

## Appendix Q

### Exhibit K to the Amended Motion to Dismiss

[E]lectronically Filed – Warren – June 17, 2019  
–11:58 AM<sup>1</sup>

{85}<sup>2</sup>

A8 Thursday, October 18, 2018 [;] THE WALL  
STREET JOURNAL. [;] WORLD NEWS<sup>3</sup>

#### Canada's Legalization of Pot Offers Test

[photograph]

In Toronto, people smoked cannabis on the  
street Wednesday after Canada legalized  
recreational marijuana use.<sup>4</sup>

Patchwork of regulations and supply  
constraints will likely slow retail rollout

By Paul Vieira

OTTAWA – Canada became the largest  
country to legalize the recreational use of

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<sup>1</sup> Said electronic filing information appears across top of the article above the date and in light blue lettering.

<sup>2</sup> Exhibit sticker appears in the bottom right corner, the page number is handwritten and in brackets {85} herein, and article appears vertically.

<sup>3</sup> Said information appears across top of page above article's title.

<sup>4</sup> Statement appears directly under the photograph.

marijuana on Wednesday, a potentially watershed moment for a nascent cannabis industry that is banking on showing the drug can be safely regulated.

The first Group of Seven country to embrace legalization, Canada is joining eight U.S. states, Washington, D.C., and the South American country of Uruguay. Its implementation here will likely serve as a test case for other governments considering an alternative approach to cannabis.

The country's big push hasn't been without hiccups. There are widespread worries that a patchwork of retail regulations and a shortage of legal supply mean the black market won't disappear soon.

Canada is "in the driver's seat now, but it is up to us to take advantage of the policy in place that lets us be world leaders – because that won't last forever," said Jay Wilgar, chief executive of Newstrike Brands Ltd., a licensed cannabis producer based in Oakville, Ontario.

Legalization had already started to reshape Canada's financial markets. There are more than 120 marijuana companies listed on Canadian stock exchanges, but the market is overshadowed by five whose total stock market value has ballooned to more than \$40 billion from less than \$4 billion in the past year.

Canada's cannabis regime has also attracted the attention of global consumer-goods firms, who are eager not to miss out on the next big trend. Corona brewer Constellation Brands acquired last year a 10% stake in Canopy

Growth Corp., one of Canada's largest, government-approved marijuana producers, and in August invested an additional \$4 billion in the Smith Falls, Ontario, grower and seller. Molson Coors Brewing Co. is also in a joint venture with Hexo Corp., a Quebec-based cannabis company, to make nonalcoholic, cannabis-infused beverages for the Canadian market.

One of the bigger risks for Canada is how the U.S. reacts. In the U.S., the use, sale or possession of marijuana is illegal under federal law. Attorney General Jess Sessions is also a longtime critic of marijuana.

Officials from the U.S. Customs Border and Protection agency reiterated Wednesday Canadians were prohibited from bringing marijuana from their country into the U.S. The agency added employees of Canadian cannabis firms could be turned back from the U.S. border if their visit is tied to cultivating marijuana business.

"They can establish their own rules," Ralph Goodale, Canada's public safety minister, told reporters in Ottawa on Wednesday.

Canadian Prime Minister Justin Trudeau, who made legalization a campaign promise back in 2015, has argued it is the best way to keep marijuana out of the hands of youth and eliminate criminal organizations from the cannabis trade.

Others have expressed concerns. "Given the known and unknown health hazards of cannabis, any increase in use of recreational cannabis after legalization, whether by adults or

youth, should be viewed as failure" of legalization, the Canadian Medical Association Journal said in an editorial this week.

Cannabis spending in the fourth quarter is projected to reach up to 1.34 billion Canadian dollars (US\$1.03billion), or C\$6.30 billion on an annual basis, according to Statistics Canada, the national data-gathering agency.

*—Jacquie McNish in Toronto and Robert Hiltz in Montreal contributed to this article.*

## Appendix R

### Exhibit L to the Amended Motion to Dismiss

[El]ectronically Filed – Warren – June 17, 2019  
–11:58 AM<sup>1</sup>

{86}

Warren County Record [; May 9, 2019 [;]  
NATIONAL EMS WEEK [; photograph  
appears to the left of article<sup>2</sup>

{87}

#### Warrenton lowers marijuana buffer

Reduced to 100 feet from schools, churches

By Adam Rollins  
Record Staff Writer

The length of three school buses could one day separate a church, school or day care in Warrenton from a medical marijuana dispensary, under new rules approved by the city's board of aldermen.

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<sup>1</sup> Said electronic filing information appears across top of the article on both pages and in light blue lettering.

<sup>2</sup> Said information, excluding the photograph, appears across top of page above article's title with the entire first page of the article appearing as the second page of the exhibit; exhibit sticker appears in the bottom-right corner, page numbers are handwritten and in brackets {; herein, and article appears vertically.

The board voted May 7 to reduce a default buffer zone around school and church facilities from 1,000 feet down to 100 feet for dispensaries, as part of new planning and zoning regulations for medical marijuana-related businesses. Aldermen said the new setback distance matches the city's regulation for liquor stores.

Aldermen left in place the 1,000-foot buffer established by state law for facilities related to the production of medical marijuana products.

These types of businesses will soon appear across Missouri after voters last year approved a constitutional amendment legalizing medical marijuana. The amendment allows local governments to enforce certain restrictions to protect public health and safety and prevent nuisances.

The new zoning rules were unanimously approved by aldermen during the regular public meeting May 7. The rules describe where different types of medical marijuana facilities may be established in the city of Warrenton.

In addition to not being allowed next to existing schools and churches, all marijuana-related facilities are prohibited within 100 feet of the Interstate 70 corridor and within 100 feet of Main Street.

A dispensary would be allowed in any commercial area of the city, with certain areas requiring a conditional use permit from the board of aldermen. Dispensaries are prohibited in residential and industrial areas.

Any business related to the three stages of medical marijuana production – cultivation, manufacturing and testing – would be confined to areas zoned for light industrial uses.

Ward 2 Alderman Gary Auch said the city has already received inquiries about per-

See **BUFFER** Page 8A

## Appendix S

[E]lectronically Filed – Warren – June 17, 2019  
–12:00 AM<sup>1</sup>

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 STAY**

COMES NOW Defendant, by and through undersigned counsel of record, pursuant to caselaw and due process, and requests the Court enter an order staying the proceedings for purposes of considering Defendant's amended motion to dismiss and, depending on the Court's ruling, while Defendant seeks an appellate writ and, if necessary, a writ from the United States Supreme Court. As grounds, Defendant states as follows:

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<sup>1</sup> Said electronic filing information appears vertically along the right side of all pages beginning at the top and in light blue lettering.

1. “Stay of proceedings is not a matter of right but involves the exercise of some discretion by the trial court as to granting and as to duration; but it would be an abuse of discretion to refuse a stay properly required by the circumstances.” State ex rel. Great American Ins. Co. v. Jones, 396 S.W.2d 601, 605 (Mo. banc 1965) (internal citations omitted).

2. 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.

3. Defendant has filed an amended motion to dismiss challenging the constitutionality of marijuana as a Schedule I controlled substance. See amended motion

{1}<sup>2</sup>

to dismiss.

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

5. “Due process of law requires that the proceedings shall be fair, but fairness is a relative, not an absolute concept. It is fairness with reference to particular conditions or particular results.” Snyder v. Massachusetts, 291 U.S. 97, 116 (1934).

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<sup>2</sup> Page numbers are at the bottom, in Microsoft Word, and appear in brackets {} herein.

WHEREFORE, considering the issues involved, Defendant requests the Court enter an order staying the proceedings for purposes of considering Defendant's amended motion to dismiss and, depending on the Court's ruling, while Defendant seeks an appellate writ and, if necessary, a writ from the United States Supreme Court.

