CASE NO. _____

FRANKLIN CIRCUIT COURT
DIVISION_____
JUDGE _____

DAN SEUM,

AMY STALKER,

and

DANNY BELCHER PLAINTIFFS

v.

PETITION FOR DECLARATORY AND INJUNCTIVE RELIEF

MATT BEVIN
in his official capacity as Governor of the Commonwealth of Kentucky

Serve: Governor Matt Bevin
Office of the Attorney General
700 Capitol Ave., Ste. 118
Frankfort, KY 40601-3449

and

ANDY BESHEAR DEFENDANTS
in his official capacity as Attorney General of the Commonwealth of Kentucky

Serve: Attorney General Andy Beshear
Office of the Attorney General
700 Capitol Ave., Ste. 118
Frankfort, KY 40601-3449

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I. INTRODUCTION

1. This is an action for declaratory and injunctive relief to remedy the violation of Plaintiffs' rights by the Defendants under the Constitution of the Commonwealth of Kentucky.

2. Over half of the country allows patients suffering from chronic pain and other ailments to use cannabis instead of the often dangerous and addictive alternative of prescription pharmaceuticals. Kentucky, however, treats its suffering citizens who turn to cannabis for medical purposes as criminals rather than patients in need of safe relief. Kentucky's prohibitions against the use of medical cannabis not only put the Commonwealth behind the majority of the country, but they violate the state Constitution and must be invalidated as regarding these Plaintiff-Petitioners.

II. JURISDICTION AND VENUE

3. This action is brought pursuant to Kentucky Rules of Civil Procedure, CR 57 (declaratory judgment), the Kentucky Revised Statutes, KRS 418.040 (declaratory judgment) and KRS 418.055 (further relief based on declaratory judgment), and the inherent equitable powers of the Court.

III. PARTIES

PLAINTIFFS

4. Plaintiff Dan Seum became addicted to narcotics after taking OxyContin to manage chronic back pain. Mr. Seum began using cannabis in his home in order to deal with OxyContin withdrawal and to manage his pain. Now that he is using cannabis, no pain management doctor will treat him, and he cannot explore pain management options outside of cannabis as his spine continues to deteriorate. Plaintiff Dan Seum resides in Jefferson County, Kentucky.

5. Plaintiff Amy Stalker endured miserable side effects from her attempts at treating her bipolar disorder and irritable bowel syndrome with pharmaceutical drugs. Cannabis helps her to manage her bipolar disorder and irritable bowel syndrome without the awful side effects and expenses of pharmaceutical treatment. Now, she is only using cannabis and is completely off of

pharmaceutical drugs. She constantly worries that she will be arrested. Ms. Stalker is a patient, with no governmental interference in her doctor-patient relationships, in the majority of the country, but is considered a criminal in her home state. Plaintiff Amy Stalker resides in Jefferson County, Kentucky.

6. Plaintiff Danny Belcher is a Vietnam Veteran with PTSD and a compression fracture in his spine. After an attempt at treating his ailments with pharmaceutical drugs, he switched over to using cannabis in his home because pharmaceutical drugs were ruining his quality of life. Cannabis helps manage the symptoms of his PTSD and his compression fracture without the side effects of pharmaceutical drugs. Plaintiff Danny Belcher resides in Bath County, Kentucky.

DEFENDANTS

7. Defendant Matt Bevin has been Governor of the Commonwealth of Kentucky since 2015. He is a duly elected constitutional officer of the Commonwealth of Kentucky with such powers afforded to him under the Kentucky Constitution and related state laws. He is charged with enforcing the laws of the Commonwealth of Kentucky, including the laws challenged by this lawsuit. He is sued only in his official capacity.

8. Defendant Andy Beshear has been Attorney General of the Commonwealth of Kentucky since 2016. He is a duly elected constitutional officer of the Commonwealth of Kentucky with such powers afforded to him under Sections 91, 92, and 93 of the Kentucky Constitution and related state laws, specifically KRS 15.020. He is charged with enforcing the laws of the Commonwealth of Kentucky, including the laws challenged by this lawsuit. He is sued only in his official capacity.

IV. FACTS

PLAINTIFF DAN SEUM

9. Dan Seum is a former middle school football coach and Program Coordinator at Farnsley Middle School where he worked from 2008-2012. Teaching middle schoolers how to play football was a huge part of Mr. Seum's life.

10. Mr. Seum has been struggling with back problems since 1994, which have become unbearable over time.

11. The pain was interfering with his ability to coach football. Eager to relieve his pain and continue coaching, Mr. Seum sought medical treatment.

12. Unfortunately, there was no easy fix for Mr. Seum's pain. In 2001, he underwent spinal fusion surgery in which four titanium rods were inserted into his lower spinal column.

13. Mr. Seum's back surgery did not stop the pain. Mr. Seum entered a pain management program in hopes of relieving the pain that was greatly interfering with his life. Mr. Seum was prescribed OxyContin in an attempt to relieve his pain.

14. Mr. Seum realized that the OxyContin was negatively impacting his cognitive and motor skills. Mr. Seum was worried that these problems would prevent him from coaching football.

15. When Mr. Seum talked to his doctor about the negative side effects of his OxyContin use, the doctor prescribed Mr. Seum a lower dosage of OxyContin.

16. Mr. Seum became violently ill, experiencing frequent nausea and vomiting. To his horror, Mr. Seum realized that he had become addicted to the medicine meant to allow him to live a normal life.

17. Mr. Seum decided to ask his doctor about the withdrawal symptoms. In the meantime, Mr. Seum used cannabis in his home to manage his pain and nausea when the withdrawal symptoms became intolerable.

