}

1733 [;] NARCOTIC DRUG ACT [;] §195.210[12]

195.210. Prosecution prohibited, when. – No person shall be prosecuted for a violation of any provision of this chapter if such person has been acquitted or convicted under the federal narcotic laws of the same act or omission which, it is alleged, constitutes a violation of this chapter. (9852).

{19}

1811 [;] §195.010[13]

Chapter 195

DRUG REGULATIONS

NARCOTIC DRUG ACT

Sec.
195.010 Definitions
195.020 Illicit manufacture, sale, possession–addiction–possession of apparatus for use
195.025 Transportation of drugs prohibited terms–defined
195.030 License necessary for manufacture, sale

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HYPNOTIC, SOMNIFACIENT AND STIMULATING DRUGS

CROSS REFERENCES

Adulteration or misbranding of drugs, prohibited, RSMo 196.015
Marijuana plant to be destroyed, RSMo 263.250
New drugs, limitation on sale, RSMo 196.105
Regulation of sale of poisons, RSMo 338.090

NARCOTIC DRUG ACT

195.010. Definitions.–The following words and phrases, as used in this law, have the following meanings, unless the context otherwise requires:

(1) **"Addict"** means a person who habitually uses one or more narcotic drugs to such an extent as to create a tolerance for such drugs, and who does not have a medical need for such drugs;

(2) **"Amidone"** means the substance identified chemically as 4, 4-Diphenyl-6-

Dimethylamino-Heptanone-3, or any salt or form thereof, by whatever trade name designated;

(3) **"Apothecary"** means a licensed pharmacist as defined by the laws of this state, and, where the context so requires the owner of a store or other place of business where narcotic drugs are compounded or dispensed by a licensed pharmacist; but nothing in this law shall be construed as conferring on a person who is not registered nor licensed as a pharmacist any authority, right, or privilege, that is not granted to him by the pharmacy laws of this state;

(4) **"Bemidone"** means the substance identified chemically as 1-methyl-4-meta-hydroxy-phenyl-piperidine-4-carboxylic acid ethyl ester, or any salt or form thereof, by whatever trade name designated;

(5) **"Cannabis"** includes all part of the plant Cannabis Sativa L. whether growing or not; the seeds thereof; the resin extracted from any part of such plant, and every compound, manufacture, salt, derivative, mixture or preparation of such plant, its seeds, or resin; but shall not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination;

(6) **"CB-11"** means the substance

identified chemically as 6-morpholino-4, 4-diphenyl-3-heptanone (also known as Heptazone or Heptalgin), or any salt or form thereof, by whatever trade name designated;

(7) **"Coca leaves"** includes cocaine and any compound, manufacture, salt, derivative, mixture, or preparation of coca leaves, except derivatives of coca leaves which do not contain cocaine, ecgonine, or substances from which cocaine or ecgonine may be synthetized or made;

(8) **"Dentist"** means a person authorized by law to practice dentistry in this state;

{20}

§195.010 [;] PUBLIC HEALTH AND WELFARE [;] 1812[14]

(9) **"Dispense"** includes distribute, leave with, give away, dispose of, or deliver;

(10) **"Federal narcotic laws"** means the laws of the United States relating to opium, coca leaves, and other narcotic drugs;

(11) **"Hospital"** means a place or institution devoted primarily to the purpose of providing facilities for the diagnosis, care or treatment of sick, injured, or handicapped individuals and licensed by the division of health of Missouri in keeping with the requirements of the "Hospital Licensing Law";

(12) **"Isoamidone"** means the substance identified chemically as 4, 4-diphenyl-5-methyl-

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6-dimethylaminohexanone-3, or any salt or form thereof, by whatever trade name designated;

(13) **"Isonipecaine"** means the substance identified chemically as 1-methyl-4phenyl-piperidene-4-carboxylic acid ethyl ester, or any salt or form thereof, by whatever trade name designated;

(14) **"Keto-bemidone"** means the substance identified chemically as 4-(3-hydroxy-phenyl)-1-methyl-4-piperidyl ethyl ketone hydrochloride, or any salt or form thereof, by whatever trade name designated;

(15) **"Laboratory"** means a laboratory approved by
the division of health as proper to be entrusted with the custody of narcotic drugs and the use of narcotic drugs for scientific and medical purposes and for purposes of instruction;

(16) **"Manufacturer"** means a person who by compounding, mixing, cultivating, growing, planting, protecting, harvesting, curing, or other process, produces or prepares narcotic drugs, but does not include an apothecary who compounds narcotic drugs to be sold or dispensed on prescriptions;

(17) **"Narcotic drugs"** means amidone, bemidone, cannabis, CB-11 (also known as heptazone or heptalgin), coca leaves, isoamidone, isonipecaine, keto-bemidone, N.I.H.-2933, N.I.H.-2953, NU-1196 (also known as Nisentil), NU-1779, NU-1932, NU-2206 and opium and every substance neither chemically nor physically distinguishable from them and any

other drugs to which the federal laws relating to narcotic drugs may now apply.

(18) **"N.I.H.-2933"** means the substance identified chemically as 6-dimethylamino-4, 4-diphenyl-3-heptanol, or any salt or form thereof, by whatever trade name designated;

(19) **"N.I.H.-2953"** means the substance identified chemically as 6-dimethylamino-4, 4-diphenyl-3-acetoxyheptane, or any salt or form thereof, by whatever trade name designated;

(20) **"NU-1196"** means the substance identified chemically as alpha-1, 3-dimethyl-4-phenyl-4-propionoxy piperidine (also known as Nisentil), or any salt or form thereof, by whatever trade name designated;

(21) **"NU-1779"** means the substance identified chemically as beta-1, 3-dimethyl-4-phenyl-4-propionoxy piperidine, or any salt or form thereof, by whatever trade name designated;

(22) **"NU-1932"** means the substance identified chemically as beta-1-methyl-3-ethyl-4-phenyl-4-propionoxy piperidine, or any salt or form thereof, by whatever trade name designated;

(23) **"NU-2206"** means the substance identified chemically as 3-hydroxyl-N-methyl-morphinan, or any salt or form thereof, by whatever trade name designated;

(24) **"Official written order"** means an order written on a form provided for that purpose by the United States commissioner of narcotics, under any laws of the United States making provision therefor, if such order forms are

authorized and required by federal law, and if no such order form is provided, then on an official form provided for that purpose by the division of health;

(25) **"Opium"** includes morphine, codeine, and heroin, and any compound, manufacture, salt, derivative, mixture, or preparation of opium, but does not include apomorphine or any of its salts;

(26) **"Person"** includes any corporation, association, copartnership, or one or more individuals;

(27) **"Physician"** means a person licensed by the state of Missouri to practice medicine or osteopathy;

(28) **"Registry number"** means the number assigned to each person registered under the federal narcotic laws.

(29) **"Sale"** includes barter, exchange, or gift, or offer therefor, and each such transaction made by any person, whether as principal, proprietor, agent, servant or employee;

{21}
1813 [;] DRUG REGULATIONS [;] §195.040[15]

(30) **"Veterinarian"** means a person authorized by law to practice veterinary medicine in this state;

(31) **"Wholesaler"** means a person who supplies narcotic drugs that he himself has not

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[15] Said information appears across the top of the page.

produced nor prepared, on official written orders, but not on prescriptions.
(RSMo 1939 §9832, A. L. 1945 p. 957, A. L. 1953 p. 619, A. L. 1957 p. 679)

195.020. Illicit manufacture, sale, possession–addiction–possession of apparatus for use.–It is unlawful for any person to manufacture, possess, have under his control, sell, prescribe, administer, dispense, or compound any narcotic drug, except as authorized in this law, or to possess any apparatus, device or instrument for the unauthorized use of narcotic drugs or to be or become addicted to any narcotic drug.
(RSMo 1939 §9833, A. L. 1953 p. 628, A. L. 1957 p. 679)

{22}

§195.210 [;] PUBLIC HEALTH AND WELFARE [;] 1822[16]

195.210. Prosecution prohibited, when. No person shall be prosecuted for a violation of any provision of this law if such person has been acquitted or convicted under the federal narcotic laws of the same act or omission which, it is alleged, constitutes a violation of this law.
(RSMo 1939 §9852)

HYPNOTIC, SOMNIFACIENT AND STIMULATING DRUGS

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[16] Said information appears across the top of the page.

195.220. Definitions.–As used in sections 195.220 to 195.270 the following terms mean:

(1) **"Barbiturate",** the salts and derivatives of barbituric acid or compounds, preparations or mixtures thereof which have a hypnotic or somnifacient effect on the central nervous system of a human or animal;

(2) **"Stimulant",** amphetamine or any of its derivatives which have an exciting effect on the central nervous system of a human or animal.

(L. 1959 H. B. 370 §1)

{23}

1509 [;] §195.010[17]

Chapter 195

DRUG REGULATIONS

NARCOTIC DRUG ACT

Sec.

---

[17] Said information appears across the top of the page.

195.050 Licensee may sell narcotic drugs on official written orders, to whom.
195.060 Apothecary may sell narcotic drugs on prescription–records.
195.070 Who may prescribe narcotic drugs–return of unused drugs.
195.080 Exemptions–conditions of exemption.
195.090 Records kept of drugs received, administered, dispensed, or used other than by prescription.
195.100 Label requirements.
195.110 Possession lawful only if kept in original container.
195.120 Common carriers or warehousemen exempt from certain provisions of law.
195.130 Common nuisance defined.
195.135 Search warrants–seizure of narcotics.
195.140 Illicit drugs and apparatus forfeited–disposition.
195.145 Forfeiture of vehicles or craft–action to enforce forfeiture–sale–appeal–duties of officers.
195.150 Procedure upon conviction for violation.
195.160 Prescriptions, orders and records and stocks open for inspection to certain officers.
195.170 Fraud or forgery to procure drugs prohibited.
195.180 Burden of proof of any exception or exemption upon defendant.
195.190 Division of health to enforce law.
195.195 Regulations made by whom, contents.
195.200 Penalties for violation.
195.210 Prosecution prohibited, when.

HALLUCINOGENIC, HYPNOTIC, SOMNIFACIENT AND STIMULATING DRUGS

CROSS REFERENCES

Adulteration or misbranding of drugs, prohibited, RSMo 196.015
Marijuana plant to be destroyed, RSMo 263.250
New drugs, limitation on sale, RSMo 196.105
Regulation of sale of poisons, RSMo 338.090

NARCOTIC DRUG ACT

195.010. Definitions.–The following words and phrases, as used in this law, have the following meanings, unless the context otherwise requires:

(1) **"Addict"** means a person who habitually uses one or more narcotic drugs to such an extent as to create a tolerance for such drugs, and who does not have a medical need for such drugs;

(2) **"Amidone"** means the substance identified chemically as 4, 4-Diphenyl-6-Dimethylamino-Heptanone-3, or any salt or form thereof, by whatever trade name designated;

(3) **"Apothecary"** means a licensed pharmacist as defined by the laws of this state, and, where the context so requires the owner of a store or other place of business where narcotic drugs are compounded or dispensed by a licensed pharmacist; but nothing in this law shall be construed as conferring on a person who is not registered nor licensed as a pharmacist any authority, right, or privilege, that is not granted to him by the pharmacy laws of this state;

(4) **"Bemidone"** means the substance identified chemically as 1-methyl-4-metahydroxy-phenyl-piperidine-4-carboxylic acid ethyl ester, or any salt or form thereof, by whatever trade name designated;

(5) **"Cannabis"** includes all part of the plant Cannabis Sativa L. whether growing or not; the seeds thereof; the resin extracted from any part of such plant, and every compound, manufacture, salt, derivative, mixture or preparation of such plant, its seeds, or resin; but shall not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination;

(6) **"CB-11"** means the substance identified chemically as 6-morpholino-4, 4-diphenyl-3-heptanone (also known as Heptazone or Heptalgin), or any salt or form thereof, by whatever trade name designated;

(7) **"Coca leaves"** includes cocaine and any compound, manufacture, salt, derivative, mixture, or preparation of coca leaves, except derivatives of coca leaves which do not contain cocaine, ecgonine, or substances from which cocaine or ecgonine may be synthetized or made;

(8) **"Dentist"** means a person authorized by law to practice dentistry in this state;

(9) **"Dispense"** includes distribute, leave with, give away, dispose of, or deliver;

(10) **"Federal narcotic laws"** means the laws of the United States relating to opium, coca leaves, and other narcotic drugs;

(11) **"Hospital"** means a place or institution devoted primarily to the purpose of providing facilities for the diagnosis, care or treatment of sick, injured, or handicapped individuals and licensed by the division of health of Missouri in keeping with the requirements of the "Hospital Licensing Law";

(12) **"Isoamidone"** means the substance identified chemically as 4, 4-diphenyl-5-methyl-6-dimethylaminohexanone-3, or any salt or form thereof, by whatever trade name designated;

(13) **"Isonipecaine"** means the substance identified chemically as 1-methyl-4phenyl-piperidene-4-carboxylic acid ethyl ester, or any salt or form thereof, by whatever trade name designated;

{24}

§195.020 [;] PUBLIC HEALTH AND WELFARE [;] 1510[18]

(14) **"Keto-bemidone"** means the substance identified chemically as 4-(3-hydroxy-phenyl)-1-methyl-4-piperidyl ethyl ketone hydrochloride, or any salt or form thereof, by whatever trade name designated;

(15) **"Laboratory"** means a laboratory approved by the division of health as proper to be entrusted with the custody of narcotic drugs and the use of narcotic drugs for scientific and medical purposes and for purposes of instruction;

(16) **"Manufacturer"** means a person who by compounding, mixing, cultivating, growing, planting, protecting, harvesting, curing, or other process, produces or prepares narcotic drugs, but does not include an apothecary who compounds narcotic drugs to be sold or dispensed on prescriptions;

(17) **"Narcotic drugs"** means amidone, bemidone, cannabis, CB-11 (also known as heptazone or heptalgin), coca leaves, isoamidone, isonipecaine, keto-bemidone, N.I.H.-2933, N.I.H.-2953, NU-1196 (also known as Nisentil), NU-1779, NU-1932, NU-2206 and opium and every substance neither chemically nor physically distinguishable from them and any other drugs to which the federal laws relating to narcotic drugs may now apply.