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  
Tel: 636-279-1532  
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.

{2}

*/s/ Lou Horwitz*

---

Louis Horwitz

{3}

## Appendix T

### Circuit Clerk<sup>1</sup> WARREN COUNTY

***TIM BEARD***

104 WEST MAIN STREET  
SUITE G  
WARRENTON, MO 63383  
Phone: 636-456-3363  
Facsimile: 636-456-2422

STATE OF MISSOURI )

COUNTY OF WARREN )

I, TIM BEARD, Clerk of the Circuit Court of Warren County, Missouri, do herewith certify that the foregoing attached papers are true and accurate copies from the Court file in Warren County Court Case Number 18BB-CR00013-01 re: STATE V DARRIN LAMASA.

2 Pages consist in this Certification

**WITNESS MY HAND AND SEAL of said court**

Hereunto set this 22<sup>ND</sup> day of October, 2019

/s/      /bdf

---

<sup>1</sup> To the left appears the state seal.

**Time Beard, Circuit Clerk<sup>2</sup>**  
Warren County – 12<sup>th</sup> Circuit

[next page]

Report: CZR0026 v18.0<sup>3</sup>

Case continued from previous page.

**12TH JUDICIAL CIRCUIT  
WARREN  
CIRCUIT COURT DOCKET SHEET**

Date: 22-Oct-2019

Time: 10:44:55AM

Page: 3

18BB-CR00013-01  
ST V DARRIN JOSEPH LAMASA  
Security Level: 1 Public

[docket sheet entries]

Notice; Electronic Filing  
Certificate of Service.

File By: LOUIS RICHARD  
HORWITZ

Motion to Dismiss  
Amended Motion to Dismiss;  
Table of Contents; Index to

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<sup>2</sup> To the left appears county seal.

<sup>3</sup> The information from Report through Security  
Level appears above the docket sheet entries.

Exhibits; Exhibit A; Exhibit B;  
Exhibit C; Exhibit D; Exhibit E;  
Exhibit F; Exhibit G; Exhibit H -  
part 1; Exhibit H - part 2;  
Electronic Filing Certificate of  
Service.

Filed by: LOUIS RICHARD  
HORWITZ  
On Behalf Of: DARRIN JOSEPH  
LAMASA

18-Jun-2019 Motion  
Hearing Held  
01-Jul-2019 Motion  
Denied

Exhibit Filed

Exhibit H - part 3; Electronic  
Filing Certificate of Service.  
Filed By: LOUIS RICHARD  
HORWITZ

Exhibit Filed

Exhibit I; Electronic Filing  
Certificate of Service.  
Filed By: LOUIS RICHARD  
HORWITZ

Exhibit Filed

Exhibit J; Electronic Filing  
Certificate of Service.  
Filed By: LOUIS RICHARD  
HORWITZ

Exhibit Filed

Exhibit K; Electronic Filing  
Certificate of Service.  
Filed By: LOUIS RICHARD  
HORWITZ

Exhibit Filed

Exhibit L; Electronic Filing

Certificate of Service.

Filed By: LOUIS RICHARD  
HORWITZ

On Behalf Of: DARRIN  
JOSEPH LAMASA

Note to Clerk eFiling

Filed By: LOUIS RICHARD  
HORWITZ

Motion to Stay

Amended Motion to Stay;

Electronic Filing

Certificate of Service.

Filed By: LOUIS RICHARD  
HORWITZ

On Behalf Of: DARRIN  
JOSEPH LAMASA

18-Jun-2019 Motion

Hearing Held

06-Sep-2019 Motion

Denied

18-Jun-2019 Motion Hearing Held  
State appears, defendant  
appears by counsel.  
Defendant's Amended  
Motion to Dismiss is taken  
under advisement.  
Defendant's Amended  
Motion to Stay is  
continued to 08-09-19 at  
11:30AM. MSW

Motion Hearing Scheduled  
Scheduled For: 09-Aug-2019;  
11:30AM;  
MICHAEL S WRIGHT; Setting:  
0; Warren  
Sound Recording Log Sheet

01-Jul-2019 Motion Denied

The Court having had time  
to review and consider the  
Defendant's mended motion  
to dismiss on constitutional  
grounds, the amended  
motion is hereby Denied.  
Cause remains on August 8,  
2019 11:30 am docket  
for Defendant's amended  
motion to stay. /MSW

01-Jul-2019  
Order - Denied  
Order - Denied

11-Jul-2019 Request for Records Filed

Request for docket sheet  
entry; Electronic  
Filing Certificate of Service.  
Hand delivered on 07-16-  
2019 with payment of \$1.50  
received. /bdf  
Filed By: LOUIS RICHARD  
HORWITZ  
On Behalf Of: DARRIN  
JOSEPH LAMASA

17-Jul-2019 Notice

Notice of Petition for Writ of  
Prohibition; Electronic  
Filing Certificate of Service.  
Filed By: LOUIS RICHARD  
HORWITZ  
On Behalf Of: DARRIN  
JOSEPH LAMASA

## Appendix U

[E]lectronically Filed – EASTERN DISTRICT  
CT OF APPEALS – July 17, 2019 – 11:16 AM<sup>1</sup>

IN THE  
MISSOURI COURT OF APPEALS  
EASTERN DISTRICT

STATE OF MISSOURI ex rel. )  
DARRIN LAMASA, )  
Relator, )  
v. )  
THE HONORABLE MICHAEL )  
WRIGHT, Associate Circuit Judge, )  
12th Judicial Circuit, Warren )  
County, Missouri, )  
Respondent. )

Cause No. ED108054<sup>2</sup>  
(Re: Warren County Case 18BB-CR00013-01)

**PETITION FOR WRIT OF PROHIBITION**

COMES NOW Darrin Lamasa, Relator, by and through undersigned counsel, pursuant to Supreme Court Rule 97, and petitions the Court for a writ of prohibition regarding Respondent's

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<sup>1</sup> Said electronic filing information appears vertically along the right side of all pages beginning at the top and in light blue lettering.

<sup>2</sup> Said case number appear at the top-right of the first page and to the left of electronic filing information.

July 1, 2019 order summarily denying Relator’s amended motion to dismiss that claims section 195.017.2(4)(w) (i.e., marijuana’s statutory codification as a Schedule I controlled substance) is not valid under the Due Process Clauses.<sup>3</sup>

{1}<sup>4</sup>

### **STATEMENT OF JURISDICTION**

When a Relator petitions for an “original remedial writ” and “adequate relief can be afforded . . . by application for such writ to a lower court[,]” but the petition “involv[es] the validity . . . of a statute[,]” does Rule 84.22 operate as an exception to Mo. Const. art. V, § 3? Rule 84.22, *Id.*; Mo. Const. art. V, § 3.

“The supreme court and districts of the court of appeals may issue and determine original remedial writs.” Mo. Const. art. V, § 4.1. “The supreme court may establish rules relating to practice, procedure and pleading for all courts and administrative tribunals, which shall have the force and effect of law.” Mo. Const. art. V, § 5.

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<sup>3</sup> Unless indicated otherwise, Missouri statutory and constitutional citations are to the electronic database published by the Missouri Revisor of Statutes, Cum. Supp. 2018, as of July 14, 2019. The link or hyperlink is not listed pursuant to Rule 103.04(b). Unless otherwise indicated, all other citations are to LexisNexis 2019.

<sup>4</sup> Page numbers are at the bottom, in Microsoft Word, and appear in brackets {} herein.

“No original remedial writ shall be issued by an appellate court in any case wherein adequate relief can be afforded by an appeal or by application for such writ to a lower court.” Rule 84.22(a).

“In most instances where an extraordinary writ is sought, this court does decline to consider the application if not previously made to a lower court in accordance with Rule 84.22.” State ex rel. Roberts v. Buckley, 533 S.W.2d 551, 553 (Mo. banc 1976).