18. When the doctor was finally able to see Mr. Seum and Mr. Seum told the doctor about his withdrawal symptoms, the doctor did not do what he could to help with the problems caused from the prescription medicine. Instead, the doctor immediately dismissed Mr. Seum from care for using cannabis when THC showed up in his blood work.

19. As part of dismissing Mr. Seum as a patient, the doctor revoked Mr. Seum's OxyContin prescription. This meant that Mr. Seum had to quit OxyContin cold turkey after becoming addicted due to years of taking it at his doctor's direction, resulting in even more extreme withdrawal symptoms.

20. OxyContin withdrawal symptoms consist of frequent nausea and vomiting, relentless abdominal pain, rapid or irregular heartbeat, heavy sweating, hot and cold flashes, anxiety, agitation, sleeplessness, dilated pupils, diarrhea, runny nose, coughing fits, and goose bumps.

21. With no doctor to treat him, Mr. Seum continued to do what he could for himself by using cannabis in his home. Through the use of cannabis, Mr. Seum was able to get through the OxyContin withdrawal and continue coaching football.

22. Approximately four years passed during which the use of cannabis in his home helped Mr. Seum overcome his addiction to OxyContin, manage his back pain, and continue coaching football.

23. Unfortunately, Mr. Seum fell down a flight of concrete stairs in 2010 when his legs suddenly went numb due to his pinched spinal cord. Due to this experience in combination with

a pain level that had been increasing for several months, Mr. Seum decided to once again seek medical treatment.

24. Mr. Seum underwent MRIs of his entire spine.

25. The MRIs revealed that Mr. Seum had several debilitating issues in his lower spine. Hoping that another surgery might be the answer, Mr. Seum scheduled a surgery consultation.

26. Mr. Seum provided a urine sample as required at the beginning of his surgery consultation appointment.

27. While Mr. Seum was consulting with the surgeon, a nurse informed the surgeon that Mr. Seum's urinalysis revealed cannabis in his system. The surgeon immediately ended the consultation and told Mr. Seum to leave.

28. In 2014, Mr. Seum's condition had become unbearable. He was unable to walk fifty feet because of nerve pain.

29. Mr. Seum cautiously made an appointment with his family doctor, hoping he would not be turned away. Mr. Seum's family doctor referred him to a surgeon.

30. The surgeon took MRIs of Mr. Seum's back and gave him heartbreaking news: Mr. Seum's spine was too damaged for surgery due to scar tissue from the prior surgery against his spinal cord in his lower back, stenosis, bulging disc, degenerative discs, arthritis, and other problems. Mr. Seum had no hope of fixing the source of his pain — only managing it.

31. Mr. Seum refused to take narcotics again. The surgeon understood and instead recommended that Mr. Seum have an epidural and continue to use cannabis.

32. Mr. Seum went to a pain management center to get an epidural at his surgeon's recommendation.

33. When Mr. Seum arrived at the pain management center, he was given an application to sign stating that he would not consume illegal drugs and acknowledging that if he did, the pain management center would contact law enforcement.

34. After returning the signed application, a nurse requested that Mr. Seum provide a urine sample before consulting with the doctor.

35. It was clear that Mr. Seum was expected to stop using cannabis and experience excruciating pain before the pain management center would offer him alternative pain relief. Devastated, Mr. Seum refused to provide a sample, retrieved his application, and left.

36. Since 2014, Mr. Seum has been self-medicating with cannabis in the privacy of his home.

37. Cannabis helps Mr. Seum by decreasing the inflammation in his spinal cord, allowing him to get his mind off of the pain, allowing him to function without feeling mentally deficient all the time (as was the case with OxyContin), helping decrease his depression and anxiety, helping decrease arthritis in his spine and throughout his body, and relieving his gout.

38. As of today, Mr. Seum suffers from inoperable spine disease, spinal stenosis, a bulging disc, and scar tissue in his back and spinal column.

39. Mr. Seum is left with an impossible choice: Should he stop using cannabis and experience excruciating pain in order to explore the chance that another pain management option might be more effective? Or should he continue using cannabis, preventing him from receiving medical care from Kentucky doctors for the rest of his life?

PLAINTIFF AMY STALKER

40. Plaintiff Amy Stalker is 37 years old. She comes from a family with deep ties to law enforcement; in fact her father spent his career as a police officer for the Jefferson County Police Department from 1960 to 1996. She has never been arrested.

41. Ms. Stalker has a long history of medical issues and complications due to treatments and pharmaceutical drugs prescribed for irritable bowel syndrome (IBS) and bipolar disorder.

42. At eleven years old, Ms. Stalker was prescribed Tagamet by her family pediatrician for ongoing stomach problems consisting of nausea, vomiting, diarrhea, and severe stomach pain. She was diagnosed with IBS.

43. At fifteen years old, Ms. Stalker was placed in a group home for children with behavior problems and diagnosed with bipolar disorder. She began treatment with pharmaceutical drugs, including Lithium.

44. Over the next sixteen years, Ms. Stalker was prescribed upwards of fifty pharmaceutical drugs for IBS and bipolar disorder.

45. Ms. Stalker was prescribed Clonazepam, a benzodiazepine meant to treat epilepsy and used "off label" to treat many other illnesses, including bipolar disorder.

46. Benzodiazepines are meant to be used for a short time due to their highly addictive nature and their tendency to cause seizures upon discontinued use.

47. Ms. Stalker's doctors never warned her of the dangerous side effects of Clonazepam and continued to prescribe it to her for ten years, which was much longer than was safe or necessary.