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[18] Said information appears across the top of the page.

(18) **"N.I.H.-2933"** means the substance identified chemically as 6-dimethylamino-4, 4-diphenyl-3-heptanol, or any salt or form thereof, by whatever trade name designated;

(19) **"N.I.H.-2953"** means the substance identified chemically as 6-dimethylamino-4, 4-diphenyl-3-acetoxyheptane, or any salt or form thereof, by whatever trade name designated;

(20) **"NU-1196"** means the substance identified chemically as alpha-1, 3-dimethyl-4-phenyl-4-propionoxy piperidine (also known as Nisentil), or any salt or form thereof, by whatever trade name designated;

(21) **"NU-1779"** means the substance identified chemically as beta-1, 3-dimethyl-4-phenyl-4-propionoxy piperidine, or any salt or form thereof, by whatever trade name designated;

(22) **"NU-1932"** means the substance identified chemically as beta-1-methyl-3-ethyl-4-phenyl-4-propionoxy piperidine, or any salt or form thereof, by whatever trade name designated;

(23) **"NU-2206"** means the substance identified chemically as 3-hydroxyl-N-methyl-morphinan, or any salt or form thereof, by whatever trade name designated;

(24) **"Official written order"** means an order written on a form provided for that purpose by the United States commissioner of narcotics, under any laws of the United States making provision therefor, if such order forms are authorized and required by federal law, and if no such order form is provided, then on an official

form provided for that purpose by the division of health;

(25) **"Opium"** includes morphine, codeine, and heroin, and any compound, manufacture, salt, derivative, mixture, or preparation of opium, but does not include apomorphine or any of its salts;

(26) **"Person"** includes any corporation, association, copartnership, or one or more individuals;

(27) **"Physician"** means a person licensed by the state of Missouri to practice medicine or osteopathy;

(28) **"Registry number"** means the number assigned to each person registered under the federal narcotic laws.

(29) **"Sale"** includes barter, exchange, or gift, or offer therefor, and each such transaction made by any person, whether as principal, proprietor, agent, servant or employee;

(30) **"Veterinarian"** means a person authorized by law to practice veterinary medicine in this state;

(31) **"Wholesaler"** means a person who supplies narcotic drugs that he himself has not produced nor prepared, on official written orders, but not on prescriptions.

(RSMo 1939 §9832, A. L. 1945 p. 957, A. L. 1953 p. 619, A. L. 1957 p. 679)

(1967) Evidence sufficient to support a conviction of illegally selling marijuana. State v. Rice (Mo.), 419 S.W. (2d) 30.

195.020. Unlawful manufacture, sale, possession, prescription–possession of apparatus for use of drugs.–It is unlawful for any person to manufacture, possess, have under his control, sell, prescribe, administer, dispense, or compound any narcotic drug, except as authorized in this law, or to possess any apparatus, device or instrument for the unauthorized use of narcotic drugs.

{25}
1517 [;] DRUG REGULATIONS [;] §195.210[19]

195.210. Prosecution prohibited, when.–No person shall be prosecuted for a violation of any provision of this law if such person has been acquitted or convicted under the federal narcotic laws of the same act or omission which, it is alleged, constitutes a violation of this law.
(RSMo 1939 §9852)

[19] Said information appears across the top of the page.

Appendix J

Exhibit D to the Amended Motion to Dismiss with Table of Contents

[El]ectronically Filed – Warren – June 17, 2019 –11:49 AM[1]

{26}[2]

Missouri's medical marijuana election information[3]

Table of Contents

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[1] Said electronic filing information appears vertically along the right side of all pages beginning at the top and in light blue lettering.

[2] Exhibit sticker appears to the right and page numbers are handwritten and in brackets {} herein.

[3] The information herein was obtained via the Missouri Secretary of State's website. The link or hyperlink is not listed pursuant to Rule 103.04(b).

{27}

STATE OF MISSOURI[4]
Office of Secretary of State

CERTIFICATE OF SUFFICIENCY OF PETITION

STATE OF MISSOURI

ss.

SECRETARY OF STATE

I, John R. Ashcroft, Secretary of State of Missouri, do hereby certify that my office has examined for compliance with the Missouri Constitution and Chapter 116, RSMo, the initiative petition submitted by Sheila Dundon with the following official ballot title:

Shall the Missouri Constitution be amended to:

- allow the use of marijuana for medical purposes, and create regulations and licensing/certification procedures for marijuana and marijuana facilities;
- impose a 4 percent tax on the retail sale of marijuana; and
- use funds from these taxes for health and care facilities for military veterans by the Missouri Veterans Commission and to

[4] To the left appears oval picture of capitol.

> administer the program to license/certify and regulate marijuana and marijuana facilities?
>
> This proposal is estimated to generate annual taxes
> and fees of $18 million for state operating costs and veterans programs, and $6 million for local governments. Annual state operating costs are estimated to be $7 million.

I further certify that this petition contains a sufficient number of valid signatures to comply with the Constitution of Missouri and Chapter 116, RSMo. Therefore, this initiative petition shall be placed on the ballot at the November 6, 2018 General Election.

> IN TESTIMONY WHEREOF, I hereunto set my hand and affix the seal of my office in the City of Jefferson, State of Missouri, on the 2nd day of August 2018.
>
> /s/ Jay Aschcroft
>
> Secretary of State[5]

[5] To the left appears the seal and underneath it is the following information: Comm. 27 (01/2014).

{28}

John R. Ashcroft[6]
Secretary of State
State of Missouri

Constitutional Amendment to Article X[IV] Relating to Legalizing Marijuana for Medical Purposes, version 1
2018-051

Congressional District 1: Sufficient
Signatures Needed: 25,572
Total Signatures Submitted: 67,533
Valid Signatures: 33,519

Congressional District 2: Sufficient
Signatures Needed: 33,830
Total Signatures Submitted: 56,604
Valid Signatures: 39,972

Congressional District 3: Sufficient
Signatures Needed: 30,395
Total Signatures Submitted: 50,641
Valid Signatures: 39,008

Congressional District 4: Sufficient
Signatures Needed: 27,103
Total Signatures Submitted: 55,732

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[6] On top appears small image of the state seal; to the left appears the following information: James C. Kirkpatrick[;] State Information Center[;] (573) 751-4936; and to the right appears the following information: Elections Division [;] (573) 751-2301

Valid Signatures: 36,829

Congressional District 5: Sufficient
Signatures Needed: 26,157
Total Signatures Submitted: 117,052
Valid Signatures: 31,109

Congressional District 6: Insufficient
Signatures Needed: 28,607
Total Signatures Submitted: 14,557
Valid Signatures: 11,995

Congressional District 1: Sufficient
Signatures Needed: 27,454
Total Signatures Submitted: 53,210
Valid Signatures: 33,204

Congressional District 1: Insufficient
Signatures Needed: 25,306
Total Signatures Submitted: 7,695
Valid Signatures: 6,066

{29}[7]

2018 Ballot Measures

The following ballot measures have been certified for the *November 6, 2018* general election.

Official Ballot Title
Amendment 1
[full text][8] [icon]
[View Certificate of Sufficiency][9] [icon]
[Proposed by Initiative Petition]

Official Ballot Title:

Shall the Missouri Constitution be amended to:

- change process and criteria for redrawing state legislative districts during reapportionment;
- change limits on campaign contributions that candidates for state legislature can accept from individuals or entities;
- establish a limit on gifts that state legislators, and their employees, can accept from paid lobbyists;

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[7] At the top-left corner appears the date 6/11/2019 and at the top, in the middle, appears 2018 Ballot Measures; and at the bottom appears link and 1/7.
[8] Words are in light blue lettering.
[9] Words are in light blue lettering.

- prohibit state legislators, and their employees, from serving as paid lobbyists for a period of time;
- prohibit political fundraising by candidates for or members of the state legislature on State property; and
- require legislative records and proceedings to be open to the public?

State governmental entities estimate annual operating costs may increase by $189,000. Local governmental entities expect no fiscal impact.

Fair Ballot Language:

A **"yes"** vote will amend the Missouri Constitution to change the process and criteria for redrawing state legislative district boundaries during reapportionment (redistricting). Currently, bipartisan house and senate commissions redraw boundaries and those maps are adopted if 70% of the commissioners approve the maps. This amendment has a state demographer chosen from a panel selected by the state auditor redraw the boundaries and submit those maps to the house and senate commissions. This amendment would then allow changes to the demographer's maps only if 70% of the commissioners vote to make changes and do so within two months after receiving the maps from the state demographer. The amendment also reduces the limits on campaign contributions that candidates for state senator or state

representative can accept from individuals or entities by $100 per election for a senate candidate and $500 for a house candidate. The amendment creates a $5 limit on gifts that state legislators and their employees can accept from paid lobbyists or the lobbyists' clients, and prohibits state legislators and their employees from serving as paid lobbyists for a period of two years after the end of their last legislative session. The amendment prohibits political fundraising by candidates for or members of the state legislature on State property. The amendment further requires all legislative records and proceedings to be subject to the state open meetings and records law (Missouri Sunshine Law).

A **"no"** vote will not amend the Missouri Constitution regarding redistricting, campaign contributions, lobbyist gifts, limits on lobbying after political service, fundraising locations, and legislative records and proceedings.

{30}[10]

If passed, this measure will have no impact on taxes.

Official Ballot Title

Amendment 2

[full text][11] [icon]

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[10] At the top-left corner appears the date 6/11/2019 and at the top, in the middle, appears 2018 Ballot Measures; and at the bottom appears link and 2/7.

[11] Words appear in light blue lettering.

[View Certificate of Sufficiency][12] [icon]
[Proposed by Initiative Petition]

Official Ballot Title:

Shall the Missouri Constitution be amended to:

- allow the use of marijuana for medical purposes, and create regulations and licensing/certification procedures for marijuana and marijuana facilities;
- impose a 4 percent tax on the retail sale of marijuana; and
- use funds from these taxes for health and care services for military veterans by the Missouri Veterans Commission and to administer the program to license/certify and regulate marijuana and marijuana facilities?

This proposal is estimated to generate annual taxes and fees of $18 million for state operating costs and veterans programs, and $6 million for local governments. Annual state operating costs are estimated to be $7 million.

Fair Ballot Language:

A **"yes"** vote will amend the Missouri Constitution to allow the use of marijuana for medical purposes under state laws. This

[12] Words appear in light blue lettering.

amendment does not change federal law, which makes marijuana possession, sale and cultivation a federal offense. This amendment creates regulations and licensing procedures for medical marijuana and medical marijuana facilities — dispensary, cultivation, testing and marijuana-infused product manufacturing facilities. This amendment creates licensing fees for such facilities. This amendment will impose a 4 percent tax on the retail sale of marijuana for medical purposes by dispensary facilities. The funds from the license fees and tax will be used by the Missouri Veterans Commission for health and care services for military veterans, and by the Department of Health and Senior Services to administer the program to license/certify and regulate marijuana and marijuana facilities.

A **"no"** vote will not amend the Missouri Constitution as to the use of marijuana.

If passed, this measure will impose a 4 percent retail sales tax on marijuana for medical purposes.

Official Ballot Title
Amendment 3
[full text][13] [icon]
[View Certificate of Sufficiency][14] [icon]
[Proposed by Initiative Petition]

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[13] Words appear in light blue lettering.
[14] Words appear in light blue lettering.