The supreme court shall have exclusive appellate jurisdiction in all cases involving the validity of a treaty or statute of the United States, or of a statute or provision of the constitution of this state, the construction of the revenue laws of this state, the title to any state office and in all cases where the punishment imposed is death. The

{2}

court of appeals shall have general appellate jurisdiction in all cases except those within the exclusive jurisdiction of the supreme court.

Mo. Const. art. V, § 3.

“In all cases of final judgment rendered upon any indictment or information, an appeal to the proper appellate court shall be allowed to the defendant, provided, . . . .” Section 547.070. An appeal is not an option because Respondent’s order summarily denying Relator’s amended motion to dismiss is not a judgment under Rule

74.01. See Rule 74.01 (stating, “[a] judgment is entered when a writing signed by the judge and denominated ‘judgment’ or ‘decree’ is filed.). “An original action filed in a court lacking jurisdiction or venue shall be transferred to the appropriate court.” Mo. Const. art. V, § 11.

Thus, absent an opinion on point interpreting Rule 84.22 in the context of Mo. Const. art. V, § 3, Relator petitions the Court for a writ of prohibition.

### **STATEMENT OF THE FACTS<sup>5</sup>**

On January 5, 2018, the State filed a Complaint against Relator. See exhibit A. On January 31, 2018, undersigned counsel filed his entry of appearance. See exhibit T. On July 31, 2018, the State filed an Information

{3}

against Relator. See exhibit B. The charge against Relator is “the class C felony of trafficking in the second degree[]” based on the possession of a certain amount of marijuana. See exhibits A and B.

On November 6, 2018, the Missouri Constitution was amended with an initiative petition to include medical marijuana that

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<sup>5</sup> The additional motions and exhibits that accompanied the amended motion to dismiss are included in this petition. Thus, the Index to Exhibits for this petition references the amended motion to dismiss’ table of contents, index to exhibits, exhibits, and the amended motion to stay.

passed as a ballot measure. See exhibit I; Mo. Const. art. XIV. In a collateral context, Canada – one of our two bordering nations – recently legalized marijuana. See exhibit P.

On June 17, 2019, Relator filed an amended motion to dismiss the charge and an amended motion to stay. See exhibits C through R.

Relator's amended motion to dismiss has three major issues and each issue presents a question of law: whether Missouri's medical marijuana law (Mo. Const. art. XIV) is preempted by the federal statute; 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 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. See exhibit C, pp. 6-7, major issues.

Assuming that interpreting the word "no" "out of the statute" does not constitute an interpretation of the word "no," no majority opinion has interpreted

{4}

the word "no." Morales v. TWA, 504 U.S. 374, 385 (1992); see exhibit C, p. 34, ground 70.

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

Section 195.017.1.

The findings required for each of the schedules are as follows: (1) **SCHE**DULE 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).

On July 1, 2019, Respondent summarily denied Relator's amended motion to dismiss. See exhibit S.

**RELIEF SOUGHT**

Relator seeks a writ of prohibition 1) vacating Respondent's July 1, 2019 order summarily denying Relator's amended motion to dismiss and 2) ordering Respondent to grant Relator's amended motion to dismiss.

**STATEMENT OF THE REASONS WHY THE  
WRIT SHOULD ISSUE**

A writ of prohibition is appropriate: (1) to prevent the usurpation of judicial power when a lower court lacks authority or jurisdiction; (2) to remedy an excess of authority, jurisdiction or abuse of discretion where the lower court lacks the power to act as intended; or (3) where a party may suffer irreparable harm if relief is not granted.

State ex rel. Strauser v. Martinez, 416 S.W.3d 798, 801 (Mo. banc 2014) (internal citation omitted). “Prohibition will lie when there is an important question of law decided erroneously that would otherwise escape review by this Court, and the aggrieved party may suffer considerable hardship and expense as a consequence of the erroneous decision.” State ex rel. Chassaing v. Mummert, 887 S.W.2d 573, 577 (Mo. banc 1994) (internal citation omitted). “Interlocutory review of trial court error by writ of prohibition, however, should occur only in extraordinary circumstances. If the error is one of law, and reviewable on appeal, a writ of prohibition is not appropriate.” Id. (internal citations omitted).

*Question of law*

The issues presented are questions of law. See exhibit C, pp. 6-7, major issues.

*Important*

The three major issues seem to be issues of first impression not only for Missouri, but the entire nation, and as such, would seem to qualify as important

{6}

under Chassaing. Id.; State ex rel. Chassaing v. Mumment, 887 S.W.2d 573, 577 (Mo. banc 1994) (internal citation omitted). And it has not been one year since the Missouri voters passed medical marijuana. See exhibit I.

*Escape review*

“In a direct appeal of a guilty plea, our review is restricted to the subject-matter jurisdiction of the trial court and the sufficiency of the information or indictment.” State v. Sharp, 39 S.W.3d 70, 72 (Mo. App. E.D. 2001) (internal citations omitted). “On direct appeal we review the trial court “for prejudice, not mere error, and will reverse only if the error was so prejudicial that it deprived the defendant of a fair trial.” State v. Tokar, 918 S.W.2d 753, 761 (Mo. banc 1996) (citation omitted).” State v. Morrow, 968 S.W.2d 100, 106 (Mo. banc 1998).

Regarding a guilty plea, Relator’s three major issues do not involve either “the subject-matter jurisdiction of the trial court [or] the sufficiency of the information[.]” State v. Sharp, 39 S.W.3d 70, 72 (Mo. App. E.D. 2001) (internal citations omitted); see exhibit C, pp. 6-7, major issues.

Regarding a jury trial and the standard of review’s concern for a fair trial, if, on appeal, Relator’s amended motion to dismiss should

have been granted, that is not error that would have “deprived [Relator] of a fair trial[,]” the remedy for which would be a retrial – that is error that Relator should never have had to stand trial in the first place. State v. Morrow, 968 S.W.2d 100, 106 (Mo. banc 1998) (internal citation omitted); Id. (internal citation omitted) (internal quotation marks omitted). Further, a retrial could not provide adequate relief because the fact still

{7}

remains that the jury would not decide Relator’s questions of law and there is no verdict director for section 195.017.1. See exhibit C, pp. 21-26, second major issue and pp. 29-31, third major issue, whether to reach the merits (each addressing the arguments and reasoning that defer to the legislature).

*Suffer*

The operative word is “may” not “shall.” Caselaw does not state, “[a] writ of prohibition is appropriate: . . . (3) where a party [shall] suffer irreparable harm if relief is not granted.” State ex rel. Strauser v. Martinez, 416 S.W.3d 798, 801 (Mo. banc 2014) (internal citation omitted); see also State ex rel. Chassaing v. Mummert, 887 S.W.2d 573, 577 (Mo. banc 1994) (internal citation omitted) (not stating, “the aggrieved party [shall] suffer considerable hardship and expense as a consequence of the erroneous decision.”). Even assuming arguendo that Relator was found not guilty, Relator would still have suffered the hardship and expense of having to stand trial when, according to his

amended motion to dismiss, he should never have had to stand trial in the first place. State ex rel. Chassaing v. Mummert, 887 S.W.2d 573, 577 (Mo. banc 1994) (internal citation omitted).

WHEREFORE, Relator petitions the Court for a writ of prohibition regarding Respondent's July 1, 2019 order summarily denying Relator's amended motion to dismiss.

Respectfully submitted,

{8}

*/s/ Lou Horwitz*

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Louis Horwitz, Mo Bar No. 56155  
Attorney for Relator  
1 Mid Rivers Mall Drive, Suite 280  
St. Peters, MO 63376  
Tel: 636-279-1532  
Fax: 636-279-1632  
Email: LouHorwitzLLC@att.net

#### **Certificate of Service**

I certify that on this 17th day of July, 2019, a true copy of the above and foregoing was electronically filed with the Clerk of the Court via the Missouri eFiling System and served via electronic mail to the parties and attorneys listed below.