48. In 2007, Ms. Stalker underwent an endoscopic ultrasound to address her continuous stomach problems.

49. A reaction between the Clonazepam and the anesthesia caused Ms. Stalker to have a grand mal seizure, rendering her unconscious for over an hour and causing long-term memory loss.

50. Due to Ms. Stalker's sensitivity and allergies to many of the pharmaceutical drugs she had been prescribed, Ms. Stalker suffered horrible side effects which became unmanageable and dangerous.

51. Between the years of 1998 and 2011, Ms. Stalker was hospitalized in psychiatric hospitals and facilities over ten times due to the side effects from pharmaceutical drugs.

52. In 2011, Ms. Stalker began to discontinue Clonazepam while being monitored by a psychiatric hospital.

53. While coming off of Clonazepam, Ms. Stalker experienced three more seizures and horrible withdrawal symptoms including muscle tremors, anxiety, mania, depression, hallucinations, catatonia, memory loss, appetite loss, hot flashes, and a dissociative disorder.

54. The above-stated withdrawal symptoms resulted in Ms. Stalker being hospitalized twice within the first three weeks of coming off of Clonazepam.

55. Ms. Stalker has long-lasting memory problems and muscle tremors from the seizures, side effects, and withdrawal symptoms of long-term benzodiazepine use.

56. Once Ms. Stalker was off of Clonazepam and other pharmaceutical drugs, she began seeking alternative treatments for her bipolar disorder, IBS, and other medical conditions.

57. Ms. Stalker began treating herself with cannabis because it is highly effective in treating seizures and seizure-related disorders as well as IBS, nausea, and nausea related to medication side effects.

58. In May of 2013, Ms. Stalker moved to Colorado Springs, Colorado so that she could use medical cannabis legally and without fear of being arrested and treated like a criminal.

59. After a full physical evaluation and review of Ms. Stalker's medical records, her doctor in Colorado recommended medical cannabis to treat the symptoms of IBS and bipolar disorder.

60. In June of 2013, Ms. Stalker joined the registry to become an authorized medical cannabis patient in Colorado with a medical cannabis card. (Amy Stalker's Colorado medical cannabis registration, attached hereto as **Exhibit A**.)

61. In November of 2013, Ms. Stalker moved back to Louisville, Kentucky for financial reasons.

62. In October of 2014, Ms. Stalker moved to Bainbridge Island, Washington so that she could once again acquire medical cannabis to treat her symptoms.

63. Ms. Stalker began seeing a Naturopathic doctor and nurse practitioner in Washington. They both recommended and prescribed Ms. Stalker medical cannabis due to her many medical conditions. (Amy Stalker's Washington medical cannabis prescription, attached hereto as **Exhibit B**.)

64. In May of 2015, Ms. Stalker once again moved back to Louisville, Kentucky after learning that her mother had been diagnosed with terminal cervical cancer and was having life-threatening complications from blood loss due to a tumor. Ms. Stalker became one of her mother's primary caretakers.

65. Ms. Stalker struggled to maintain her own health while caring for her mother as she had no way to follow the course of treatment recommended by her doctors - no safe way to obtain medical cannabis.

66. Since 2015, Ms. Stalker has been a patient of her current psychologist, the same psychologist she saw as a teenager.

67. Ms. Stalker's psychologist is pleased with the good mental health Ms. Stalker is experiencing without the use of traditional psychiatric drugs and acknowledges the incredible progress she has made.

68. While Ms. Stalker's current doctors have not condemned her for her use of cannabis, they are prevented from recommending, prescribing, or even discussing the positive benefits of cannabis, due to Kentucky's laws.

69. Ms. Stalker's use of medical cannabis has resulted in her exclusion from many psychiatric services in Kentucky. Even admitting the use of cannabis can result in patients losing their prescriptions for pharmaceutical drugs and being denied services in Kentucky.

70. Since 2011, Ms. Stalker has only been using cannabis and other alternative, non-pharmaceutical medications to treat her IBS, bipolar disorder, and other medical conditions resulting from her past use of pharmaceutical drugs.

71. Since Ms. Stalker's discontinuance of pharmaceutical drugs, she has experienced no seizures, no hospitalizations, and no horrible side effects of pharmaceutical drugs.

72. Ms. Stalker has accepted that cannabis is the most effective medicine to treat her IBS and bipolar disorder. It is the key component to her well-being and good mental health.

73. Ms. Stalker's rights are being violated because Kentucky laws interfere with her doctor-patient relationships and cause the inability to follow her doctors' recommended course of treatment.

PLAINTIFF DANNY BELCHER

76. Danny Belcher is a Vietnam Veteran who served from 1968 to 1969. He suffers from posttraumatic stress disorder (PTSD), alcoholism, and a compression fracture in his spine. He has never been arrested.

77. Mr. Belcher developed PTSD as a result of his service to the United States.

78. Attempting to cope with the trauma experienced in Vietnam, along with the guilt of being alive when so many others had died, led him to become an alcoholic.

79. Mr. Belcher also received a compression fracture in his spine during his time in Vietnam.

80. Mr. Belcher went to the U.S. Department of Veterans Affairs (VA) in hopes of trying medical cannabis to relieve his trauma, addiction, and pain.

81. Instead, the VA prescribed him pharmaceutical drugs including Valium, Librium, Tylenol 3, and other assorted antidepressants, muscle relaxers, and pain medications.

82. While the doctor Mr. Belcher saw at the VA did not prescribe him medical cannabis, the doctor did say that he was sorry that medical cannabis was not an option in Kentucky.