{31}[15]

Pick a Race Results

State of Missouri – State of Missouri – General Election, November 06, 2018

Official Results
As announced by the Board of State Canvassers on November 30, 2018

Choose election type: State of Missouri – General Election, November 06, 2018
Choose Election

Choose Race: Constitutional Amendment No. 2 [;] Submit

Office/ Candidate Name	Party	Votes	% of Votes
Constitutional Amendment No. 2		**3256 of 3256 Precincts Reported**	
YES		1,583,227	65.589%
NO		830,631	34.411%
Total Votes: 2,413,858			

[15] At the top-left corner appears the date 6/11/2019 and at the top, in the middle, appears State of Missouri – Election Night Results and immediately underneath is a 2 x 2 box which is omitted; and at the bottom appears link and 1/3.

County	YES	NO
Adair	5,158	3,454
Andrew	4,275	3,258
Atchison	1,275	935
Audrain	5,067	3,536
Barry	6,586	5,610
Barton	2,243	2,732
Bates	3,944	2,731
Benton	4,720	3,556
Bollinger	2,315	2,427
Boone	53,819	20,229
Buchanan	19,594	10,482
Butler	8,032	5,714
Caldwell	2,326	1,437
Callaway	10,427	6,556
Camden	11,993	7,841
Cape Girardeau	18,459	13,582
Carroll	1,995	1,712
Carter	1,336	993
Cass	29,979	13,728
Cedar	2,593	2,804
Chariton	1,657	1,657
Christian	20,219	15,989
Clark	1,383	1,278
Clinton	5,293	3,297
Cole	18,436	14,773
Cooper	4,006	2,814
Crawford	5,004	3,455

Appendix K

Exhibit E to the Amended Motion to Dismiss

[El]ectronically Filed – Warren – June 17, 2019 –11:49 AM[1]

{32}[2]

States with legalized medical marijuana

1. Alaska:	Alaska Stat. §§ 17.37.010 – .080
2. Arizona:	Ariz. Rev. Stat. §§ 36-2801 – 2819
3. Arkansas:	Ark. Const. amend. 98
4. California:	Cal. Health & Saf. Code, § 11362.5
5. Colorado:	Colo. Const. art. XVIII, § 14
6. Connecticut:	Conn. Gen. Stat. §§ 21a-408 – 429
7. Delaware:	Del. Code Ann. tit. 16, §§ 4901A – 4928A
8. Florida:	Fla. Stat. § 381.986
9. Hawaii:	Haw. Rev. Stat. §§ 329-121 – 131
10. Illinois:	410 Ill. Comp. Stat. Ann. 130/1 – 999

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[1] Said electronic filing information appears vertically along the right side of all pages beginning at the top and in light blue lettering.

[2] Exhibit sticker appears to the right and page numbers are handwritten and in brackets {} herein.

11. Louisiana:	La. Rev. Stat. Ann. §§ 40:1046 – 40:1049
12. Maine:	Me. Rev. Stat. Ann. tit. 22, §§ 2421 – 2430-H
13. Maryland:	Md. Code Ann. Health-Gen. §§ 13-3301 – 3316
14. Massachusetts:	Mass. Gen. Laws ch. 94I, §§ 1 – 8
15. Michigan:	Mich. Comp. Laws §§ 333.26421 – .26430
16. Minnesota:	Minn. Stat. §§ 152.22 – .37
17. Missouri:	Mo. Const. art. XIV
18. Montana:	Mont. Code Ann. §§ 50-46-301 – 345
19. Nevada:	Nev. Rev. Stat. §§ 453A.010 – .810
20. New Hampshire:	N.H. Rev. Stat. Ann. §§ 126-X:1 – :12

{33}

21. New Jerssey:	N.J. Stat. Ann. §§ 24:6I-1 – 16
22. New Mexico:	N.M. Stat. Ann. §§ 26-2B-1 – 7
23. New York:	N.Y. C.P.L.R., Pub. Health §§ 3360 – 3369-e
24. North Dakota:	N.D. Cent. Code §§ 19-24.1-01 – 40
25. Ohio:	Ohio Rev. Code Ann. §§ 3796.01 – .30

26. Oklahoma:	Okla. Stat. tit. 63, §§ 420 – 426
27. Oregon:	Or. Rev. Stat. §§ 475B.785 – .949
28. Pennsylvania:	35 Pa. Cons. Stat. §§ 10231.101 – .2110
29. Rhode Island:	R.I. Gen. Laws §§ 21-28.6-1 – 17
30. Utah:	Utah Code Ann. §§ 26-61a-101 – 703
31. Vermont:	Vt. Stat. Ann. tit. 18, §§ 4472 – 4474m
32. Washington:	Wash. Rev. Code §§ 69.51A.005 – .903
33. West Virginia:	W. Va. Code §§ 16A-1-1 – 16-1

Appendix L

Exhibit F to the Amended Motion to Dismiss

[El]ectronically Filed – Warren – June 17, 2019 –11:49 AM[1]

{34}[2]

States where the legislature enacted medical marijuana (not an exhaustive list)

1. Rhode Island:
   S.B. 0710, 2005 Gen. Assemb., Jan. Sess. (R.I. 2005); 2005 R.I. Pub. Laws 442

2. New Mexico:
   S.B. 523, 48th Leg., Reg. Sess. (N.M. 2007); 2007 N.M. Laws 210

3. New Jersey:
   S.B. 119, 213th Leg., Reg. Sess. (N.J. 2008); 2009 N.J. Laws 307

4. Connecticut:
   H.B. 5389, 2012 Gen. Assemb., Reg. Sess. (Conn. 2012); 2012 Conn. Acts 55 (Reg. Sess.)

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[1] Said electronic filing information appears vertically along the right side beginning at the top and in light blue lettering.

[2] Exhibit sticker appears to the right and page number is handwritten and in brackets {} herein.

5. New York:
   Assemb. B. 6357, 2013-2014 Gen. Assemb., Reg. Sess. (N.Y. 2013); 2014 N.Y. Laws 90

6. Illinois:
   H.B. 1, 98th Gen. Assemb., 2013 Sess. (Ill. 2013); 2013 Ill. Laws 122

7. New Hampshire:
   H.B. 573, 2013 Gen. Court, Reg. Sess. (N.H. 2013); 2013 N.H. Laws 242

8. Maryland:
   H.B. 881, 431st Gen. Assemb., Reg. Sess. (Md. 2014); 2014 Md. Laws 240

9. Minnesota:
   S.B. 2470, 88th Leg., Reg. Sess. (Minn. 2014); 2014 Minn. Laws 311

10. Pennsylvania:
    S.B. 3, 2015-2016 Gen. Assemb., Reg. Sess. (Pa. 2015); 2016 Pa. Laws 16

Appendix M

Exhibit G to the Amended Motion to Dismiss

{35}[3]

Missouri's caselaw

The first Missouri opinion to mention the statutory criteria includes a dissent that predated all legalized medical marijuana and appears to be the first opinion in our nation not to interpret the word "no" "out of the statute." State v. Mitchell, 563 S.W.2d 18, 36 (Mo. banc 1978); see ground 4, infra; Morales v. TWA, 504 U.S. 374, 385 (1992). Each ground, excluding ground 8, is a case and the cases appear chronologically.

Defendant states the following eight grounds:

1. State v. Stock, 463 S.W.2d 889 (Mo. banc 1971). The context was an appeal. Id. at 890 (stating, "[a]ppellant, Frederick Louis Stock, has appealed from the judgment entered

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[1] Said information appears at the top-right of all pages.

[2] Said electronic filing information appears vertically along the right side of all pages beginning at the top and in light blue lettering.

[3] Exhibit sticker appears to the right and page numbers are handwritten and in brackets {} herein.

pursuant to jury verdict wherein he was found guilty of making an unlawful sale of a narcotic drug, marijuana[.]").

The defendant claimed he was "denied equal protection of the law because the punishment for the sale of a hallucinogenic drug is not as harsh as the penalty for the sale of a narcotic drug." Id. at 895. The claim was also unsupported. Id. (stating, "[n]o supporting authority is cited.").

> [T]he legislature can, if it deems it advisable to control the unlawful traffic in marijuana, classify marijuana as it has done so. It is not bound by the dictionary or chemical definition of a narcotic drug. It may also impose a more harsh penalty for the sale of marijuana when there is a reasonable legislative basis for doing so.

Id.

{36}

Argument

Stock should be deemed not relevant because the context was pre-CSA, equal protection, and sentencing. Id. However, it does establish a precedent in this area to not reach the merits, regardless of the actual claim, and uphold the General Assembly's classification of marijuana. The pre-CSA statutory definition for a narcotic drug did not list specific criteria that a drug must meet in order to be listed as such and that circumstance is completely different

from the CSA. See sections 195.010(17), RSMo 1959 or exhibit C, p. 20 (definition 17); 195.010(17), RSMo 1969 or exhibit C, p. 24 (definition 17); 195.017.1.

2. State v. Golightly, 495 S.W.2d 746 (Mo. App. W.D. 1973). The context was an appeal. Id. at 747 (stating, "[a]ppellant was convicted by the verdict of a jury of the commission of the crime of selling marijuana[.]").

The defendant "is asking this court to recognize and declare that marijuana is not a narcotic drug nor is it dangerous and addictive to the extent that its seller should be punished with the same severity and harshness as the seller of heroin, cocaine, morphine, etc." Id. at 753.

"The contention is answered by the established law in this state that it is a legislative function to define and punish crime, as set forth in State v. Stock, 463 S.W.2d 889, 895 [Mo. 1971]." Id.

Argument

Golightly should be deemed not relevant because the context was pre-CSA and sentencing. Id.

{37}

In addition, considering that the pre-CSA statute listed the narcotic drugs as opposed to providing criteria with which to interpret and assess a drug's constitutionality, it would seem to have been impossible for any court to grant the relief requested. See sections 195.010(17), RSMo 1959 or exhibit C, p. 20 (definition 17); 195.010(17), RSMo 1969 or exhibit C, p. 24 (definition 17).

3. State v. Burrow, 514 S.W.2d 585 (Mo. banc 1974). The context was an appeal, sentencing, and due process and equal protection. Id. at 586 (stating, "[a]ppeal from judgment and sentence of five years' imprisonment on jury verdict of guilty to charge of selling marihuana."); Id. at 590 (stating,

> "The continued classification of marihuana with the 'narcotic drugs' rather than with the 'hallucinogenic, hypnotic, somnifacient and stimulating drugs' with the same mandatory minimum penalties for a first conviction for sale of marihuana to an adult, violates defendant's rights under the due process and equal protection clauses of the Missouri and United States Constitutions."

).

Specifically, the defendant claimed that "the effects on the user of marihuana and the so-called 'hard' drugs differ widely and that the effects of marihuana are less severe or dangerous than the 'hallucinogenic, hypnotic, somnifacient and stimulating drugs,' dealt with in Schedules III, IV and V of the Missouri law." Id.

The court quoted extensively from a pre-CSA Arizona case. Id. at 591-592; State v. Wadsworth, 505 P.2d 230 (Ariz. 1973).

{38}

The defendant "has not sustained his burden of demonstrating a lack of rational basis

for the legislative classification here attacked." Burrow, 514 S.W.2d at 593. "In this state, fixing of criminal punishment is a legislative matter. State v. Golightly, 495 S.W.2d 746, 753 [4-6] (Mo. App. 1973). The authority of the General Assembly is in no manner derivative from federal legislation." Id.

Argument

Burrow should be deemed not relevant because the statutory criteria was not mentioned and the context was sentencing. Id. at 590; Id. at 593. To the extent the defendant claimed that the Due Process Clauses were involved, Defendant's second major issue was not present. See amended motion to dismiss, second major issue, grounds 28-42.

4. State v. Mitchell, 563 S.W.2d 18 (Mo. banc 1978). The context was an appeal, equal protection, and sentencing. Id. at 21 (stating, "appeals from the conviction and sentence of seven years entered on his plea of guilty to a charge of selling marihuana in violation of secs. 195.017 and 195.200, RSMo Supp. 1975."); Id. (stating, "[t]he classification of marihuana in schedule I of sec. 195.017 and the consequent punishment of marihuana offenses as set forth in sec. 195.200 deny appellant equal protection of the law[.]").

"[N]o evidence was submitted by the appellant to the trial court[.]" Id. at 24. One of defendant's equal protection arguments was that "marihuana is less harmful than alcohol and tobacco which are not proscribed." Id. at 25.

{39}

"This argument, however, is without merit. As to alcohol and tobacco, the legislature's decision to prohibit some harmful substances does not thereby constitutionally compel it to regulate or prohibit all harmful substances." Id. (citing to Williamson v. Lee Optical of Oklahoma, Inc., 348 U.S. 483, 489 (1955) and United States v. Kiffer, 477 F.2d 349 (2nd Cir. 1973)).[4]

The defendant had another argument involving the statutory criteria, but the opinion is not clear as to whether this argument was, in fact, based on equal protection. Id. at 26 (stating, "marihuana has been misclassified in schedule I because it does not come within the criteria established by the legislature for those substances[.]"). The argument involving the statutory criteria appears to have been based on "numerous studies which comment on the harmlessness of marihuana[.]" Id. It is not clear from the opinion what part of the statutory criteria was being challenged. Id.