The Honorable Michael Wright,  
Associate Circuit Judge

12th Judicial Circuit  
Warren County Courthouse  
104 West Main St.  
Warrenton, MO 63383  
Tel: 636-456-3375  
Fax: 636-456-2422  
Email: michael.wright@courts.mo.gov

Kelly King, Prosecuting Attorney  
Warren County Prosecuting Attorney's office  
104 West Main St., Suite E  
Warrenton, MO 63383  
Tel: 636-456-7024  
Fax: 636-456-5285  
Email: kelly.king@prosecutors.mo.gov

*/s/ Lou Horwitz*

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Louis Horwitz

{9}

## Appendix V

### Index to Exhibits for Petition for Writ of Prohibition in the Missouri Court of Appeals, Eastern District

[El]ectronically Filed – EASTERN DISTRICT  
CT OF APPEALS – July 17, 2019 – 11:16 AM<sup>1</sup>

### IN THE MISSOURI COURT OF APPEALS EASTERN DISTRICT

STATE OF MISSOURI ex rel. )  
DARRIN LAMASA, )  
Relator, )  
v. )  
THE HONORABLE MICHAEL )  
WRIGHT, Associate Circuit Judge, )  
12th Judicial Circuit, Warren )  
County, Missouri, )  
Respondent. )

Cause No. ED108054<sup>2</sup>  
(Re: Warren County Case 18BB-CR00013-01)

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<sup>1</sup> Said electronic filing information appears vertically along the right side of all pages beginning at the top and in light blue lettering.

<sup>2</sup> Said case number appears at the top-right of the first page and to the left of electronic filing information.

**INDEX TO EXHIBITS<sup>3</sup>**

<u>Exhibit</u>	<u>Description</u>	<u>Page Number</u>
A	Complaint	1
B	Information	2
C	Amended motion to dismiss	3
D	Table of Contents	55
E	Index to Exhibits	58
F	Jurisdiction	60
G	Standing	66
H	Missouri's Pre-CSA drug laws	71
I	November 6, 2018 election information	85
J	States with legalized medical marijuana	91
K	States that legislatively enacted medical marijuana	93
L	Missouri's caselaw	94
M	Additional caselaw	104
N	Irrelevant caselaw	131
O	Legislative history excerpts	133

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<sup>3</sup> Excluding exhibit S, which is a certified copy, each exhibit is a true and accurate copy. Relator's social security number and date of birth have been redacted in exhibits A and B. Exhibits F through Q are the exhibits in the amended motion to dismiss and said exhibits have updated handwritten page numbers. Exhibits D, E, and R are separate motions that relate to the amended motion to dismiss and were filed on the same day. Exhibits H and I have a table of contents. Exhibits C and M are submitted in parts. This Index, including the certificate of service, consists of three pages.

<u>Exhibit</u>	<u>Description</u>	<u>Page Number</u>
P	<u>Wall Street Journal</u> article: Canada's legalization	144
Q	<u>Warren County Record</u> article: Treatment similar to alcohol	145
R	Relator's amended motion to stay	147
S	Certified copy of the docket sheet for Respondent's July 1, 2019 order	150
T	Entry of Appearance	152

Respectfully submitted,

*/s/ Lou Horwitz*

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Louis Horwitz, Mo Bar No. 56155  
 Attorney for Relator  
 1 Mid Rivers Mall Drive, Suite 280  
 St. Peters, MO 63376  
 Tel: 636-279-1532  
 Fax: 636-279-1632  
 Email: LouHorwitzLLC@att.net

#### **Certificate of Service**

I certify that on this 17th day of July, 2019, a true copy of the above and foregoing was electronically filed with the Clerk of the Court

via the Missouri eFiling System and served via electronic mail to the parties and attorneys listed below.

The Honorable Michael Wright,  
Associate Circuit Judge  
12th Judicial Circuit  
Warren County Courthouse  
104 West Main St.  
Warrenton, MO 63383  
Tel: 636-456-3375  
Fax: 636-456-2422  
Email: michael.wright@courts.mo.gov

Kelly King, Prosecuting Attorney  
Warren County Prosecuting Attorney's office  
104 West Main St., Suite E  
Warrenton, MO 63383  
Tel: 636-456-7024  
Fax: 636-456-5285  
Email: kelly.king@prosecutors.mo.gov

*/s/ Lou Horwitz*

---

Louis Horwitz

## Appendix W

[E]lectronically Filed – EASTERN DISTRICT  
CT OF APPEALS – July 17, 2019 – 11:16 AM<sup>1</sup>

IN THE  
MISSOURI COURT OF APPEALS  
EASTERN DISTRICT

STATE OF MISSOURI ex rel. )  
DARRIN LAMASA, )  
Relator )  
v. )  
THE HONORABLE MICHAEL )  
WRIGHT, Associate Circuit Judge, )  
12th Judicial Circuit, Warren )  
County, Missouri, )  
Respondent. )

Cause No. ED108054<sup>2</sup>  
(Re: Warren County Case 18BB-CR00013-01)

### SUGGESTIONS IN SUPPORT

Relator is not aware of any published opinions since June 17, 2019 – the date the amended motion to dismiss was filed with the

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<sup>1</sup> Said electronic filing information appears vertically along the right side of all pages beginning at the top and in light blue lettering.

<sup>2</sup> Said case number appears at the top-right of the first page and to the left of electronic filing information.

trial court – that materially address the issues and therefore Relator has no suggestions in support.

Respectfully submitted,

*/s/ Lou Horwitz*

---

Louis Horwitz, Mo Bar No. 56155  
Attorney for Relator  
1 Mid Rivers Mall Drive, Suite 280  
St. Peters, MO 63376  
Tel: 636-279-1532  
Fax: 636-279-1632  
Email: LouHorwitzLLC@att.net

{1}<sup>3</sup>

**Certificate of Service**

I certify that on this 17th day of July, 2019, a true copy of the above and foregoing was electronically filed with the Clerk of the Court via the Missouri eFiling System and served via electronic mail to the parties and attorneys listed below.

The Honorable Michael Wright,  
Associate Circuit Judge  
12th Judicial Circuit  
Warren County Courthouse

---

<sup>3</sup> Page numbers are at the bottom, in Microsoft Word, and appear in brackets { } herein.

104 West Main St.  
Warrenton, MO 63383  
Tel: 636-456-3375  
Fax: 636-456-2422  
Email: michael.wright@courts.mo.gov

Kelly King, Prosecuting Attorney  
Warren County Prosecuting Attorney's office  
104 West Main St., Suite E  
Warrenton, MO 63383  
Tel: 636-456-7024  
Fax: 636-456-5285  
Email: kelly.king@prosecutors.mo.gov

*/s/ Lou Horwitz*

---

Louis Horwitz

{2}

## Appendix X

[E]lectronically Filed – EASTERN DISTRICT  
CT OF APPEALS – July 17, 2019 – 12:35 PM<sup>1</sup>

IN THE  
MISSOURI COURT OF APPEALS  
EASTERN DISTRICT

STATE OF MISSOURI ex rel. )  
DARRIN LAMASA, )  
Relator )  
v. )  
THE HONORABLE MICHAEL )  
WRIGHT, Associate Circuit Judge, )  
12th Judicial Circuit, Warren )  
County, Missouri, )  
Respondent. )

Cause No.  
(Re: Warren County Case 18BB-CR00013-01)

**MOTION TO STAY**

COMES NOW Relator, by and through undersigned counsel, and requests the Court issue an order staying all proceedings in 18BB-CR00013-01 until Relator's petition for writ of prohibition is decided. As grounds, Relator states the following:

---

<sup>1</sup> Said electronic filing information appears vertically along the right side of all pages beginning at the top and in light blue lettering.