83. When Mr. Belcher was taking the pharmaceutical drugs, he experienced disorientation and a low quality of life. These were enhanced due to his continued use of alcohol along with the pharmaceutical drugs.

84. Because of his experience with pharmaceutical drugs, Mr. Belcher decided to try using cannabis in his home in hopes of treating his PTSD symptoms, alcoholism, and compression fracture pain.

85. Through the use of cannabis in his home, Mr. Belcher has been able to successfully manage his PTSD, compression fracture pain, and completely discontinue alcohol use without experiencing the side effects of pharmaceutical drugs.

86. The use of cannabis in his home helps Mr. Belcher manage the trauma, addictive tendencies, and pain he experiences as a result of his military service.

THE MEDICAL EVIDENCE

87. Cannabis and its medicinal properties were first introduced to the Western world in 1839 by British physician W.B. O'Shaughnessy. (Tod H. Mikuriya, *Marijuana in Medicine: Past, Present, and Future*, 110 California Medicine 34, 34 (1969).)

88. Dr. O'Shaughnessy prescribed cannabis to patients for pain relief and sedation. Specifically, Dr. O'Shaughnessy had success with using cannabis to relieve pain from rheumatism, treat convulsions, and treat muscle spasms resulting from tetanus and rabies. (*Id.*)

89. By 1860, the medicinal uses of cannabis were widely recognized in the Western world. Cannabis was used to treat stomach pain, postpartum mental health problems, chronic cough, inflammatory pain, nerve pain, and undereating. (*Id.* at 35.)

90. In the 1890s, cannabis was considered a preferable alternative to opioids as, unlike opioids, cannabis does not lead to physical dependence, constipation, or a decrease in appetite. (*Id.* at 36, 37.)

91. In addition to the above-stated uses, cannabis was used to treat insomnia, menstrual cramps, migraine headaches, and muscle spasms. (*Id.* at 36)

92. Medicinal cannabis was widely prescribed by doctors in the latter half of the nineteenth century. (*Id.* at 37.)

93. The United States federal government has acknowledged the health benefits of cannabis, while making laws that contradict that knowledge for more than 80 years.

94. In 1937, the American Medical Association concluded that there was no danger of cannabis addiction, and suggested that it continue to be used for medicinal purposes. (*Id.*)

95. Unfortunately, Congress passed the Marihuana Tax Act in the same year, choosing to ignore the expert opinions of medical professionals and instead respond to the terrified demands of the people who had been fed propaganda on the false dangers of cannabis meant to target Mexican immigrants, jazz musicians, and other discrete groups. This essentially ended the use of cannabis in medicine. (*Id.*; Grass: The History of Marijuana (Sphinx Productions) (1999).)

96. Nonetheless, the support for medicinal cannabis persisted in the medical community. In the 1940s, cannabis was found to assist with opioid and alcohol withdrawal as well as control epileptic seizures more effectively than the most commonly prescribed medication. (*Id.* at 38.)

97. In 1951, the Narcotic Drugs Import and Export Act, or the Boggs Act, was passed, providing minimum sentences for the possession of cannabis and classifying cannabis as a narcotic alongside opium and other highly addictive drugs. The rationale was the "stepping-stone theory" which claimed that the use of cannabis led to the use of more dangerous and addictive drugs, labeling cannabis the "gateway drug." (*The Report of the National Commission on Marihuana and Drug Abuse, History of Marihuana Legislation*, Schaffer Library of Drug Policy, http://www.druglibrary.org/schaffer/library/studies/nc/nc2_7.htm (last visited May 11, 2017), citing Congressional Record, 1951: 8197-8198.)

98. The Boggs Act passed even though Dr. Harris Isbell provided testimony that no proof existed showing that cannabis leads to dangerous behavior, crime, or dependency; instead, Congress relied on propaganda connecting cannabis with communist China. (*Id.*, citing Kefauver Committee Hearings, 1951: 119; Grass: The History of Marijuana (Sphinx Productions) (1999).)

99. In 1956, Congress passed the Narcotic Control Drug Act, continuing to classify cannabis alongside highly addictive narcotic drugs and increasing minimum sentences from the Boggs Act. (*Id.*, citing Federal Bureau of Narcotics, 1956: 28; Daniel Committee Hearings, 1955: 57.)

100. The 1956 Act reiterated support for the stepping stone theory, and claimed that cannabis itself was a dangerous, addictive drug. This claim was made without any scientific support. (*Id.*, citing U.S. Code Cong. & Ad. News, 1956: 3294.)

101. In 1969, medical doctor Tod H. Mikuriya published a paper calling for "[m]ore reasonable laws and regulations" so that medical research of cannabis could continue. (*See* Mikuriya, *supra* at 39.)

102. In 1970, the Controlled Substances Act was passed. While this eliminated mandatory minimum sentences and reduced penalties for possession, it also created "schedules" to categorize drugs based on their medical usefulness and potential for abuse. Cannabis was placed in Schedule I, labeling it a drug with no valid medical uses and a high potential for abuse. (Scott C. Martin, *A Brief History of Marijuana Law in America*, Time History (Apr. 20, 2016), http://time.com/4298038/marijuana-history-in-america/; Grass: The History of Marijuana (Sphinx Productions) (1999).)

103. No scientific evidence supported classifying cannabis as a Schedule I controlled substance. (*Id.*) Nonetheless, a dislike of "hippies" and other counter-culturalists who used cannabis recreationally, and a desire by President Nixon to be seen as tough-on-crime, was enough to support the classification. (Grass: The History of Marijuana (Sphinx Productions) (1999).)