> Although he has directed the court's attention to numerous studies which comment on the harmlessness of marihuana, there are, however, other authorities which take a contrary view regarding the hazards involved in using marihuana. The present

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[4] Williamson is distinguished in the amended motion to dismiss, grounds 35 and 42 and Kiffer is distinguished in exhibit H, ground 2.

> state of knowledge of the effects of marihuana is still incomplete and is marked by much disagreement and controversy.

Id.

{40}

> One of the dissenting opinions states,
>
> It is altogether inappropriate to say of marihuana that the substance "has no accepted medical use in treatment" -- the other quality precedent to proscription under Schedule I of § 195.017. The cannabinoids have had very valuable uses in the treatment of numerous disorders: anorexia nervosa, glaucoma, high blood pressure, leukemia, among others. Soler, Cannabis and the Courts, 6 Conn. L.R. 601, 633 (1974). The legislature of New Mexico has very recently enacted a statute which permits a citizen access to marihuana for certain medicinal purposes such as treatment for glaucoma and as an aid to counteract the nausea of chemotherapy. [Controlled Substance Therapeautic Research Act, House Bill 329 33rd Legislature. Signed by the Governor, February 21, 1978].

Id. at 36 (Charles Shangler, S.J., dissenting).

Argument

Judge Shangler's dissent is relevant for not interpreting the word "no" "out of the statue." Id. (stating, "[i]t is altogether inappropriate to say of marihuana that the substance 'has no accepted medical use in treatment[.]'"); Morales v. TWA, 504 U.S. 374, 385 (1992). The importance of the word "no" may also be demonstrated by considering whether the judge would have made the same interpretation if the word "no" was not in the statutory criteria.

The majority opinion should be deemed not relevant because of the context and the court did not interpret the word "no" or the statutory criteria. In presenting studies on

{41}

the "harmlessness of marihuana" and comparing marijuana to alcohol and tobacco, the defendant presented a debatable issue. Mitchell, 563 S.W.2d at 26. The court deferred to the legislature and cited to United States v. Kiffer, 477 F.2d 349 (2nd Cir. 1973) and State v. Rao, 370 A.2d 1310 (Conn. 1976). Id. (stating, "[i]n light of the fact that we are dealing with a debatable medical issue, we cannot conclude that the legislature acted arbitrarily or irrationally in placing marihuana in schedule I.") (internal citations omitted). Kiffer is distinguished in exhibit H, ground 2 and Rao is listed in exhibit I because it does not mention the statutory criteria.

5. State v. Stallman, 673 S.W.2d 857 (Mo. App. E.D. 1984). The context was an appeal, due process, and equal protection. Id. at 857 (stating,

"[a]ppellant claims on appeal that because the placement of marijuana under Schedule I Controlled Substance was without a rational basis, the trial court erred in overruling his motion to dismiss and in convicting him in violation of his constitutional rights to due process and equal protection of the law."). [a]ppellant was convicted in a court-tried case of cultivating marijuana[.]").

The court relied on Mitchell. Id. In addition, the court made two statements in support. Id. at 858. One, "circumstances have not changed since the Missouri Supreme Court handed down its decision in Mitchell." Id. Two, the DEA's "report alone provides a rational basis for the statutory classification of marijuana as a Schedule I Controlled Substance[.]" Id. (referring to 44 Fed.Reg. 36, 123 (1979)).

Argument

Stallman should also be deemed not relevant because the statutory criteria was

{42}

not mentioned.

6. State v. McManus, 718 S.W.2d 130 (Mo. banc 1986). The context was an appeal. Id. at 130 (stating, "[a]ppellant questions the validity of section 195.017, RSMo 1978, which classifies marijuana as a Schedule I controlled substance.").

> Appellant contends that section 195.060, RSMo 1978, is fatally inconsistent with section 195.017.1. Section 195.060.1 permits the dispensing of Schedule I controlled

> substances by certain professionals. He claims that if physicians may dispense Schedule I drugs through section 195.060 the finding that they have no accepted medical usefulness in section 195.017 cannot be founded upon a rational basis.

Id. at 131.

"[T]his Court need determine only whether marijuana has an accepted medical use within the meaning of the statute." Id.

> This analysis fails to consider the meaning of the word "accepted" in section 195.017.1. All the evidence, including expert testimony, shows that the medical uses for the THC in marijuana are still in the investigational stage. 47 Fed. Reg. 28,151 (1982). Appellant's expert witness admitted that the medical community as a whole, does not accept the medical usefulness of marijuana.

Id.

Argument

McManus should be deemed not relevant because the word "no" was interpreted

{43}

"out of the statute[]" when the issue was framed as "whether marijuana has an accepted medical use within the meaning of the statute." Morales v. TWA, 504 U.S. 374, 385 (1992); Id. at 131.

7. State v. Cox, 248 S.W.3d 1 (Mo. App. W.D. 2008). The context was an appeal. Id. at 3 (stating, "Cox appeals the circuit court's judgment convicting him of the Class B felony of possessing a controlled substance with the intent to distribute in violation of Section 195.211, RSMo 2000.").

Defendant claimed "Section 563.026, RSMo 2000, makes medical necessity a valid defense to a possession of a controlled substance charge." Id. at 6.

The court relied on the statutory criteria. Id. at 7 (stating, "[t]he General Assembly's classification precluded the circuit court from deeming Cox's use of marijuana as necessary for medical purposes.").

Argument

Cox should be deemed not relevant based on the context and issue. Id.

Argument in conclusion

8. No Missouri opinion has reached the merits of Defendant's three major issues. See amended motion to dismiss. And Judge Shangler's dissenting opinion, which reached the right result, predated all legalized medical marijuana. Mitchell, 563 S.W.2d at 36 (stating, "[i]t is altogether inappropriate to say of marihuana that the substance 'has no accepted medical use in treatment'[.]") (Charles Shangler, S.J., dissenting); People v. Mower, 49 P.3d 1067, 1070 (Cal. 2002) (stating, "[a]t the General Election held on November 5, 1996, the electors approved an initiative statute designated on the ballot as

{44}

Proposition 215 and entitled Medical Use of Marijuana. In pertinent part, the measure added section 11362.5, the Compassionate Use Act of 1996.") (internal citation omitted).

Appendix N

Exhibit H to the Amended Motion to Dismiss

[El]ectronically Filed – Warren – June 17, 2019 –11:49 AM[2]

{45}[3]

Additional caselaw

No federal court or state court outside Missouri has reached the merits of Defendant's three major issues. See amended motion to dismiss. Although the cases herein mention the statutory criteria, they should be deemed substantively irrelevant because they do not interpret the word "no." Each case may have additional factors (including but not limited to an equal protection claim or context, sentencing, or rescheduling) that contribute to its substantive irrelevance. However, four cases are procedurally relevant for purposes of

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[1] Said information appears at the top-right of all pages.

[2] Said electronic filing information appears vertically along the right side of all pages beginning at the top and in light blue lettering. In addition, said exhibit was submitted in three parts and the third part was electronically filed on same day at 11:58 AM.

[3] Exhibit sticker appears to the right and states Part 1 and page numbers are handwritten and in brackets {} herein. Exhibit sticker Part 2 appears at the top of page 54. Exhibit sticker Part 3 appears at the top of page 63.

jurisdiction. See grounds 1, 18, 20, and 22, infra; exhibit A.

Each ground is a case and the cases appear chronologically. Within each ground, where necessary, an argument is provided.

Defendant states the following twenty-two grounds:

1. United States v. Maiden, 355 F. Supp. 743 (D. Conn. 1973). The context was a pretrial motion to dismiss, punishment, and equal protection. Id. at 744-745 (stating, "[t]his motion to dismiss an indictment raises a host of broad constitutional challenges to the criminalization of marijuana."); Id. at 747 (stating, "[t]he premise of defendants' first two contentions is that the Equal Protection Clause requires legislators to scale penalties in proportion to the danger of the conduct penalized."); Id. at 748 (stating, "defendants' third equal protection claim, the arbitrariness of placing marijuana in Schedule I with heroin and other narcotics.").

"In these circumstances the validity of an indictment subjecting defendants to the

{46}

marijuana penalties does not depend on whether the findings required for a Schedule I listing apply to marijuana." Id. (internal footnote omitted).

Argument

The omitted footnote that is referred to in the previous sentence provides an interpretation as to whether the criteria are cumulative, but within that interpretation, there was no interpretation of the word "no." Id. at 748 n.4

(stating, "[d]efendants' attack on whether the findings required for Schedule I apply to marijuana assumes that for each schedule, all three findings must be met."); Id. (stating, "section 202 of the Act, in establishing the three findings for each of the five schedules, does not in terms specify whether the findings are cumulative. 21 U.S.C. § 812. In fact they cannot logically be read as cumulative in all situations.").

In addition, since standing and jurisdiction were not mentioned, it is reasonable to infer that the court found it had jurisdiction and that the defendant had standing.

2. United States v. Kiffer, 477 F.2d 349 (2nd Cir. 1973). The context was an appeal concerning sentencing and rescheduling. Id. at 356 (stating, "[a]ppellants attack their sentences as the product of an irrational system of drug classification. They assert that the statutory penalties are not justified because scientific evidence shows that marihuana is not nearly as dangerous as heroin, and they suggest that marihuana should be classified, if anywhere, in Schedule V.") (internal footnote omitted); Id. (stating, "[i]t is apparently true that there is little or no basis for concluding that marihuana is as dangerous a substance as some of the other drugs included in Schedule I. But the focus of appellants' attack is on the penalty provisions accompanying the schedule[.]").

{47}

> In view of these disparities in the statutory sanctions and the ongoing

> dispute regarding the potential effects of marihuana, we cannot say that its placement in Schedule I is so arbitrary or unreasonable as to render it unconstitutional. Moreover, a final observation is appropriate. The provisions of the Act allowing periodic review of the control and classification of allegedly dangerous substances create a sensible mechanism for dealing with a field in which factual claims are conflicting and the state of scientific knowledge is still growing.

Id. at 356-357.

3. Louisiana Affiliate of NORML v. Guste, 380 F. Supp. 404 (E.D. La. 1974). The context was a civil "suit seeking declaratory and injunctive relief" and equal protection. Id. at 405; Id. (stating, "they allege that the criminalization of the mere possession of marijuana is a violation of the equal protection clause of the Fifth and Fourteenth Amendments which constitutes invidious and arbitrary discrimination since other more potentially harmful substances such as alcohol and cigarettes are not subject to the same control.").

"Plaintiff's causes of actions may be categorized into three general categories: 1) violation of right of privacy; 2) cruel and unusual punishment and 3) violation of equal protection of the laws." Id. at 406.

Right of privacy

The statutory criteria were mentioned in the context of the right to privacy claim. Id. at 408. Plaintiff claimed there were "recent scientific findings and investigations" that

{48}

apparently casted doubt on the statutory criteria. Id. The opinion does not indicate what, if any, were the "recent scientific findings and investigations[.]" Id.

> In order for the court to do this it would be necessary for this court to substitute its judgment based on social, economic, historical and scientific evidence for that of the respective legislatures. The Supreme Court has specifically turned away from such an approach in Ferguson v. Skrupa, 372 U.S. 726, 83 S. Ct. 1028, 10 L. Ed. 2d 93 (1963).

Id.

Equal protection

"Plaintiff alleges that invidious discrimination is present since no rational basis exists for treating marijuana different from cigarettes or alcohol." Id.

"The legislatures, both federal and state, rest their distinction in treatment on their obligation and authority to legislate for the public health and welfare. It is only by substituting a judicial judgment that this is incorrect that these statutes can be overturned, see *Ferguson*, supra." Id.

Argument

Regarding equal protection, plaintiff presented a debatable issue by comparing marijuana to cigarettes and alcohol. Id. The merits were not reached in the privacy claim and the equal protection claim because of Ferguson. Id. Ferguson is distinguished in the amended motion to dismiss. See amended motion to dismiss, second major issue, grounds 34 and 42.

{49}

4. NORML v. Drug Enforcement Administration, 559 F.2d 735 (D.C. Cir. 1977). The context was a petition, rescheduling, and "United States treaty obligations under the Single Convention on Narcotic Drugs[.]" Id. at 737; Id. at 742 (stating, "denied NORML's petition for rescheduling 'in all respects.'") (internal citation omitted).

The "Acting Assistant Secretary for Health[]" stated, in a letter, "there 'is currently no accepted medical use of marihuana in the United States' and that there 'is no approved New Drug Application' for marihuana on file with the Food and Drug Administration of HEW." Id. at 742, 742-743 (internal footnote omitted).