1. On November 6, 2018, the Missouri Constitution was amended with an initiative petition to include medical marijuana that passed as a ballot measure. See petition for writ of prohibition (“petition”), exhibit I; Mo. Const. art. XIV.

2. Relator is charged with “the class C felony of trafficking in the second degree[]” based on the possession of a certain amount of marijuana. See petition, exhibit B.

3. Relator claims section 195.017.2(4)(w) (i.e., marijuana’s statutory codification as a Schedule I controlled substance) is not valid under the Due Process

{1}<sup>2</sup>

Clauses. See petition, exhibits C through Q.

4. Relator’s three major issues are questions of law and seem to be issues of first impression not only for Missouri, but the entire nation. See petition, exhibit C, pp. 6-7, major issues.

5. Relator submits his questions of law will escape review. See petition, statement of the reasons why the writ should issue.

6. Relator requested a stay from the trial court. See petition, exhibit R.

7. The trial court passed Relator’s request for a stay to August 8, 2019. See petition, exhibit S.

WHEREFORE, Relator requests the Court issue an order staying all proceedings in

---

<sup>2</sup> Page numbers are at the bottom, in Microsoft Word, and appear in brackets {} herein.

18BB-CR00013-01 until Relator's petition for writ of prohibition is decided.

Respectfully submitted,

*/s/ Lou Horwitz*

---

Louis Horwitz, Mo Bar No. 56155  
Attorney for Relator  
1 Mid Rivers Mall Drive, Suite 280  
St. Peters, MO 63376  
Tel: 636-279-1532  
Fax: 636-279-1632  
Email: LouHorwitzLLC@att.net

**Certificate of Service**

I certify that on this 17th day of July, 2019, a true copy of the above and foregoing was electronically filed with the Clerk of the Court via the Missouri eFiling System and served via electronic mail to the parties and attorneys listed below.

{2)

The Honorable Michael Wright,  
Associate Circuit Judge  
12th Judicial Circuit  
Warren County Courthouse  
104 West Main St.  
Warrenton, MO 63383  
Tel: 636-456-3375

Fax: 636-456-2422  
Email: michael.wright@courts.mo.gov

Kelly King, Prosecuting Attorney  
Warren County Prosecuting Attorney's office  
104 West Main St., Suite E  
Warrenton, MO 63383  
Tel: 636-456-7024  
Fax: 636-456-5285  
Email: kelly.king@prosecutors.mo.gov

*/s/ Lou Horwitz*

---

Louis Horwitz

{3}

## Appendix Y

IN THE  
MISSOURI COURT OF APPEALS  
EASTERN DISTRICT<sup>1</sup>

STATE OF MISSOURI EX REL. )  
DARRIN LAMASA, RELATOR, )  
 )  
vs. )  
 )  
THE HONORABLE MICHAEL WRIGHT, )  
ASSOCIATE CIRCUIT JUDGE, 12TH )  
JUDICIAL CIRCUIT, WARREN )  
COUNTY, MISSOURI, RESPONDENT. )

No. ED108054

Writ of Prohibition

WARREN COUNTY CIRCUIT COURT  
Cause No. 18BB-CR00013-01

ORDER

Relator has filed a Petition for Writ of Prohibition along with Suggestions in Support and Exhibits.

---

<sup>1</sup> On top appears small image of the state seal; in top-right corner appears the word “SCANNED”; and in bottom-right corner appears the seal.

Being duly advised in the premises, the Court hereby DENIES Relator's Motion for Stay and DENIES Relator's Petition for Writ of Prohibition.

SO ORDERED.

DATED: 7/19/19

/s/

---

Gary M. Gaertner, Jr.,  
Presiding Judge  
Writ Division II  
Missouri Court of Appeals,  
Eastern District

cc: Hon. Michael S. Wright  
Kelly King  
Louis Horwitz

## Appendix Z

[E]lectronically Filed – SUPREME COURT OF  
MISSOURI – July 29, 2019 – 09:59 AM<sup>1</sup>

IN THE  
MISSOURI SUPREME COURT

STATE OF MISSOURI ex rel. )  
DARRIN LAMASA, )  
Relator, )  
v. )  
THE HONORABLE MICHAEL )  
WRIGHT, Associate Circuit Judge, )  
12th Judicial Circuit, Warren )  
County, Missouri, )  
Respondent. )

Cause No. SC98024<sup>2</sup>  
(Re: Warren County Case 18BB-CR00013-01)

**PETITION FOR WRIT OF PROHIBITION**

COMES NOW Darrin Lamasa, Relator, by  
and through undersigned counsel, pursuant to  
Supreme Court Rule 97, and petitions the Court  
for a writ of prohibition regarding Respondent's

---

<sup>1</sup> Said electronic filing information appears  
vertically along the right side of all pages beginning  
at the top and in light blue lettering.

<sup>2</sup> Said case number appears at the top-right of the  
first page and to the left of electronic filing  
information.

July 1, 2019 order summarily denying Relator's amended motion to dismiss that claims section 195.017.2(4)(w) (i.e., marijuana's statutory codification as a Schedule I controlled substance) is not valid under the Due Process Clauses.<sup>3</sup>

{1}<sup>4</sup>

### **STATEMENT OF JURISDICTION**

"The supreme court and districts of the court of appeals may issue and determine original remedial writs." Mo. Const. art. V, § 4.1. "No original remedial writ shall be issued by an appellate court in any case wherein adequate relief can be afforded by an appeal or by application for such writ to a lower court." Rule 84.22(a). "In all cases of final judgment rendered upon any indictment or information, an appeal to the proper appellate court shall be allowed to the defendant, provided, . . ." Section 547.070.

An appeal is not an option because Respondent's July 1, 2019 order summarily denying Relator's amended motion to dismiss is not a judgment under Rule 74.01. See Rule 74.01

---

<sup>3</sup> Unless indicated otherwise, Missouri statutory and constitutional citations are to the electronic database published by the Missouri Revisor of Statutes, Cum. Supp. 2018, as of July 25, 2019. The link or hyperlink is not listed pursuant to Rule 103.04(b). Unless otherwise indicated, all other citations are to LexisNexis 2019.

<sup>4</sup> Page numbers are at the bottom, in Microsoft Word, and appear in brackets { } herein.

(stating, “[a] judgment is entered when a writing signed by the judge and denominated ‘judgment’ or ‘decree’ is filed.”).

On July 17, 2019, Relator filed a petition for writ of prohibition and a motion to stay in the Missouri Court of Appeals, Eastern District. See exhibits V and Y, respectively. Said petition’s case number is ED108054. See exhibit V or exhibit Z. On July 19, 2019, the Eastern District summarily denied Relator’s petition. See exhibit Z.

In summarily denying, the Eastern District also opted not to address a question of law that Relator presented in his statement of jurisdiction. In this particular context, this question of law is not one for a trial court. Believing the issue to be legitimate and in keeping with the spirit of the law whereby not raising

{2}

the issue could mean that Relator has waived the issue, Relator presents the issue should the Court deem it appropriate to provide guidance on this question of law.

*Question of law presented to the Eastern District*

When a Relator petitions for an “original remedial writ” and “adequate relief can be afforded . . . by application for such writ to a lower court[,]” but the petition “involv[es] the validity . . . of a statute[,]” does Rule 84.22 operate as an exception to Mo. Const. art. V, § 3?

Rule 84.22, Id.; Mo. Const. art. V, § 3; see exhibit V, statement of jurisdiction.

The supreme court shall have exclusive appellate jurisdiction in all cases involving the validity of a treaty or statute of the United States, or of a statute or provision of the constitution of this state, the construction of the revenue laws of this state, the title to any state office and in all cases where the punishment imposed is death. The court of appeals shall have general appellate jurisdiction in all cases except those within the exclusive jurisdiction of the supreme court.