104. In 1972, an investigative committee, the Shafer Commission, issued a recommendation that cannabis be removed from Schedule I and decriminalized for private use in the home; the recommendation of the Shafer Commission was rejected by President Nixon. (*Id.*)

105. The classification of cannabis as having "no valid medical uses" effectively stopped research into its medical uses. (*Id.*)

106. Not all states agreed with cannabis' classification as a Schedule I controlled substance with no valid medical uses. From 1973 to 1981, eleven states decriminalized possession of cannabis: Alaska, Oregon, California, Colorado, Nebraska, Maine, Mississippi, Ohio, North

Carolina, New York, and Maine. (*Marijuana Law Reform Timeline*, NORML, http://norml.org/shop/item/ marijuana-law-reform-timeline (last visited May 16, 2017).) New Mexico had a cannabis medical research program in 1978. (Martin, *supra*.)

107. Throughout the 1980s and 1990s, many studies supported that the decriminalization of cannabis did not increase the use of cannabis and other Schedule I controlled substances. (*See Marijuana Decriminalization & Its Impact on Use*, NORML, http://norml.org/aboutmarijuana/item/ marijuana-decriminalization-its-impact-on-use-2 (last visited May 16, 2017).)

108. A 1981 University of Michigan study found that the decriminalization of cannabis had no effect on cannabis use and attitudes towards cannabis among young people. (L. Johnson et al., *Marijuana Decriminalization: The Impact on Youth 1975-1980*, Monitoring the Future paper 13 (1981) *in Marijuana Decriminalization & Its Impact on Use*, *supra*.)

109. A 1989 study from the Journal of Public Health found that decriminalization of cannabis possession did not impact rates of cannabis use. (E. Single, *The Impact of Marijuana Decriminalization: An Update*, 10 Journal of Public Health 456, 456-466 (1989) *in Marijuana Decriminalization & Its Impact on Use, supra*.)

110. A 1993 study from the Journal of the American Statistical Association found that states that did not decriminalize cannabis had significantly higher rates of emergency room patients with illicit drug emergencies than states that decriminalized cannabis. (K. Model, *The Effect of Marijuana Decriminalization on Hospital Emergency Room Episodes: 1975-1978*, 88 Journal of the American Statistical Association 737, 737-747 (1993) *in Marijuana Decriminalization & Its Impact on Use*, *supra*.)

111. A 1993 study from the Social Sciences Journal found that the decriminalization of cannabis does not affect the use frequency of alcohol and illicit drugs. (C. Thies and C. Register, *Decriminalization of Marijuana and the Demand for Alcohol, Marijuana and Cocaine*, 30 The Social Sciences Journal 385, 385-399 (1993) *in Marijuana Decriminalization & Its Impact on Use*, *supra*.)

112. A 1997 study by the Connecticut Law Review Commission found that:

1. In states which had decriminalized cannabis, significantly less money was spent on the arrest and prosecution for cannabis possession offenses;
2. States which had criminalized cannabis saw a larger increase of cannabis use than states which had decriminalized cannabis; and
3. Decriminalizing cannabis did not impact the use frequency of alcohol or Schedule I controlled substances. (Connecticut Law Review Commission, Drug Policy in Connecticut and Strategy Options: Report to the Judiciary Committee of the Connecticut General Assembly (1997) *in Marijuana Decriminalization & Its Impact on Use*, *supra*.)

113. A 1999 study conducted by the National Academy of Sciences found that decriminalization of cannabis does not lead to a substantial increase in the recreational use of cannabis. (National Academy of Sciences, Institute of Medicine, Marijuana and Medicine: Assessing the Science Base 102 (Janet E. Joy et al. eds., 1999) *in Marijuana Decriminalization & Its Impact on Use*, *supra*.)

114. Even in light of all of the scientific evidence to the contrary, cannabis remains a Schedule I controlled substance.

115. The side effects of many legal pharmaceutical drugs along with legal recreational drugs tobacco and alcohol are significantly more dangerous and addictive than cannabis.

116. Cannabis can be used as an alternative to painkillers, anti-anxiety medications, stimulants, sleep aids, and antidepressants.

117. Many pharmaceutical drugs in the above categories have side effects that make them much more dangerous and addictive than cannabis.

118. Vicodin was moved from a Schedule III controlled substance to a Schedule II controlled substance in 2014. Its side effects include addiction, tolerance, and dependence, along with nausea, constipation, slowed breathing, dizziness or lightheadedness, impaired judgment, confusion, profound drowsiness, and loss of consciousness. It becomes more dangerous when mixed with alcohol or other drugs. (Eric Patterson, *The Effects of Vicodin Use*, DrugAbuse.com, http://drugabuse.com/library/the-effects-of-vicodin-use/ (last visited May 16, 2017).)

119. OxyContin is a Schedule II controlled substance. Its side effects include addiction, tolerance, and dependence, along with severe constipation, persistent vomiting, muscle spasms, dangerous slowing of the heart and lungs, blockage in the heart and lungs, infection in the heart and lungs, widespread inflammation, and septicemia. Its withdrawal symptoms include increased pain sensitivity, diffuse body aches, increased restlessness and agitation, insomnia, lack of appetite, nausea and vomiting, diarrhea, chills, and cold sweats. (Eric Patterson, *The Effects of OxyContin Use*, DrugAbuse.com, http://drugabuse.com/library/the-effects-of-oxycontin-use/ (last visited May 16, 2017).)