"The one page letter makes conclusory statements without providing a basis for or explanation of its findings." Id. at 749 (internal footnote omitted). "Accordingly, recognizing that it is our obligation as a court to ensure that the agency acts within statutory bounds, we hold that Dr. Cooper's letter was not an adequate substitute for the procedures enumerated in

Section 210(a)-(c)." Id. at 749-750 (internal footnotes omitted).

> However, placement in Schedule I does not appear to flow inevitably from lack of a currently accepted medical use. Like that of Section 201(c), the structure of Section 202(b) contemplates balancing of medical usefulness along with several other considerations, including potential for abuse and danger of dependence. To treat medical use as the controlling factor in classification decisions is to render irrelevant the other "findings" required by Section 202(b). The legislative history of the CSA indicates that medical
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> {50}
>
> use is but one factor to be considered, and by no means the most important one.

Id. at 748 (internal footnotes omitted).

Argument

The above interpretation assumes the statutory criteria is surplusage. Even though Defendant is not contesting the first criteria of "high potential for abuse[]" – a debatable issue that would require expert testimony because there is no unambiguous qualifying word such as "no" – assuming arguendo that marijuana was found to not have a high potential for abuse, then, the remaining criteria would be, in fact, "render[ed] irrelevant" and thus it would be

unconstitutional to classify marijuana in Schedule I. Section 195.071.1; 21 U.S.C. § 812 (b)(1); NORML v. DEA, 559 F.2d at 748; see also exhibit J, ground 8; amended motion to dismiss, surplusage, grounds 57-62.

In addition, according to the court's interpretation of the DEA's scheduling practices, it seems reasonable to infer that the DEA views the statutory criteria as surplusage. Id. at 748 (stating, "[m]oreover, DEA's own scheduling practices support the conclusion that substances lacking medical usefulness need not always be placed in Schedule I.").

5. State v. Vail, 274 N.W.2d 127 (Minn. 1978). The context was an appeal regarding equal protection and rescheduling. Id. at 129 (stating, "[t]his is an appeal from a judgment of the district court[.]"); Id. at 134 (stating, "[t]he second issue raised by the defendant is the equal protection challenge to the statutory classification of marijuana as a Schedule I controlled substance.").

{51}

> In view of the continued debate over possible short- and long-term physical and psychological effects, it cannot fairly be said that continued apprehension and reluctance of the state board of pharmacy to reschedule marijuana is so arbitrary and unreasonable as to render it unconstitutional. Similarly, the fact that Schedule I does not include all substances

> which arguably meet the statutory criteria is not constitutionally fatal.

Id. at 136 (internal footnote omitted).

Argument

Excluding United States v. Kiffer, 477 F.2d 349 (2nd Cir. 1973) and State v. Stock, 463 S.W.2d 889 (Mo. banc 1971), all cases that were cited in support in the above omitted footnote are listed in exhibit I because they do not mention the statutory criteria. Id. at n.15. Kiffer is distinguished in ground two, supra and Stock is distinguished in exhibit G, ground 1.

6. United States v. Miroyan, 577 F.2d 489 (9th Cir. 1978). The context was an appeal. Id. at 491 (stating, "Miroyan and McGinnis appeal from their convictions for several drug-related offenses.").

The defendant claimed marijuana did not meet the statutory criteria. Id. at 495 (stating, "[m]arijuana, argues McGinnis, cannot rationally be deemed to meet the criteria required for a Schedule I substance[.]").

"We need not again engage in the task of passing judgment on Congress' legislative assessment of marijuana." Id. (internal citations omitted). The cases cited in support for not "passing judgment on Congress' legislative assessment of marijuana[]"

{52}

were: United States v. Rogers, 549 F.2d 107 (9th Cir. 1976); United States v. Kiffer, 477 F.2d 349 (2nd Cir. 1973); United States v. Lustig, 555 F.2d 737 (9th Cir. 1977); and United States v.

Rodriquez-Camacho, 468 F.2d 1220 (9th Cir. 1972). Id.; Id.

Argument

Rogers and Rodriquez-Camacho are listed in exhibit I because they do not mention the statutory criteria. Lustig involved cocaine. United States v. Lustig, 555 F.2d 737, 750 (9th Cir. 1977) (stating, "Lustig finally argues that cocaine is improperly classified as a controlled substance, since it is relatively harmless."). Kiffer is distinguished in ground 2, supra.

7. NORML v. Bell, 488 F. Supp. 123 (D. D.C. 1980). The context was a declaratory judgment, equal protection, and punishment. Id. at 125 (stating, "NORML filed this action October 10, 1973, seeking a declaratory judgment[.]"); Id. at 134 (stating, "the classification of marijuana, a relatively harmless drug, as a controlled substance violates equal protection."); Id. (stating, "overinclusive for establishing the same penalties for possession of marijuana as for all other controlled substances and for including marijuana in Schedule I with the more dangerous narcotics and opiates.").

"Given the continuing debate over marijuana, this court must defer to the legislature's judgments on disputed factual issues." Id. at 136. "The continuing questions about marijuana and its effects make the classification rational." Id.

> Even assuming, arguendo, that marijuana does not fall within a literal reading of Schedule I, the classification still is rational.

> Placing marijuana in Schedule I furthered the regulatory purposes of Congress. The statutory
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> {53}
>
> criteria of section 812(b)(1) are guides in determining the schedule to which a drug belongs, but they are not dispositive.

Id. at 140 (internal footnote omitted).

Argument

The court interpreted the statutory criteria to be surplusage when it stated the criteria are merely a guide and not dispositive to scheduling. Id. at 140 (stating, "[t]the statutory criteria of section 812(b)(1) are guides in determining the schedule to which a drug belongs, but they are not dispositive."). However, the interpretative statement is arguably dictum because it is not necessary for the holding that the classification is rational. Id. at 136 (stating, "[t]he continuing questions about marijuana and its effects make the classification rational.").

Also, in comparing marijuana to alcohol and nicotine, NORML presented a debatable issue. Id. at 134 (stating, "underinclusive in failing to include as a controlled substance drugs such as alcohol and nicotine, which satisfy Schedule I criteria[.]"); Id. at 136 (stating, "[g]iven the continuing debate over marijuana, this court must defer to the legislature's judgments on disputed factual issues.").

8. Wolkind v. Selph, 495 F. Supp. 507 (E.D. Va. 1980). The context was habeas corpus

and, in part, sentencing. Id. at 508 (stating, "petitioner filed with this Court a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254."); Id. at 509 (stating, "[t]hat the potential (five to forty year) sentence for possession with intent to distribute marijuana violates the due process and equal protection provisions . . . .").

{54}

> The petitioner offers the reports of several research studies performed to analyze the effects of marijuana use. Essentially, the petitioner's authorities tend to emphasize the perceived benign effects of marijuana and the lack of serious consequence attendant to its use. Respondent's authorities identify negative or detrimental consequences flowing from the use of marijuana. This Court has no legislative power so it need not weigh the authorities cited by either side to the end that wise legislation be adopted. The court needs only to conclude that it is neither arbitrary nor irrational for the General Assembly of Virginia to seek to punish severely trade in marijuana. Petitioner has not met his burden of proving the irrationality of the legislative scheme. The scientific and medical uncertainty concerning the effects

> of marijuana usage are clearly unresolved.

Id. at 511.

"Petitioner further challenges the classification of marijuana by the Virginia Code as overinclusive, in that marijuana is a benign drug with no objectionable characteristics, and as underinclusive, in that the statute does not likewise provide criminal penalties for the possession with the intent to distribute either tobacco or alcohol." Id. at 512.

> This Section of the Controlled Substances Act has uniformly met the rational basis test under equal protection and due process scrutiny. The Court joins with those courts having previously determined the rationality of the inclusion of marijuana within Schedule I and DENIES the petition on this
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> {55}
>
> ground. Petitioner's underinclusive claim must be rejected also. See NORML v. Bell, supra, at 137.

Id. at 513 (internal footnote omitted).

The cases cited in support for the CSA passing "the rational basis test under equal protection and due process scrutiny[]" were: NORML v. Bell, 488 F. Supp. 123 (D.D.C. 1980); United States v. Kiffer, 477 F.2d 349 (2nd Cir. 1973); United States v. La Froscia, 485 F.2d 457 (2nd Cir. 1973); United States v. Rodriquez-Camacho, 468 F.2d 1220 (9th Cir. 1972);

Louisiana Affiliate of NORML v. Guste, 380 F. Supp. 404 (E.D. La. 1974); United States v. Maiden, 355 F. Supp. 743 (D. Conn. 1973). Id., Id. at n.3.

Argument

The defendant presented a debatable issue. Id. at 511 (stating, "[t]he petitioner offers the reports of several research studies performed to analyze the effects of marijuana use."); Id. (stating, "[t]his Court has no legislative power so it need not weigh the authorities cited by either side to the end that wise legislation be adopted.").

La Froscia and Rodriquez-Camacho are listed in exhibit I because they do not mention the statutory criteria. Maiden is distinguished in ground 1, supra; Kiffer is distinguished in ground 2, supra; Guste is distinguished in ground 3, supra; and Bell is distinguished in ground 7, supra.

9. United States v. Fogarty, 692 F.2d 542 (8th Cir. 1982). The context was an appeal. Id. at 544 (stating, "Fogarty appeals his conviction[.]").

"The gist of this claim is that the weight of current medical knowledge purportedly shows that marijuana does not satisfy the three statutory criteria necessary for inclusion

{56}

in Schedule I[.]" Id. at 547 (internal citation omitted). "Fogarty places particular emphasis on the number of currently accepted medical uses for marijuana, including therapeutic uses in

the treatment of glaucoma and cancer." Id. at 547.

Under "the highly deferential standard of review[,]" "'the judiciary may not sit as a superlegislature to judge the wisdom or desirability of legislative policy determinations made in areas that neither affect fundamental rights nor proceed along suspect lines[]'" and "judicial self-restraint is especially appropriate where as here the challenged classification entails legislative judgments on a whole host of controversial medical, scientific, and social issues." Id., Id. (quoting New Orleans v. Dukes, 427 U.S. 297, 303 (1976) and Dukes cites to Day-Brite Lighting, Inc. v. Missouri, 342 U.S. 421, 423 (1952); see amended motion to dismiss, ground 41), Id. (internal citations omitted).

"[T]he ongoing vigorous dispute as to the physical and psychological effects of marijuana, its potential for abuse, and whether it has any medical value, supports the rationality of the continued Schedule I classification." Id. at 547-548 (internal citation omitted).

Additional cases cited in support of marijuana's classification being rational were: United States v. Kiffer, 477 F.2d 349 (2nd Cir. 1973); United States v. Erwin, 602 F.2d 1183 (5th Cir. 1979); Wolkind v. Selph, 495 F. Supp. 507 (E.D. Va. 1980); and United States v. Creswell, 515 F. Supp. 1268 (E.D.N.Y. 1981). Id. at 547 n.4.

Argument

The court adopted Bell's and Maiden's interpretation of the statutory criteria. Id. at

548 (stating, "the three statutory criteria for Schedule I classification set out in § 812(b)

{57}

(1) . . . should not be read as being either cumulative or exclusive.") (internal footnotes omitted); Id. at n.5 (citing NORML v. Bell, 488 F. Supp. 123, 140 (D. D.C. 1980) and United States v. Maiden, 355 F. Supp. 743, 748-749 n.4 (D. Conn. 1973)). Bell is distinguished in ground 7, supra and Maiden is distinguished in ground 1, supra. Again, the interpretative statement is arguably dictum because it is not necessary for the holding that the classification is rational. See ground 7, supra; Fogarty, 692 F.2d at 547-548.

The merits were also not reached because of Section 811. Id. at 548 (stating, "under Section 811 Congress has provided a comprehensive reclassification scheme,
authorizing the Attorney General to reclassify marijuana in view of new scientific evidence.").

Regarding the additional cases cited in support of the rationality finding, Erwin is listed in exhibit I because it does not mention the statutory criteria; Wolkind is distinguished in ground eight, supra; Kiffer is distinguished in ground 2, supra; and Creswell involved reclassification. United States v. Creswell, 515 F. Supp. 1268, 1271 (E.D.N.Y. 1981) (stating, "it is difficult to characterize a decision not to reclassify as arbitrary.").

10. United States v. Middleton, 690 F.2d 820 (11th Cir. 1982). The context was an appeal and rescheduling. Id. at 821 (stating, "an appeal

from convictions from convictions entered against the defendant for the crimes of importation of marijuana, possession of marijuana, resisting customs officers, and bail jumping."); Id. at 823 (stating, "defendant argues that this court should substitute its judgment for that of Congress and reclassify marijuana.").

{58}

"The determination of whether new evidence regarding either the medical use of marijuana or the drug's potential for abuse should result in a reclassification of marijuana is a matter for legislative or administrative, not judicial, judgment." Id. (citing United States v. Kiffer, 477 F.2d 349 (2nd Cir. 1973) and United States v. La Froscia, 485 F.2d 457 (2nd Cir. 1973)).