Mo. Const. art. V, § 3; see exhibit V, statement of jurisdiction.

“In most instances where an extraordinary writ is sought, this court does decline to consider the application if not previously made to a lower court in accordance with Rule 84.22.” State ex rel. Roberts v. Buckley, 533 S.W.2d 551, 553 (Mo. banc 1976); see exhibit V, statement of jurisdiction.

Relator is not aware of an opinion on point interpreting Rule 84.22 in the context of Mo. Const. art. V, § 3.

{3}

## **STATEMENT OF THE FACTS<sup>5</sup>**

On January 5, 2018, the State filed a Complaint against Relator. See exhibit A. On January 31, 2018, undersigned counsel filed his entry of appearance. See exhibit T. On July 31, 2018, the State filed an Information against Relator. See exhibit B. The charge against Relator is “the class C felony of trafficking in the second degree[]” based on the possession of a certain amount of marijuana. See exhibits A and B.

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 I; Mo. Const. art. XIV. In a collateral context, Canada – one of our two bordering nations – recently legalized marijuana. See exhibit P.

On June 17, 2019, Relator filed an amended motion to dismiss the charge and an amended motion to stay. See exhibits C through R.

Relator’s amended motion to dismiss has three major issues and each issue presents a question of law: whether Missouri’s medical marijuana law (Mo. Const. art. XIV) is preempted by the federal statute; if not, since there is no verdict director for the statutory

---

<sup>5</sup> This petition includes, as exhibits, the additional motions (e.g., table of contents) and exhibits that accompanied the amended motion to dismiss and are so indicated in the Index to Exhibits.

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

{4}

beyond rational basis review; and 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. See exhibit C, pp. 6-7, major issues.

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 exhibit C, p. 34, ground 70.

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

#### Section 195.017.1.

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).

{5}

On July 1, 2019, Respondent summarily denied Relator's amended motion to dismiss. See exhibit S.

On July 17, 2019, Relator filed a petition for writ of prohibition and a motion to stay in the Missouri Court of Appeals, Eastern District. See exhibits V and Y, respectively. On July 19, 2019, the Eastern District summarily denied Relator's petition. See exhibit Z.

### **RELIEF SOUGHT**

Relator seeks a writ of prohibition 1) vacating Respondent's July 1, 2019 order summarily denying Relator's amended motion to dismiss and 2) ordering Respondent to grant Relator's amended motion to dismiss.

### **STATEMENT OF THE REASONS WHY THE WRIT SHOULD ISSUE**

A writ of prohibition is appropriate: (1) to prevent the usurpation of judicial power when a lower court lacks authority or jurisdiction; (2) to remedy an excess of authority,

jurisdiction or abuse of discretion where the lower court lacks the power to act as intended; or (3) where a party may suffer irreparable harm if relief is not granted.

State ex rel. Strauser v. Martinez, 416 S.W.3d 798, 801 (Mo. banc 2014) (internal citation omitted). “Prohibition will lie when there is an important question of law decided erroneously that would otherwise escape review by this Court, and the aggrieved party may suffer considerable hardship and expense as a consequence of the erroneous decision.” State ex rel. Chassaing v. Mummert, 887 S.W.2d 573, 577 (Mo. banc 1994) (internal citation omitted). “Interlocutory review of trial

{6}

court error by writ of prohibition, however, should occur only in extraordinary circumstances. If the error is one of law, and reviewable on appeal, a writ of prohibition is not appropriate.” Id. (internal citations omitted).

#### *Question of law*

The issues presented are questions of law. See exhibit C, pp. 6-7, major issues.

#### *Important*

The three major issues seem to be issues of first impression not only for Missouri, but the entire nation, and as such, would seem to qualify as important under Chassaing. Id.; State ex rel. Chassaing v. Mummert, 887 S.W.2d 573, 577 (Mo. banc 1994) (internal citation omitted). And

it has not been one year since the Missouri voters passed medical marijuana. See exhibit I.

*Escape review*

“In a direct appeal of a guilty plea, our review is restricted to the subject-matter jurisdiction of the trial court and the sufficiency of the information or indictment.” State v. Sharp, 39 S.W.3d 70, 72 (Mo. App. E.D. 2001) (internal citations omitted). “On direct appeal we review the trial court “for prejudice, not mere error, and will reverse only if the error was so prejudicial that it deprived the defendant of a fair trial.” State v. Tokar, 918 S.W.2d 753, 761 (Mo. banc 1996) (citation omitted).” State v. Morrow, 968 S.W.2d 100, 106 (Mo. banc 1998).

Regarding a guilty plea, Relator’s three major issues do not involve either “the subject-matter jurisdiction of the trial court [or] the sufficiency of the

{7}

information[.]” State v. Sharp, 39 S.W.3d 70, 72 (Mo. App. E.D. 2001) (internal citations omitted); see exhibit C, pp. 6-7, major issues.

Regarding a jury trial and the standard of review’s concern for a fair trial, if, on appeal, Relator’s amended motion to dismiss should have been granted, that is not error that would have “deprived [Relator] of a fair trial[,]” the remedy for which would be a retrial – that is error that Relator should never have had to stand trial in the first place. State v. Morrow, 968 S.W.2d 100, 106 (Mo. banc 1998) (internal citation omitted); Id. (internal citation omitted) (internal quotation marks omitted). Further, a

retrial could not provide adequate relief because the fact still remains that the jury would not decide Relator's questions of law and there is no verdict director for section 195.017.1. See exhibit C, pp. 6-7, major issues and pp. 29-31, third major issue, whether to reach the merits (addressing the arguments and reasoning that defer to the legislature).

*Suffer*

The operative word is "may" not "shall." Caselaw does not state, "[a] writ of prohibition is appropriate: . . . (3) where a party [shall] suffer irreparable harm if relief is not granted." State ex rel. Strauser v. Martinez, 416 S.W.3d 798, 801 (Mo. banc 2014) (internal citation omitted); see also State ex rel. Chassaing v. Mummert, 887 S.W.2d 573, 577 (Mo. banc 1994) (internal citation omitted) (not stating, "the aggrieved party [shall] suffer considerable hardship and expense as a consequence of the erroneous decision."). Even assuming arguendo that Relator was found not guilty, Relator would still have suffered the hardship and expense

{8}

of having to stand trial when, according to his amended motion to dismiss, he should never have had to stand trial in the first place. State ex rel. Chassaing v. Mummert, 887 S.W.2d 573, 577 (Mo. banc 1994) (internal citation omitted).

WHEREFORE, Relator petitions the Court for a writ of prohibition regarding Respondent's July 1, 2019 order summarily denying Relator's amended motion to dismiss.

Respectfully submitted,

*/s/ Lou Horwitz*

---

Louis Horwitz, Mo Bar No. 56155  
Attorney for Relator  
1 Mid Rivers Mall Drive, Suite 280  
St. Peters, MO 63376  
Tel: 636-279-1532  
Fax: 636-279-1632  
Email: LouHorwitzLLC@att.net

**Certificate of Service**

I certify that on this 29th day of July, 2019, a true copy of the above and foregoing was electronically filed with the Clerk of the Court via the Missouri eFiling System and served via electronic mail to the parties and attorneys listed below.