120. Morphine is a Schedule II controlled substance. Its side effects include addiction, tolerance, and dependence, along with nausea, vomiting, itchy skin, appetite loss, constricted pupils, urinary retention, constipation, shallow or slowed breathing, altered or irregular heart rate

and rhythm, chest pain, cyanosis, dizziness, confusion, agitation, seizures, uncontrolled vomiting, breathing difficulties, cardiac arrest, convulsions, and loss of consciousness. Its withdrawal symptoms include extreme drug cravings, anxiety, irritability, sweating, runny nose, diarrhea, decreased appetite, cramping, vomiting, and chills. (Amanda Lautieri, *The Effects of Morphine Use*, DrugAbuse.com, http://drugabuse.com/library/the-effects-of-morphine-use/ (last visited May 16, 2017).)

121. The abuse of prescription opioid pain relievers such as Vicodin, OxyContin, and Morphine resulted in the deaths of between 16,000 and 18,000 people in the United States in 2015. (*National Overdose Deaths: Number of Deaths from Prescription Opiod Pain Relievers (excluding non-methadone synthetics)*, National Institute on Drug Abuse: Advancing Addiction Science (January 2017), https://www.drugabuse.gov/related-topics/trends-statistics/overdose-death-rates.)

122. Xanax is a Schedule IV controlled substance. Its side effects include addiction, tolerance, and dependence, along with trouble with cognitive skills, difficulty producing words properly, drowsiness, headaches, fatigue, dizziness, difficulty concentrating, dry mouth, changes in sex drive, inability to perform sexually, increased salivation, weight changes, difficulty urinating, constipation, skin rashes, seizures, depression, shortness of breath, memory problems, unusual changes in mood, blurred vision, slurred speech, weakness, respiratory depression, and coma. Xanax is more dangerous in combination with alcohol and other depressant substances. Chronic use can lead to cognitive deficits, memory impairment, delirious states, depression, psychotic experiences, sedation, and aggressive and impulsive behavior. (Eric Patterson, *The Effects of Xanax Use*, DrugAbuse.com, http://drugabuse.com/library/the-effects-of-xanax-use/ (last visited May 16, 2017).)

123. The abuse of benzodiazepines such as Xanax resulted in the deaths of 8,000 to 9,000 people in 2015. (*National Overdose Deaths: Number of Deaths from Benzodiazepines*, National Institute on Drug Abuse: Advancing Addiction Science (January 2017), https://www.drugabuse.gov/related-topics/trends-statistics/overdose-death-rates.)

124. Adderall is a Schedule II controlled substance. Its side effects include addiction, tolerance, and dependence, along with appetite suppression and unhealthy weight loss, irritability, trouble sleeping, feelings of restlessness, potentially dangerous cardiac issues, fatigue, feelings of depression or anxiety, decreased ability to concentrate, disrupted heart rhythm, increased blood pressure, headaches, dryness of the mouth, hostility, paranoia, and inhibited growth in children. Its withdrawal symptoms include depression, tiredness, either sleeping for extended periods or being unable to sleep at all, low energy, disorientation, increased appetite, and lack of motivation. (Eric Patterson, *The Effects of Adderall Use*, DrugAbuse.com, http://drugabuse.com/library/the-effects-of-adderall-use/ (last visited May 16, 2017).)

125. Ambien is a Schedule IV controlled substance. Its side effects include addiction, tolerance, and dependence, along with headaches, memory loss, persistent drowsiness, gastrointestinal disturbances such as nausea, sleepwalking, sleep eating, light headed feelings, trouble walking, problems with balance, diarrhea, heartburn, stomach cramps, weak feelings, appetite changes, tremors, redness of the eyes, joint pain, muscle pain, skin rash, hives, trouble breathing, chest pain, and loss of consciousness. Ambien is especially dangerous when mixed with alcohol, opioids, or benzodiazepines. Its withdrawal symptoms include sweating, fatigue, intractable insomnia, irritability, stomach cramps, panic attacks, delirium, and seizure. (Eric

Patterson, *The Effects of Ambien Use*, DrugAbuse.com, http://drugabuse.com/library/ the-effects-of-ambien-use/ (last visited May 16, 2017).)

126. All of the above-described drugs are Schedule II controlled substances or lower, meaning that they can be, and are, prescribed by doctors to patients for medical use.

127. Tobacco and alcohol are legal to use recreationally for adults over the age of 18 and 21, respectively.

128. Tobacco's side effects include addiction, tolerance, and dependence, along with decreased bone density, osteoporosis, atherosclerosis, aneurysms, coronary heart disease, heart attacks, heart-related chest pain, high blood pressure, peripheral arterial disease, stroke, chronic obstructive pulmonary disease, emphysema, chronic bronchitis, pneumonia, asthma, tuberculosis, cataracts, optic nerve damage, and cancer of the lungs, trachea, bronchus, esophagus, oral cavity, lip, nasopharynx, nasal cavity, larynx, stomach, bladder, pancreas, kidney, liver, uterine cervix, colon, rectum, and blood. (*Effects of Smoking on Your Health*, BeTobaccoFree.gov, https://betobaccofree.hhs.gov/health-effects/smoking-health/ (last visited May 16, 2017).) Its withdrawal symptoms include intense cravings for nicotine, tingling in the hands and feet, sweating, nausea and intestinal cramping, headaches, coughing, sore throat, insomnia, difficulty concentrating, anxiety, irritability, depression, and weight gain. (Darla Burke, *Nicotine Withdrawal*, HealthLine (Nov. 11, 2015), http://www.healthline.com/ health/smoking/nicotine-withdrawal#overview1.)