Argument

Kiffer is distinguished in ground 2, supra and La Froscia is listed in exhibit I because it does not mention the statutory criteria.

11. State v. Ennis, 334 N.W.2d 827 (N.D. 1983). The context was an appeal. Id. at 829 (stating, "a judgment of conviction, dated August 9, 1982, was entered by the District Court of Williams County from which Ennis now appeals.").

> Ennis asserts that classifying marijuana as a Schedule I drug is arbitrary and irrational as the classification no longer bears a rational relationship to a legitimate governmental interest because: (1) governmental studies conducted

> subsequent to the enactment of the Uniform Controlled Substances Act reveal that marijuana does not have a "high potential for abuse"; and, (2) marijuana is currently used safely in the treatment of cancer and glaucoma.

Id. at 834.

"Accordingly, because the issue of whether or not marijuana is properly classified as a Schedule I drug is fairly debatable, we will not usurp the legislature's factfinding function." Id. at 835.

{59}

> Furthermore, we do not believe that the questions of whether or not marijuana "has no accepted medical use . . . or lacks accepted safety for the use in treatment" can be resolved by the simple fact that some states may now be experimenting with the use of marijuana as a prescriptive drug under very limited circumstances. *See, State v. Whitney*, 96 Wash.2d 578, 637 P.2d 956 (1981).

Id. at 834 (internal footnote omitted).

Argument

Based on the actual holding of Whitney, as applied to medical marijuana that has been legislatively enacted, Whitney is now support for Defendant's case. See amended motion to dismiss, argument in conclusion, ground 98.

12. United States v. Wables, 731 F.2d 440 (7th Cir. 1984). The context was an appeal and, in part, rescheduling. Id. at 442 (stating, "[t]his is an appeal from the defendant's convictions for conspiracy to possess marijuana with intent to distribute and for possession of marijuana with intent to distribute."); Id. at 450 (stating, "[t]he trial court . . . acted properly in refusing to reclassify marijuana.").

The defendant claimed the "use of marijuana in the treatment of both glaucoma and cancer prevents marijuana from meeting the 'no currently accepted medical use' standard[.]" Id. (internal citation omitted).

"[W]e hold that the proper statutory classification of marijuana is an issue that is reserved to the judgment of Congress and to the discretion of the Attorney General." Id.

{60}

13. State v. Hanson, 364 N.W.2d 786 (Minn. 1985). The context was an appeal. Id. at 787 (stating, "[i]ssues on the consolidated appeals are . . . whether they erred in their rulings on the constitutionality of classifying marijuana as a Schedule I controlled substance.").

"Defendant argues that the medical profession now recognizes that marijuana has medicinal value and that therefore classifying marijuana as a Schedule I substance is unconstitutional. This argument was advanced in the previous case of *United States v. Fogarty* . . . ." Id. at 790.

14. State v. Olson, 380 N.W.2d 375 (Wis. Ct. App. 1985). The context was an appeal and equal protection. Id. at 377 (stating, "[w]e conclude that Olson may raise his equal protection argument on appeal, notwithstanding his guilty plea.").

> The pharmacist/pharmacologist witness who testified on his behalf agreed that disputes exist among doctors and pharmacists concerning THC's acceptance for medical use. Indeed, defendant concedes in his brief that the debate continues in the scientific community regarding the effects of marijuana. The dispute destroys the factual basis for defendant's claim that inclusion of THC in Schedule I is irrational. It is rational for the legislature to classify THC in Schedule I as long as THC's acceptance for medical use is an unsettled medical question. Other courts have reached the same conclusion.

Id. at 381-382.

{61}

Argument

One, the defendant presented a debatable issue. Id. at 381 (stating, "[t]he pharmacist/pharmacologist witness who testified on his behalf agreed that disputes exist among doctors and pharmacists concerning THC's acceptance for medical use.").

Two, by focusing on the word "accepted," the court interpreted the word "no" "out of the statute." Id. at 381 (stating, "as long as THC's acceptance for medical use is an unsettled medical question."); Morales v. TWA, 504 U.S. 374, 385 (1992). The court did not state that THC "[h]as no accepted medical use[.]" Section 195.071.1(2).

Three, all cases cited in support of the statement that "[o]ther courts have reached the same conclusion[]" are distinguished in this exhibit, listed in exhibit I because they do not mention the statutory criteria, or distinguished in exhibit G, ground 5. Id. at 382.

15. United States v. Greene, 892 F.2d 453 (6th Cir. 1989). The context was an appeal, sentencing, and due process. Id. at 454 (stating, "[d]efendant appeals the imposition of two concurrent sentences[.]"); Id. at 455 (stating, "the classification of marijuana as a Schedule I controlled substance under the Federal Controlled Substances Act ("Act"), 21 U.S.C. §§ 841-904, and the imposition of penalties . . . thus violating the due process mandates of the fifth amendment.").

The "defendant argues that marijuana, on pharmacological grounds, does not satisfy the three statutory criteria necessary for inclusion in Schedule I[.]" Id. (internal citation omitted).

> Both the *Fogarty* and the *Middleton* courts concluded that this provision evidences Congressional intent to provide an efficient and flexible

{62}

> mechanism for assuring the continued rationality of the classification of controlled substances. We agree that this mechanism, and not the judiciary, is the appropriate means by which defendant should challenge Congress' classification of marijuana as a Schedule I drug.

Id. at 456 (internal citation omitted).

Argument

Even though the merits were not reached, the defendant claimed due process was involved, but Defendant's second major issue was not present. Id. at 455; see amended motion to dismiss, second major issue, grounds 28-42. Fogarty is distinguished in ground 9, supra and Middleton is distinguished in ground 10, supra. Another case cited in support of marijuana's Schedule I classification was United States v. Fry, 787 F.2d 903 (4th Cir. 1986) and that case is listed in exhibit I because it does not mention the statutory criteria. Greene, 892 F.2d at 455.

16. Seeley v. State, 940 P.2d 604 (Wash. 1997). The context was a declaratory judgment and equal protection. Id. at 608 (stating, "Mr. Seeley asked the Superior Court for a declaratory judgment finding RCW 69.50.204(c)(14), which places marijuana on schedule I of controlled substances, unconstitutional[.]"); Id. at 611 (stating, "II. Equal Protection Analysis").

"Respondent argues that (1) no rational basis exists for classifying marijuana as a schedule I controlled substance, and (2) comparable drugs such as cocaine, morphine, and methanphetamines are not similarly classified." Id. at 614.

"This court concludes that RCW 69.50.204(c)(14) does not violate the Washington {63} Constitution and reverses the trial court." Id. at 606.

> So long as scientists disagree about the effect of marijuana, the legislature is free to adopt the opinions of those scientists who view marijuana as harmful. We will not substitute our judgment for that of the legislature where the statute in question bears a rational relationship to a legitimate legislative purpose.

Id. at 615 (citing State v. Dickamore, 592 P.2d 681, 683-684 (Wash. Ct. App. 1979)).

17. Olsen v. Holder, 610 F. Supp. 2d 985 (S.D. Iowa 2009). The context was a civil suit. Id. at 986 (stating, "Plaintiff, Carl Olsen, filed an 'Original Complaint for Declaratory and Injunctive Relief.'").

> Plaintiff contends that marijuana "no longer meets the statutory requirement for inclusion in Schedule I of the CSA" because several states have determined that marijuana has a legitimate

> medical use, in contradiction to the CSA's requirement that a Schedule I drug have "no currently accepted medical use in treatment in the United States."

Id. (internal citation omitted).

"Plaintiff [had also] filed a 'Petition for Marijuana Rescheduling' with the Drug Enforcement Administration ('DEA')" "assert[ing] the same arguments as in the present case[.]" Id. at 988; Id. The petition was denied and the plaintiff appealed to the Eighth Circuit. Id. at 989 (stating, "[o]n December 19, 2008, the DEA issued a nine page letter (the 'DEA Letter') rejecting Plaintiff's Petition for Marijuana Rescheduling and declining

{64}

to institute rulemaking proceedings . . . ."); Id. (stating, "'filed a Petition for Review in the United States Court of Appeals for the Eighth Circuit, pursuant to 21 U.S.C. § 877, from the "DEA Letter" of December 19, 2008.'").

> The Court disagrees and finds that it lacks jurisdiction over the present matter because Plaintiff's proper and exclusive remedy is one he is already pursuing in parallel litigation, namely, he must petition the Attorney General for a re- or descheduling determination and, upon an adverse ruling, appeal the Attorney General's determination to the proper United States Court of

> Appeals in conformity with 21 U.S.C. § 877.

Id. at 993.

Related litigation

"Having exhausted his administrative remedies by petitioning the DEA to reschedule marijuana, Plaintiff's only recourse is to pursue an appeal of the DEA's adverse decision to the appropriate Court of Appeals, consistent with the provisions of 21 U.S.C. § 877." Id. at 995.

The Eighth Circuit also did not reach the merits, but for a different reason. Olsen v. DEA, 332 Fed. Appx. 359, 360 (8th Cir. 2009) (stating, "we conclude that Olsen lacks standing under Article III of the United States Constitution.") (unpublished per curiam opinion).

18. United States v. Wilde, 74 F. Supp. 3d 1092 (N.D. Ca. 2014). The context was a pretrial motion to dismiss. Id. at 1094 (stating, "the Court DENIES Wilde's motion

{65}

to dismiss the indictment."). One of the charges was "using or possessing a firearm during and in relation to a crime of violence or a drug trafficking crime in violation of 18 U.S.C. § 924(c)(1)(A)[.]" Id. at 1094 (charge four).

"Wilde argues that marijuana meets none of these three criteria, and hence its inclusion in Schedule I of the CSA cannot stand." Id. at 1098.

> In support of his motion, Wilde attached voluminous exhibits purporting to demonstrate the safety and medical efficacy of marijuana. See Docket Nos. 87-1 to

> 87-30. These filings are ultimately irrelevant, however, as federal courts (both within and without this circuit) have repeatedly rejected constitutional challenges to the classification of marijuana under the CSA when applying traditional rational basis review.

Id. at 1098 (internal citations omitted).

"If traditional rational basis applied, this factual information would be irrelevant since legislation and regulations will be upheld so long as there is any 'conceivable' basis justifying the challenged classification." Id. at 1097.

"Moreover, under traditional rational basis review, the mere existence of an 'ongoing vigorous dispute as to the physical and psychological effects of marijuana, its potential for abuse, and whether it has any medical value, supports the rationality of continued Schedule I classification.'" Id. at 1099 (quoting United States v. Fogarty, 692 F.2d 542, 548 (8th Cir. 1982) (internal citation omitted).

Argument

Since standing and jurisdiction were not mentioned, it is reasonable to infer that

{66}

the court found it had jurisdiction and that the defendant had standing. Three of the published opinions cited in support of marijuana's classification passing rational basis review were United States v. Miroyan, 577 F.2d 489 (9th Cir. 1978), United States v. Plume, 447 F.3d 1067 (8th Cir. 2006), and United States v. Ernst, 857

F. Supp. 2d 1098 (D. Or. 2012). Id. at 1098. Plume involved industrial hemp and the regulation of hemp. Plume, 447 F.3d at 1070 (claiming the "court erred (1) by holding that industrial hemp is subject to the CSA[] . . . and (3) by failing to find that regulating hemp under the CSA constitutes a due process and equal protection violation.") (internal footnote omitted). Ernst is listed in exhibit I because it does not mention the statutory criteria. Miroyan is distinguished in ground 6, supra and Fogarty is distinguished in ground 9, supra.

19. Americans for Safe Access v. DEA, 706 F.3d 438 (D.C. Cir. 2013). The context was a petition and rescheduling. Id. at 439 (stating, "[p]etitioners . . . challenge DEA's denial of its petition to initiate proceedings to reschedule marijuana.").

"Petitioners' argument focuses at length on one study — the March 1999 report from the Institute of Medicine ("IOM") — that was clearly addressed by the DEA." Id. at 450. "Petitioners construe 'adequate and well-controlled studies' to mean peer-reviewed, published studies suggesting marijuana's medical efficacy." Id. at 451.

"On the merits, the question before the court is not whether marijuana could have some medical benefits. Rather, the limited question that we address is whether the DEA's decision declining to initiate proceedings to reschedule marijuana under the CSA was arbitrary and capricious." Id. at 440. "Because the agency's factual findings in this case are supported by

substantial evidence and because those factual findings reasonably

{67}

support the agency's final decision not to reschedule marijuana, we must uphold the agency action." Id. at 449.

20. United States v. Pickard, 100 F. Supp. 3d 981 (E.D. Ca. 2015). The context was a pretrial motion to dismiss and equal protection. Id. at 989 (stating, "Mr. Pickard moved to dismiss the indictment, arguing that the classification of marijuana as a Schedule I substance under the CSA, 21 U.S.C. § 801, et seq., violates his Fifth Amendment equal protection rights[.]").