The Honorable Michael Wright,  
Associate Circuit Judge  
12th Judicial Circuit  
Warren County Courthouse  
104 West Main St.  
Warrenton, MO 63383  
Tel: 636-456-3363  
Fax: 636-456-2422  
Email: michael.wright@courts.mo.gov

{9}

Kelly King, Prosecuting Attorney

Warren County Prosecuting Attorney's office  
104 West Main St., Suite E  
Warrenton, MO 63383  
Tel: 636-456-7024  
Fax: 636-456-5285  
Email: kelly.king@prosecutors.mo.gov

*/s/ Lou Horwitz*

---

Louis Horwitz

{10}

## Appendix AA

### Index to Exhibits for Petition for Writ of Prohibition in the Missouri Supreme Court

[El]ectronically Filed – SUPREME COURT OF  
MISSOURI – July 29, 2019 – 09:59 AM<sup>1</sup>

### IN THE MISSOURI SUPREME COURT

STATE OF MISSOURI ex rel. )  
DARRIN LAMASA, )  
Relator, )  
v. )  
THE HONORABLE MICHAEL )  
WRIGHT, Associate Circuit Judge, )  
12th Judicial Circuit, Warren )  
County, Missouri, )  
Respondent. )

Cause No. SC98024<sup>2</sup>  
(Re: Warren County Case 18BB-CR00013-01)

### INDEX TO EXHIBITS

#### Preamble

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<sup>1</sup> Said electronic filing information appears vertically along the right side of all pages beginning at the top and in light blue lettering.

<sup>2</sup> Said case number appears at the top-right of the first page and to the left of electronic filing information.

Excluding exhibit S, which is a certified copy, each exhibit is a true and accurate copy. Relator's social security number and date of birth have been redacted in exhibits A and B. Exhibits F through Q are the exhibits in the amended motion to dismiss and said exhibits have updated handwritten page numbers. Exhibits F through Q were filed in the petition to the Eastern District. See exhibit X. In addition, exhibits F through Q filed in the Eastern District are not filed in this petition because that would result in two copies of the same exhibit. Exhibits D, E, and R are separate motions that relate to the amended motion to dismiss and were filed on the same day. Exhibits H and I have a table of contents. Exhibits C and M are submitted in parts. This Index, including the certificate of service, consists of four pages.

<u>Exhibit</u>	<u>Description</u>	<u>Page Number</u>
A	Complaint	1
B	Information	2
C	Amended motion to dismiss	3
D	Table of contents	55
E	Index to exhibits	58
F	Jurisdiction	60
G	Standing	66
H	Missouri's pre-CSA drug laws	71
I	November 6, 2018 election information	85
J	States with legalized medical marijuana	91
K	States that legislatively enacted medical marijuana	93

<u>Exhibit</u>	<u>Description</u>	<u>Page Number</u>
L	Missouri's caselaw	94
M	Additional caselaw	104
N	Irrelevant caselaw	131
O	Legislative history excerpts	133
P	<u>Wall Street Journal</u> article: Canada's legalization	144
Q	<u>Warren County Record</u> article: Treatment similar to alcohol	145
R	Relator's amended motion to stay	147
S	Certified copy of the docket sheet For Respondent's July 1, 2019 order	150
T	Entry of appearance	152
U	Writ summary – Eastern District ("ED")	153
V	Writ petition – ED	155
W	Writ suggestions – ED	164
X	Writ index to exhibits – ED	166
Y	Motion to stay – ED	169
Z	ED's 7/19/19 order	172

Respectfully submitted,

*/s/ Lou Horwitz*

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Louis Horwitz, Mo Bar No. 56155  
 Attorney for Relator  
 1 Mid Rivers Mall Drive, Suite 280  
 St. Peters, MO 63376

Tel: 636-279-1532  
Fax: 636-279-1632  
Email: LouHorwitzLLC@att.net

**Certificate of Service**

I certify that on this 29th day of July, 2019, a true copy of the above and foregoing was electronically filed with the Clerk of the Court via the Missouri eFiling System and served via electronic mail to the parties and attorneys listed below.

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Tel: 636-456-3363  
Fax: 636-456-2422  
Email: michael.wright@courts.mo.gov

Kelly King, Prosecuting Attorney  
Warren County Prosecuting Attorney's office  
104 West Main St., Suite E  
Warrenton, MO 63383  
Tel: 636-456-7024  
Fax: 636-456-5285  
Email: kelly.king@prosecutors.mo.gov

*/s/ Lou Horwitz*

---

Louis Horwitz

## Appendix BB

[E]lectronically Filed – SUPREME COURT OF  
MISSOURI – July 29, 2019 – 09:59 AM<sup>1</sup>

IN THE  
MISSOURI SUPREME COURT

STATE OF MISSOURI ex rel. )  
DARRIN LAMASA, )  
Relator, )  
v. )  
THE HONORABLE MICHAEL )  
WRIGHT, Associate Circuit Judge, )  
12th Judicial Circuit, Warren )  
County, Missouri, )  
Respondent. )

Cause No. SC98024<sup>2</sup>  
(Re: Warren County Case 18BB-CR00013-01)

**SUGGESTIONS IN SUPPORT**

Since June 17, 2019 – the date the amended motion to dismiss was filed with the trial court – Relator is aware of one published opinion that merits mentioning:

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<sup>1</sup> Said electronic filing information appears vertically along the right side of all pages beginning at the top and in light blue lettering.

<sup>2</sup> Said case number appears at the top-right of the first page and to the left of electronic filing information.

Commonwealth v. Jezzi, 208 A.3d 1105 (Pa. Super. Ct. 2019).<sup>3</sup>

I. Commonwealth v. Jezzi, 208 A.3d 1105 (Pa. Super. Ct. 2019) is marginally relevant to Relator's first major issue but otherwise should be deemed irrelevant because, yet again, it is another majority opinion that does not interpret the word "no" and also involved equal protection.

{1}<sup>4</sup>

See exhibit C, pp. 6-7, major issues; see also exhibits L and M.

The context was an appeal of "two counts of possession with intent to deliver marijuana ('PWID'), and one count each of possession of marijuana and possession of drug paraphernalia." Jezzi at opening sentence (internal footnote omitted).

"Appellant argues the criminal prohibition of marijuana as a Schedule I controlled substance in the CSA is irreconcilable with [Pennsylvania's medical marijuana act]." Id. at between footnotes 2 and 3 and before headnote 1.

---

<sup>3</sup> The opinion seems to be in the process of being published because the pagination has not been completed for the citation based on the Bluebook. Consequently, Relator will use headnotes, footnotes, and parenthetical statements as an alternative way hopefully to help locate citations or quotations.

<sup>4</sup> Page numbers are at the bottom, in Microsoft Word, and appear in brackets {} herein.

Appellant argued that classification is unconstitutional because it denies substantive due process and is not rationally related to a legitimate government interest. Further, Appellant suggested the Schedule I classification of marijuana denies Pennsylvania citizens equal protection under the law because the CSA states marijuana has no medical use for Pennsylvania citizens generally but the MMA sets up a medical marijuana production, distribution, and certification program for Pennsylvania citizens who are medical patients or medical patient caregivers.

Id.

“Instantly, the substantive due process section of Appellant’s argument is underdeveloped and lacks specificity on which of Appellant’s constitutional rights is violated by the Schedule I classification of marijuana.” Id. at between headnotes 2 and 3 and before footnote 4. “Accordingly, Appellant waived his

{2}

claim regarding the deprivation of substantive due process.” Id. (internal citation omitted).

Based upon the foregoing, we hold that the CSA and the MMA can be read in harmony and given full effect, where the MMA was not

intended to remove marijuana from the list of Schedule I substances under the CSA; the MMA was intended to provide a controlled program for lawful access to medical marijuana under specific circumstances and criteria for special medical needs.

Id. at ending paragraph.

“Regarding Appellant's equal protection challenge, we first observe that medical marijuana is not listed in the CSA as a Schedule I substance, only marijuana is listed. The MMA provides a very limited and controlled vehicle for the legal use of medical marijuana by persons qualified under the MMA.” Id. at immediately preceding and following headnote 16 (internal citation omitted). “We also hold the CSA Schedule I classification of marijuana does not violate equal protection on the ground that it treats similarly situated citizens disparately.” Id. at ending paragraph.