129. Tobacco also has negative effects for people around tobacco smokers. Second hand smoke can lead to ear infections, bronchitis, pneumonia, Sudden Infant Death Syndrome, frequent lower respiratory illness, wheezing and coughing, frequent severe asthma attacks, and an increased risk of developing lung cancer. (*Secondhand Smoke*, BeTobaccoFree.gov,

https://betobaccofree.hhs.gov/health-effects/secondhand-smoke/index.html (last visited May 16, 2017).)

130. The abuse of tobacco, a legal activity, results in the deaths of 480,000 people in the United States every year. (*Smoking & Tobacco Use*, Centers for Disease Control and Prevention, https://www.cdc.gov/tobacco/data_statistics/fact_sheets/fast_facts/ (last visited May 16, 2017).)

131. Alcohol's side effects include addiction, tolerance, and dependence, along with slurring of speech, drowsiness, emotional changes, sleep disruption, lowering of body temperature, nausea and vomiting, loss of bladder and bowel control, blackouts, temporary loss of consciousness, coma, the development of alcoholism, liver damage, depression, cancer, depression of the immune system, reduced sexual performance, weight gain, high blood pressure, hangover, cirrhosis, pancreatitis, and death. (Eric Patterson, *The Effects of Alcohol Use*, DrugAbuse.com, http://drugabuse.com/library/the-effects-of-alcohol-use/ (last visited May 16, 2017).) Its withdrawal symptoms include shaky hands, sweating, mild anxiety, nausea, vomiting, headache, insomnia, hallucinations, and Delirium Tremens which include disorientation, confusion, severe anxiety, hallucinations, profuse sweating, seizures, high blood pressure, racing and irregular heartbeat, severe tremors, low-grade fever. (*Alcohol Withdrawal*, WebMD, http://www.webmd.com/mental-health/addiction/alcohol-withdrawal-symptoms-treatments#2-3 (last visited May 16, 2017).)

132. Alcohol abuse also has negative effects for people around alcohol abusers through, for example, being involved in a car wreck due to someone driving under the influence of alcohol or being a victim of the domestic violence engaged in by some alcohol abusers.

133. The abuse of alcohol results in the deaths of 88,000 people in the United States every year. (*Alcohol Facts and Statistics*, National Institute on Alcohol Abuse and Alcoholism,

https://www.niaaa.nih.gov/alcohol-health/overview-alcohol-consumption/alcohol-facts-and-statistics (last visited May 16, 2017).)

134. Cannabis, on the other hand, has no serious harmful side effects for patients who use it properly. Less serious side effects of cannabis come from smoking it: headache, nausea, dizziness, and respiratory problems. However, cannabis does not need to be smoked. (Mark A. Ware et al., *Cannabis for the Management of Pain: Assessment of Safety Study (COMPASS)*, 16 Journal of Pain 1233, 1233-1242 (2015) *in* Sheryl Ubelacker, *No Addled Brain for Experienced Medical Marijuana Users: Study*, Toronto Star (Sept. 29, 2015) https://www.thestar.com/life/health_wellness/2015/09/29/no-addled-brain-for-experienced-medical-marijuana-users-study.html.)

135. Cannabis overdose, unlike the legal prescription drugs discussed above, has resulted in no deaths. (*Annual Number of Deaths by Selected Causes in the US, Including Deaths Attributed to Alcohol, Tobacco, and Other Drug Use*, Drug War Facts, http://drugwarfacts.org/chapter/causes_of_death (last visited May 17, 2017); *Drug Fact Sheet*, Drug Enforcement Administration, https://www.dea.gov/druginfo/drug_data_sheets/Marijuana.pdf (last visited May 17, 2017).)

136. Even though cannabis is significantly less dangerous than prescription drugs prescribed by physicians every day, it somehow continues to be ranked as a Schedule I controlled substance, inaccurately labeling it as being more dangerous than prescription drugs.

THE SITUATION NATIONWIDE

137. Currently, the U.S. is struggling with recognizing the health benefits of cannabis while still criminalizing the use of cannabis in many states.

138. According to recent studies, cannabis is a safer alternative to prescription and illicit drugs. (*See* David Powell et al., *Do Medical Marijuana Laws Reduce Addictions and Deaths Related to Pain Killers?*, July 2015 National Bureau of Economic Research 21345 (2015); *see* Jordan Bechtold et al., *Chronic Adolescent Marijuana Use as a Risk Factor for Physical and Mental Health Problems in Young Adult Men*, 29 Psychology of Addictive Behaviors 552 (2015); *see* Helene R. White et al., *Divergent Marijuana Trajectories Among Men: Socioeconomic, Relationship, and Life Satisfaction Outcomes in the Mid-30s*, 156 Drug and Alcohol Dependence 62 (2015); *see* Marcus A. Bachhuber, *Medical Cannabis Laws and Opioid Analgesic Overdose Mortality in the United States, 1999-2010*, 174 JAMA Internal Medicine 1668 (2014).)

139. However, cannabis continues to be inaccurately classified as a Schedule I controlled substance, not available for medical use. (Controlled Substances Act of, 21 U.S.C. §§ 812(c)(10), 812(d)(1), 812(d)(2) (1970).)

140. In 2015, 574,641 people were arrested in the United States for possession of cannabis, including people using it for medicinal purposes. (*Drug War Statistics*, DRUGPOLICY.ORG, http://www.drugpolicy.org/drug-war-statistics (last visited May 17, 2017).)