"Defendants claim that the weight of current medical knowledge shows marijuana does not satisfy these three criteria." Id. at 1006.

"As shown from the evidence in the record, there are conflicts in testimony and material disagreements as to whether marijuana has a high potential for abuse." Id. "Similarly, the evidence shows that disagreements among well-informed experts as to marijuana's medical use persist." Id. at 1007. "Finally, the evidence is conflicting as to whether there is accepted safety for marijuana's use under medical supervision." Id.

"In view of the principled disagreements among reputable scientists and practitioners regarding the potential benefits and detrimental effects of marijuana, this court cannot say that its placement on Schedule I is so arbitrary or

unreasonable as to render it unconstitutional." Id. at 1008-1009.

21. State v. Rainier, 357 P.3d 867 (Idaho Ct. App. 2015). The context was an appeal, due process, and rescheduling. Id. at 868 (stating, "Rainier appeals from a jury verdict finding him guilty of possession of marijuana with the intent to deliver."); Id.

{68}

at 869 (stating, "Rainier correctly identifies the proper standard of review for a due process claim under these circumstances as the rational basis test."); Id. at 870 (stating, "Rainier's point that the legal landscape in regard to marijuana is changing in much of the country is indisputable. This fact, however, does not give this Court carte blanche to reclassify or ignore marijuana within Idaho's statutory scheme.").

The defendant claimed marijuana's "classification is untenable given the current state of science and law in regard to marijuana in this country." Id. at 869. Part of the claim was based on medical marijuana. Id. (stating, "[h]e first lists the states in which cannabis is currently accepted for medical use and argues it cannot therefore be said that marijuana 'has no accepted medical use in the United States.'").

"The issue then is not whether the classification of marijuana as a schedule I drug under section 37-2705 is irrational and thus unenforceable, but rather whether the legislature had a rational basis related to a legitimate government purpose for deciding to so list it." Id. "Thus, since this Court sees a

rational relationship between the listing of marijuana as a schedule I drug and a legitimate government purpose, Rainier's due process claim fails." Id. at 869-870.

Argument

In reframing the issue, the court did not reach the merits. Id. at 869 (stating, "[t]he issue then is not whether the classification of marijuana as a schedule I drug under section 37-2705 is irrational and thus unenforceable, but rather whether the legislature had a rational basis related to a legitimate government purpose for deciding to so list it."). In addition, preemption was not discussed and Defendant's second major issue was not

{69}

present. See amended motion to dismiss, first major issue, grounds 1-27; amended motion to dismiss, second major issue, grounds 28-42.

22. United States v. Green, 222 F. Supp. 3d 267 (W.D.N.Y. 2016). The context was a pretrial motion to dismiss, equal protection, and rescheduling. Id. at 269 (stating, "[t]heir motion to dismiss was initially considered by the magistrate judge assigned to this case, who issued a thorough and comprehensive Report and Recommendation, recommending that the motion be denied.") (internal footnote omitted); Id. (stating, "[d]efendants contend that their equal protection rights have been violated by the federal government's classification of marijuana as a Schedule I controlled substance[.]"); Id. at 273 (stating, "[d]efendants argue that they are challenging the constitutionality of Congress's

failure to reclassify marijuana, and the DEA's refusal to do the same.").

> Defendants have characterized the "central question" in this case as follows: "[D]oes the government's position that marijuana currently has *no accepted medical use* in the United States—a finding required for Schedule I substances—have a rational basis?" (Dkt. 109 at 4 (emphasis original)). Based upon the election results last month, comprehensive medical marijuana laws have been adopted in 28 states and the District of Columbia.

Id. at 275 (internal citation omitted).

"It is difficult to conclude that marijuana is not currently being used for medical purposes—it is. There would be no rational basis to conclude otherwise. And if that were the central question in this case, Defendants argument would have merit—but it is not the central question." Id.

{70}

"Rational basis review asks not whether it is reasonable to conclude that the specific criteria in the statute have been met, but, rather, whether there is any
conceivable basis that might support the classification."
Id. at 277.

"[W]hen assessing an equal protection challenge to marijuana scheduling: If traditional rational basis applied, this factual information

[(current scientific evidence and contemporary legislative developments)] would be irrelevant since legislation and regulations will be upheld so long as there is any 'conceivable' basis justifying the challenged classification." Id. at 278 (quoting United States v. Wilde, 74 F. Supp. 3d 1092, 1097 (N.D. Cal. 2014)).

> Any hearing on this issue is unnecessary. Whether the medical purposes for which marijuana is being used is "accepted" continues to be debated. As determined by the *Pickard* court, after a full evidentiary hearing, the medical use of marijuana in treatment remains the subject to "principled disagreement of the experts." *Pickard*, 100 F. Supp. 3d at 1007. Since the question is "at least debatable," a court would err if it were to substitute its judgment for that of the legislature. *Clover Leaf Creamery*, 449 U.S. at 469. As a result, the classification of marijuana as a Schedule I controlled substance withstands scrutiny under the rational basis test.

Id. at 280.

Argument

One, the merits were not reached because the court reframed the issue. Id. at 277 (stating, "[r]ational basis review asks not whether it is reasonable to conclude that the

{71}
specific criteria in the statute have been met, but, rather, whether there is any conceivable basis that might support the classification."); Id. at 280 (stating, "the classification of marijuana as a Schedule I controlled substance withstands scrutiny under the rational basis test.").

Two, the court cited to United States v. Kiffer, 477 F.2d 349 four times as support for deferring to Congress as opposed to reaching the merits. Id. at 269, 272, 276, and 277. Kiffer is distinguished in ground 2, supra.

Three, even though the merits were not reached, the Defendant anchored his medical marijuana claim to rational basis review. Id. at 275 (stating, "[d]efendants have characterized the 'central question' in this case as follows: '[D]oes the government's position that marijuana currently has no accepted medical use in the United States—a finding required for Schedule I substances—have a rational basis?'"). Although the context was equal protection, and preemption was not discussed, Defendant is seeking to extend the Due Process Clauses beyond rational basis and thus Defendant's second and third major issues were not present. Id. at 269 (stating, "[d]efendants contend that their equal protection rights have been violated by the federal government's classification of marijuana as a Schedule I controlled substance[.]"); see amended motion to dismiss.

Appendix O

Exhibit I to the Amended Motion to Dismiss

[El]ectronically Filed – Warren – June 17, 2019 –11:58 AM[1]

{72}[2]

Irrelevant caselaw

People v. Stark, 400 P.2d 923 (Colo. 1965); Reyna v. State, 434 S.W.2d 362 (Tex. Crim. App. 1968); Commonwealth v. Leis, 243 N.E.2d 898 (Mass. 1969); State v. White, 456 P.2d 54 (Mont. 1969); People v. Bloom, 76 Cal. Rptr. 137 (Cal. Ct. App. 1969); Miller v. State, 458 S.W.2d 680 (Tex. Crim. App. 1970); Rener v. Beto, 447 F.2d 20 (5th Cir. 1971); Egan v. Sheriff, 503 P.2d 16 (Nev. 1972); State v. Kantner, 493 P.2d 306 (Haw. 1972); United States v. Rodriguez-Camacho, 468 F.2d 1220 (9th Cir. 1972); State v. Sliger, 261 So. 2d 643 (La. 1972); State v. Wadsworth, 505 P.2d 230 (Ariz. 1973); People v. Demers, 42 A.D.2d 634 (N.Y. App. Div. 1973); State v. Nugent, 312 A.2d 158 (N.J. Super. Ct. App. Div. 1973); Gaskin v. State, 490 S.W.2d 521 (Tenn. 1973); English v. Virginia Probation & Parole Board, 481 F.2d 188 (4th Cir. 1973); Kenny v. State, 282 So. 2d 387 (Ala. Crim. App. 1973); Boswell v.

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[1] Said electronic filing information appears vertically along the right side of all pages beginning at the top and in light blue lettering.

[2] Exhibit sticker appears to the right and page numbers are handwritten and in brackets {} herein.

State, 276 So. 2d 592 (Ala. 1973); United States v. La Froscia, 485 F.2d 457 (2nd Cir. 1973); Kreisher v. State, 303 A.2d 651 (Del. 1973); Kreisher v. State, 319 A.2d 31 (Del. 1974); Blincoe v. State, 204 S.E.2d 597 (Ga. 1974); State v. Beck, 329 A.2d 190 (R.I. 1974); State v. Leins, 234 N.W.2d 645 (Iowa 1975); United States v. Spann, 515 F.2d 579 (10th Cir. 1975); State v. Renfro, 542 P.2d 366 (Haw. 1975); State v. O'Bryan, 531 P.2d 1193 (Idaho 1975); Ravin v. State, 537 P.2d 494 (Alaska 1975); People v. Morehouse, 364 N.Y.S.2d 108 (N.Y. Crim. Term 1975); State v. Donovan, 344 A.2d 401 (Me. 1975); People v. McCaffrey, 332 N.E.2d 28 (Ill. App. Ct. 1975); Kehrli v. Sprinkle, 524 F.2d 328 (10th Cir. 1975); State v. Strong, 245 N.W.2d 277 (S.D. 1976); United States v. Rogers, 549 F.2d 107 (9th Cir. 1976); State v.

{73}

Rao, 370 A.2d 1310 (Conn. 1976); People v. Bourg, 552 P.2d 504 (Colo. 1976); United States v. Bergdoll, 412 F. Supp. 1308 (D. Del. 1976); State v. Infante, 260 N.W.2d 323 (Neb. 1977); Evans v. State, 569 P.2d 503 (Okla. Crim. App. 1977); Ross v. State, 360 N.E.2d 1015 (Ind. App. 1977); United States v. Gramlich, 551 F.2d 1359 (5th Cir. 1977); Hamilton v. State, 366 So. 2d 8 (Fla. 1978); People v. Schmidt, 272 N.W.2d 732 (Mich. Ct. App. 1978); United States v. Erwin, 602 F.2d 1183 (5th Cir. 1979); United States v. Fry, 787 F.2d 903 (4th Cir. 1986); United States v. Burton, 894 F.2d 188 (6th Cir. 1990); United States v. Stacy, 734 F. Supp. 2d 1074 (S.D. Cal.

2010); United States v. Washington, 887 F. Supp. 2d 1077 (D. Mont. 2012); Mont. Caregivers Ass'n, LLC v. United States, 841 F. Supp. 2d 1147 (D. Mont. 2012); United States v. Ernst, 857 F. Supp. 2d 1098 (D. Or. 2012)

Appendix P

Exhibit J to the Amended Motion to Dismiss

{74}[3]

Legislative History

Legislative history excerpts concerning marijuana and the statutory criteria provide support for Defendant's argument that the word "no" should not be interpreted "out of the statute." Morales v. TWA, 504 U.S. 374, 385 (1992).

Defendant states the following twenty-seven grounds:

1. "Until the 12th revision of the United States Pharmacopeia in 1942, marijuana was listed as a chemical with medical usefulness. It was suddenly deleted, said Dr. Osmond of Princeton, []rather in the way that Stalin rewrote history." 116 Cong. Rec. 2,219 (1970) (Stuart Auerbach, Study Discloses Medical Uses of Synthetic Pot, Wash. Post, Feb. 3, 1970).

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2. "Federal narcotic enforcement officials who regarded marihuana as the 'new' drug danger second to opiates in hazard (no clear scientific basis was ever given for this belief), asked for and received responsibility for its regulation at the Federal level, culminating in the Marihuana Tax Act of 1937." *Controlled Dangerous Substances, Narcotics and Drug Control Laws: Hearings on Legislation to Regulate Controlled Dangerous Substances and Amend Narcotics and Drug Laws Before the H. Comm. on Ways and Means*, 91st Cong., 2d Sess. 273 (1970) (statement of Dr. Roger O. Egeberg, Assistant Secretary for Health and Scientific Affairs, U.S. Department of Health, Education, and Welfare) (hereinafter "*Hearings: Ways and Means*").

> 3. I think this became a cause celebre of the earlier Bureau of Narcotics. They suddenly decided that marihuana led to heroin and while they later
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> {75}
>
> could not prove that marihuana in and of itself was so bad, they clung to the fact that marihuana was the road to heroin and that they went together.

Hearings: Ways and Means, 91st Cong., 2d Sess. 296 (1970) (statement of Dr. Roger O. Egeberg, Assistant Secretary for Health and Scientific Affairs, U.S. Department of Health, Education, and Welfare).

4. "But there is no – as he said, there is no evidence, no hard evidence, that [] ties in marihuana abuse with heroin use, with later LSD use." *Federal Drug Abuse and Drug Dependence Prevention, Treatment, and Rehabilitation Act of 1970: Hearings on S. 3562 Before the Spec. Subcomm. on Alcoholism and Narcotics of the S. Comm. on Labor and Public Welfare*, 91st Cong., 2d Sess., Part 1, 150 (1970) (statement of Joseph Cochin, M.D., Ph. D., professor of pharmacology, Boston University Medical School; Chairman, Scientific Review Comm., Center for Studies of Narcotics and Drug Abuse, NIMH) (hereinafter "*Hearings: Spec. Subcomm.*").