#### *Argument*

One, regarding Relator's first major issue (preemption), even though preemption was not specifically discussed and Pennsylvania's medical marijuana act was not preempted, the appellant essentially attempted to have the CSA preempted by state law. Id. at ending paragraph (stating, “we hold that the CSA

{3}

and the MMA can be read in harmony and given full effect[.]”); Id. at between footnotes 2 and 3 and before headnote 1 (stating, “[a]ppellant

argues the criminal prohibition of marijuana as a Schedule I controlled substance in the CSA is irreconcilable with [Pennsylvania's medical marijuana act."'); see exhibit C, p. 6, first major issue.

In addition, the opinion does not mention the Raich court's statement, "marijuana [is] contraband for any purpose[.]" Gonzales v. Raich, 545 U.S. 1, 27 (2005); see also exhibit C, p. 19.

Two, in comparison, Relator's substantive due process claim is quite developed. Jezzi at between headnotes 2 and 3 and before footnote 4 (stating, "the substantive due process section of Appellant's argument is underdeveloped and lacks specificity on which of Appellant's constitutional rights is violated by the Schedule I classification of marijuana."); see exhibit C, pp. 21-26, second major issue (demonstrating how and why the Due Process Clauses may be extended beyond rational basis review).

Three, equal protection does not seem applicable. See exhibit C, p. 5, preliminary statement 4.

Respectfully submitted,

*/s/ Lou Horwitz*

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Louis Horwitz, Mo Bar No. 56155  
Attorney for Relator

{4}

1 Mid Rivers Mall Drive, Suite 280  
St. Peters, MO 63376

Tel: 636-279-1532  
Fax: 636-279-1632  
Email: LouHorwitzLLC@att.net

**Certificate of Service**

I certify that on this 29th day of July, 2019, a true copy of the above and foregoing was electronically filed with the Clerk of the Court via the Missouri eFiling System and served via electronic mail to the parties and attorneys listed below.

The Honorable Michael Wright,  
Associate Circuit Judge  
12th Judicial Circuit  
Warren County Courthouse  
104 West Main St.  
Warrenton, MO 63383  
Tel: 636-456-3363  
Fax: 636-456-2422  
Email: michael.wright@courts.mo.gov

Kelly King, Prosecuting Attorney  
Warren County Prosecuting Attorney's office  
104 West Main St., Suite E  
Warrenton, MO 63383  
Tel: 636-456-7024  
Fax: 636-456-5285  
Email: kelly.king@prosecutors.mo.gov

*/s/ Lou Horwitz*

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Louis Horwitz

{5}

## Appendix CC

[E]lectronically Filed – SUPREME COURT OF  
MISSOURI – July 29, 2019 – 10:27 AM<sup>1</sup>

IN THE  
MISSOURI SUPREME COURT

STATE OF MISSOURI ex rel. )  
DARRIN LAMASA, )  
Relator, )  
v. )  
THE HONORABLE MICHAEL )  
WRIGHT, Associate Circuit Judge, )  
12th Judicial Circuit, Warren )  
County, Missouri, )  
Respondent. )

Cause No. SC98024<sup>2</sup>  
(Re: Warren County Case 18BB-CR00013-01)

**MOTION TO STAY**

COMES NOW Relator, by and through undersigned counsel, and requests the Court issue an order staying all proceedings in 18BB-CR00013-01 until Relator's petition for writ of

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<sup>1</sup> Said electronic filing information appears vertically along the right side of all pages beginning at the top and in light blue lettering.

<sup>2</sup> Said case number appears at the top-right of the first page and to the left of electronic filing information.

prohibition is decided. As grounds, Relator states the following:

1. On November 6, 2018, the Missouri Constitution was amended with an initiative petition to include medical marijuana that passed as a ballot measure. See petition for writ of prohibition (“petition”), exhibit I; Mo. Const. art. XIV.

2. Relator is charged with “the class C felony of trafficking in the second degree[]” based on the possession of a certain amount of marijuana. See petition, exhibit B.

3. On June 17, 2019, Relator filed an amended motion to dismiss that claims section 195.017.2(4)(w) (i.e., marijuana’s statutory codification as a

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Schedule I controlled substance) is not valid under the Due Process Clauses. See petition, exhibits C through Q.

4. On June 17, 2019, Relator also filed an amended motion to stay. See petition, exhibit R.

5. Relator’s three major issues are questions of law – for which there are no verdict directors – and seem to be issues of first impression not only for Missouri, but the entire nation. See petition, exhibit C, pp. 6-7, major issues.

6. On July 1, 2019, Respondent summarily denied Relator’s amended motion to dismiss. See petition, exhibit S.

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<sup>3</sup> Page numbers are at the bottom, in Microsoft Word, and appear in brackets {} herein.

7. Relator's request for a stay was passed to August 8, 2019. Id.

8. On July 17, 2109, Relator filed a petition for writ of prohibition along with a motion to stay in the Missouri Court of Appeals, Eastern District. See petition, exhibits U through Y.

9. On July 19, 2019, the Eastern District summarily denied Relator's petition and motion to stay. See petition, exhibit Z.

10. Relator submits his questions of law will escape review, including the appellate jurisdictional question of law that is not for a trial court. See petition, statement of the reasons why the writ should issue and statement of jurisdiction (stating, “[w]hen a Relator petitions for an ‘original remedial writ’ and ‘adequate relief can be afforded . . . by application for such writ to a lower court[,]’ but the petition ‘involv[es] the validity . . . of a statute[,]’ does Rule 84.22 operate as an

{2}

exception to Mo. Const. art. V, § 3?”); see also petition, exhibit V, p. 156, statement of jurisdiction.

WHEREFORE, Relator requests the Court issue an order staying all proceedings in 18BB-CR00013-01 until Relator's petition for writ of prohibition is decided.

Respectfully submitted,

*/s/ Lou Horwitz*

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Louis Horwitz, Mo Bar No. 56155  
Attorney for Relator  
1 Mid Rivers Mall Drive, Suite 280  
St. Peters, MO 63376  
Tel: 636-279-1532  
Fax: 636-279-1632  
Email: LouHorwitzLLC@att.net

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{3}  
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Tel: 636-456-7024  
Fax: 636-456-5285  
Email: kelly.king@prosecutors.mo.gov

*/s/ Lou Horwitz*

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Louis Horwitz

{4}

## Appendix DD

In the Supreme Court of Missouri

## September Session, 2019

State ex rel. Darrin Lamasa,  
Relator,

No. SC98024 PROHIBITION  
Warren County Circuit  
Court No. 18BB-CR00013-01  
Eastern District Court of Appeals  
No. ED108054

The Honorable Michael Wright,  
Respondent.

*Now at this day, on consideration of the petition for a writ of prohibition herein to the said respondent, it is ordered by the Court here that the said petition be, and the same is hereby denied. Relator's motion for stay overruled as moot.*

STATE OF MISSOURI-Sct.

*I, BETSY AUBUCHON, Clerk of the Supreme Court of the State of Missouri, certify that the foregoing is a full, true and complete transcript of the judgment of said Supreme Court, entered of record at the September Session thereof, 2019, and on the 3<sup>rd</sup> day of September, 2019, in the above-entitled cause.*

WITNESS my hand and the Seal of the Supreme Court of Missouri, at my office in the City of Jefferson, this 3<sup>rd</sup> day of September, 2019.

/s/  
\_\_\_\_\_, Clerk<sup>1</sup>

/s/  
\_\_\_\_\_, Deputy Clerk

[next page]<sup>2</sup>

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Supreme Court of  
Missouri

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vs.

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**MANDATE**

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**JUDGMENT**

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<sup>1</sup> To the left appears the seal.

<sup>2</sup> Information appears vertically.