> 5. There is almost total agreement among competent scientists and physicians that marihuana is not a narcotic drug like heroin or morphine but rather a mild hallucinogen. To equate its risks–either to the individual or to society–with the risks inherent in the use of hard narcotics is neither medically or legally defensible.

Part 1, Drug Abuse Control Amendments—1970: Hearings on H.R. 11701 and H.R. 13743 Before the Subcomm. On Public Health and Welfare of the H. Comm. on Interstate and Foreign Commerce, 91st Cong., 2d Sess., Serial No. 91-45, 179 (1970) (statement of Dr. Stanley F. Yolles, Director, National Institute of Mental Health,

{76}
Department of Health, Education, and Welfare) (hereinafter "*Hearings: Public Health and Welfare, Part 1*").

> 6. Heroin is addictive. It is perhaps the single most important cause of human decay and serious crime in the United States today. LSD has caused irreversible mental illness in many young people. Marijuana and peyote, on the other hand, are rather mild hallucinogens. They are neither addictive nor highly toxic. To equate the dangers that are presented by these two highly different categories of illegal drugs is fundamentally wrong.

Hearings: Ways and Means, 91st Cong., 2d Sess. 494 (1970) (Report, by and through letter of Peter Barton Hutt, chairman, Comm. on Alcohol and Drug Reform of the American Bar Association's Section on Individual Rights and Responsibilities).

7. "[]In other respects the scheduling of drugs appears to reflect a certain lack of expertise and professional judgment." *Hearings: Ways and Means*, 91st Cong., 2d Sess. 523 (1970) (statement via transcript of prior testimony of Dr. Louis J. West, American Psychiatric Association).

8. "Classification is a real problem. The criteria [] provided in this bill are poor and mixed up. Schedule I is particularly bad. 'High potential for abuse' is a term which coves lots of

substances – food, alcohol, marihuana, cigarettes, cocaine, aspirin, and amphetamine as well as heroin." *Hearings: Ways and Means*, 91st Cong., 2d Sess. 405 (1970) (statement of Dr. Jonathan Cole, chairman, Comm. for Effective Drug Abuse Legislation).

{77}

9. "The scheduling in Bill S. 3246 places marihuana, the hallucinogens and heroin in the same category, on the basis of what seems wholly nonrelevant logic." *Part 2, Drug Abuse Control Amendments—1970: Hearings on H.R. 11701 and H.R. 13743 Before the Subcomm. On Public Health and Welfare of the H. Comm. on Interstate and Foreign Commerce*, 91st Cong., 2d Sess., Serial No. 91-46, 850 (1970) (statement via letter of Samuel Irwin, Ph. D., professor of pharmacology, Department of Psychiatry, University of Oregon Medical School) (hereinafter "*Hearings: Public Health and Welfare, Part 2*").

> 10. I have been unable to find any scientific colleague who agrees that the scheduling of drugs in the proposed legislation makes any sense, nor have I been able to find anyone who was consulted about the proposed schedules. This unfortunate scheduling, which groups together such diverse drugs as heroin, LSD and marihuana, perpetuates a fallacy long apparent to our youth. These drugs are not equivalent in pharmacological

> effects or in the degree or danger they present to individuals and to society. On the other hand, the specious criterion of medical use places the amphetamines in a much lesser category, which the facts do not support. If such scheduling of drugs is retained in the legislation which is ultimately passed, the law will become a laughing stock.

Hearings: Ways and Means, 91st Cong., 2d Sess. 485 (1970) (statement of Leo E. Hollister, M.D., medical investigator, Veterans Administration Hospital, Palo Alto, Cal.).

{78}

11. "When the criteria used are such that marijuana is classified in the same schedule as heroin, whereas methamphetamine is placed in the same category as the barbiturates, we are simply perpetuating an absurdity." *Hearings: Ways and Means*, 91st Cong., 2d Sess. 483 (1970) (statement via letter of John A. Clausen, professor of sociology and research sociologist, Institute for Human Development, University of California).

12. "Marihuana, LSD, and heroin have been indiscriminately lumped together as narcotics along with methedrine and barbituates. Clearly misrepresentation has occurred, and the facts have been distorted." *Hearings: Spec. Subcomm.*, 91st Cong., 2d Sess., Part 1, 265 (1970) (statement of Dr. Kenneth D. Graver, administrator, Mental Health Division, State of Oregon, appearing on behalf of the

National Association of State Mental Health Program Directors).

13. "They should not lump heroin and marihuana, for example, in one set of provisions." *Hearings: Public Health and Welfare, Part 2*, 91st Cong., 2d Sess., Serial No. 91-46, 550 (1970) (statement of Dana L. Farnsworth, director, University Health Services, Harvard University).

14. "In general, in both bills, I find the criterion of 'no accepted medical use' for placing drugs under the highest, most stringent controls to be a very bad one." *Hearings: Public Health and Welfare, Part 1*, 91st Cong., 2d Sess., Serial No. 91-45, 316 (1970) (statement of Dr. Jonathan O. Cole, chairman, Comm. for Effective Drug Abuse Legislation, and in behalf of the American College of Neuro-Psycho Pharmacology).

{79}

15. Section 202 lists four schedules; Schedule I covers those substances which, in the opinion of the Attorney General, possess a (1) high potential for abuse, and (2) no accepted medical use in the United States and (3) a lack of accepted safety for use under medical supervision. The criteria used in scheduling substances under this bill are improper and inappropriate and lead to illogical results. For example, the wording of the above-quoted criteria results in marihuana being classified in the

> same schedule as heroin, merely because marihuana is capable of being abused and at the present time has no accepted medical usefulness. Whatever may be said about the drug marihuana, it is clear that is should not be scheduled and controlled in the same manner as heroin.

Hearings: Public Health and Welfare, Part 2, 91st Cong., 2d Sess., Serial No. 91-46, 850 (1970) (statement of Neil L. Chayet, lecturer in legal medicine at the Boston University School of Law, Boston University School of Medicine, Tufts University School of Medicine, and Tufts University School of Dental Medicine).

> 16. We feel that it is imperative that we bring to the attention of the Congress a series of concepts and specific provisions which are greatly disturbing to us as members of the scientific community. . . . A second basic concept with which we are in basic disagreement is the criteria which are used in categorizing the various substances which are controlled by the Bill. The dominant criteria appear to be the medical usefulness of the substance and the potential for abuse, rather than the more realistic criteria of the danger of

{80}

> the substance to the individual and/or to society in general. The criteria used in the Bill lead to the absurd result of the classification of marijuana in the same schedule as heroin, with amphetamine, among the most dangerous of all abused substances, being placed much further down, in Schedule III.

Hearings: Public Health and Welfare, Part 2, 91st Cong., 2d Sess., Serial No. 91-46, 812 (1970) (Enclosure, statement from members of the Scientific Review Comm. of the Center for the Studies of Narcotics and Drug Abuse, by and through letter of Bernard C. Glueck, Jr., M.D., Director of Research, Institute of Living, Research Laboratories).

17. "The President's Ad Hoc Panel on Drug Abuse (1962) and Dr. Goddard, Commissioner of the Food and Drug Administration, have both declared that marijuana is less harmful than alcohol." *Hearings: Public Health and Welfare, Part 1*, 91st Cong., 2d Sess., Serial No. 91-45, 301 (1970) (statement of Lawrence Speiser, director, Washington (D.C.) Office, American Civil Liberties Union).

18. "From the standpoint of social and legislative policy, marijuana, being no more harmful than alcohol or tobacco, should not be treated differently." *Hearings: Ways and Means*, 91st Cong., 2d Sess. 384 (1970) (statement of

Hope Eastman, assistant director, Washington office, American Civil Liberties Union).

19. "Methamphetamine is also far more dangerous than marihuana to personal health and public safety, but receives a lesser classification." *Hearings: Ways and Means*, 91st Cong., 2d Sess. 367 (1970) (statement of Dr. Daniel X. Freedman, chairman, Task Force on Drug Abuse in Youth, American Psychiatric Association).

{81}

> 20. As a pharmacologist and an expert in this field, I believe that scheduling according to medical use or non-use is nonsense. Scheduling should be based solely on danger rather than use. Otherwise, we end up with the absurdity that methamphetamine -- one of the most dangerous drugs now being misused -- is in schedule III and marihuana, which even the BNDD admits may be quite limited in its hazards, ending up in schedule I along with heroin and LSD, purely on philosophical, generational and societal considerations.

Hearings: Spec. Subcomm., 91st Cong., 2d Sess., Part 1, 160 (1970) (statement of Joseph Cochin, M.D., Ph. D., professor of pharmacology, Boston University Medical School; Chairman, Scientific Review Comm., Center for Studies of Narcotics and Drug Abuse, NIMH).

> 21. First of all, there were a number of specific objections which were raised at the FDA-BNDD meeting. The placing of marihuana and various psychedelics in class 1 was judged to be unrealistic since the amphetamines were considered to be much more insidiously dangerous drugs and were placed in class III.

Hearings: Public Health and Welfare, Part 2, 91st Cong., 2d Sess., Serial No. 91-46, 569 (1970) (statement of Charles R. Schuster, Ph. D., associate professor of psychiatry and pharmacology, University of Chicago, and director of basic research, State of Illinois Narcotic and Drug Abuse Program).

> 22. I disagree strongly with the criteria which are used in categorizing the substances controlled by the bill. These are medical usefulness of the

{82}

> substance, and its potential for abuse. The more important criteria are obviously the danger of use to the person and/or to society, whether or not the drug is used in medicine. The criteria presently used lead to absurd results. Marihuana, a mildly dangerous drug, is placed in the same schedule with her[oi]n, while amphetamine, among the most dangerous of all

> abused substances, is placed much lower, in Schedule III.

Hearings: Public Health and Welfare, Part 2, 91st Cong., 2d Sess., Serial No. 91-46, 830 (1970) (statement via letter of John A. O'Donnell, University of Kentucky, Department of Sociology and Rural Sociology).

> 23. We say it is against the law to buy or smoke cigarettes before 18 and we pay no attention to the law. Any youngster 12 years of age can go buy cigarettes out of a machine. Then we tell him it is against the law to smoke marihuana and at least under the present law, there are very harsh penalties just for the possession and smoking. Then we tell him it is against the law to use heroin or other very hard drugs. It seems to me we tend by our practices and what we say is against the law, to make it very difficult for the young person to have respect for the law in the first place. What are we telling him when we tell him something is against the law when in one instance we pay no attention to it and we make fortunes by pushing one product, tobacco, and then send him to prison for the other, marihuana.

Hearings: Ways and Means, 91st Cong., 2d Sess. 342 (1970) (statement of James C. Corman, Cal. comm. member).

{83}

> 24. The never published studies, done 10 years ago at the Army Chemical Corps medical research laboratory at the Edgewood (Md.) Arsenal, were disclosed in proceedings of a National Institute of Mental Health conference of January, 1969, released yesterday. At that scientific meeting, Dr. Van Sim of the Edgewood Arsenal described his work publicly for the first time. He said that both the synthetic chemical and natural marijuana "are interesting from a medical standpoint . . . There are three areas where they can be of definite medical use in medicine.

116 Cong. Rec. 2,219 (1970) (Stuart Auerbach, Study Discloses Medical Uses of Synthetic Pot, Wash. Post, Feb. 3, 1970).

25. "[T]he studies which have thus far been completed show that whatever harmful effects marihuana may have, they are not comparable to the effects of the other drugs on schedule I." 116 Cong. Rec. 33,660 (1970) (statement of Rep. Ryan).

> 26. This legislation would constitute a Congressional finding that heroin and marijuana are of equal danger to society, and of

> equal harm to the individual. As the unanimous testimony at the hearings has demonstrated, however, this simply is not true, and widespread dissemination of this misinformation as part of national policy could have tragic results.

Hearings: Ways and Means, 91st Cong., 2d Sess. 492 (1970) (statement via letter of Peter Barton Hutt, chairman, Comm. on Alcohol and Drug Reform of the American Bar Association's Section on Individual Rights and Responsibilities).

{84}

> 27. Be it resolved, That the American Bar Association urges that statutory law distinguish between the more dangerous drugs, such as heroin and LSD, and the less dangerous drugs, such as peyote and marijuana, and urges widespread public educational efforts designed to publicize the true hazards of these drugs in order to avoid the erroneous and unfortunate conclusion that all drugs are of equal harm and raise identical health hazards.

Hearings: Ways and Means, 91st Cong., 2d Sess. 494 (1970) (Recommendation, by and through letter of Peter Barton Hutt, chairman, Comm. on Alcohol and Drug Reform of the American Bar

Association's Section on Individual Rights and Responsibilities).