141. 21 states continue to criminalize the use of cannabis, including Kentucky. (*29 Legal Medical Marijuana States and DC*, ProCon.org (April 20, 2017), http://medicalmarijuana.procon.org/view.resource.php?resourceID=000881&print=true.)

142. Between 1996 and 2017, 29 states and D.C., over half of the country, introduced measures to permit the medical use of cannabis. (*29 Legal Medical Marijuana States and DC*, ProCon.org (April 20, 2017), http://medicalmarijuana.procon.org/view.resource.php?resourceID=000881&print=true.)

THE SITUATION IN KENTUCKY

143. Kentucky is facing an epidemic of opioid drugs - both prescription painkillers, and heroin. (*The Heroin Epidemic*, Office of Drug Control Policy, http://odcp.ky.gov/Pages/ The-Heroin-Epidemic.aspx (last visited May 17, 2017); Phil Galewitz, *The Pharmacies Thriving in Kentucky's Opioid-Stricken Towns: In a Year, One County Filled Enough Prescriptions for 150 Doses of Painkillers per Resident*, The Atlantic (Feb. 7, 2017), https://www.theatlantic.com/health/archive/2017/02/kentucky-opioids/515775/).

144. Kentucky has the third-highest death rate due to opioid overdose in the U.S. with 29.9 deaths per 100,000 in 2015. (*Drug Overdose Death Data*, Centers for Disease Control and Prevention (last updated Dec. 16, 2016), https://www.cdc.gov/drugoverdose/data/statedeaths.html.)

145. In 2015, 1,273 people died in Kentucky from opioid overdose. (*Id.*)

146. Between September 2015 and September 2016, the residents of Clay County, Kentucky filled enough prescriptions of hydrocodone and oxycodone for each person in the county, including children, to have 150 doses. (*The Heroin Epidemic*, *supra*.)

147. Even though prescription opioids are frequently abused, they continue to be prescribed in Kentucky.

148. However, states that allow medicinal cannabis have seen a drop in opioid abuse-related hospital admissions, lending more support to the use of cannabis to get through opioid withdrawal, resulting in less abuse. (Steve Birr, *Opioid Abuse is Plummeting in States with Legal Marijuana*, The Libertarian Republic (Mar. 28, 2017), http://thelibertarianrepublic.com/opioid-abuse-plummeting-states-legal-marijuana/, citing Yuyan Shi, *Medical Marijuana Policies and*

Hospitalizations Related to Marijuana and Opioid Pain Reliever, 173 Drug & Alcohol Dependence 144 (2017).)

149. In a stance completely ignoring the scientific evidence, Kentucky continues to criminalize the cultivation, possession of cannabis less than eight ounces, and even the possession of cannabis paraphernalia, with punishments for these "offenses" ranging from 45 days in jail and a $250 fine to ten years in prison and a $10,000 fine. (*Kentucky Laws & Penalties*, NORML, http://norml.org/laws/item/kentucky-penalties-2 (last visited May 11, 2017), citing KRS §§ 218A.1425, 532.060, 532.090, 218A.050(3), 218A.276, 218A.1421, 218A.1422, and 218A.500.)

150. Kentucky punishments are even greater for possession of cannabis in amounts greater than eight ounces, which are automatically assumed to be for sale or trafficking. These punishments range from one year in jail and a $500 fine to twenty years in prison and a $10,000 fine. (*Id.*, citing KRS §§ 218A.1401, 218A.1421, 532.020, 532.060, 532.090, 534.030, and 534.040.)

151. While Kentucky passed Senate Bill 50 in 2013 allowing for state-sponsored researchers to explore the uses of hemp in making textiles, paper, paints, clothing, plastics, cosmetics, foodstuffs, insulation, and animal feed, this bill does not allow for research of the medical uses of cannabis. (*Id.*, citing Ky. Stat. Ann. § 260.850-.869 (2014).)

152. Senate Bill 124 in 2014 proposed an amendment to KRS § 218A.010 which would "exempt from the definition of 'marijuana' drugs used in FDA-approved studies or compassionate use programs and the substance cannabidiol when recommended by a physician practicing at a state research hospital." (*Kentucky Legislature*, Kentucky Legislative Research Commission, http://www.lrc.ky.gov/record/14rs/sb124.htm (last visited May 31, 2017).)

153. Senate Bill 57, "Cannabis Compassion Act," and Senate Bill 76, "Cannabis Freedom Act," were proposed in a bipartisan effort in 2016. The Cannabis Compassion Act proposed the establishment of "a comprehensive system for medical cannabis." (*Kentucky Legislature*, Kentucky Legislative Research Commission, http://www.lrc.ky.gov/record/17RS/SB57.htm (last visited May 31, 2017).) The Cannabis Freedom Act proposed the establishment of regulations for various aspects of cannabis cultivation and sale. (*Kentucky Legislature,* Kentucky Legislative Research Commission, http://www.lrc.ky.gov/record/17rs/SB76.htm (last visited May 31, 2017).)

154. Kentucky's current laws prevent medical researchers from studying the medical use of cannabis even though it could help in the fight against Kentucky's opioid epidemic.

155. In addition, there is no medical necessity defense in Kentucky despite evidence showing that cannabis has legitimate medicinal uses. As such, even if the Court agrees that cannabis has medicinal properties, and a jury believed that a defendant was using marijuana for valid medicinal purposes, that defendant could still be convicted of possessing or cultivating marijuana.

V. CAUSES OF ACTION

COUNT I - VIOLATION OF THE KENTUCKY CONSTITUTION, SECTION 2

Against Defendants Matt Bevin and Andy Beshear, both in their official capacities.

156. Plaintiffs incorporate paragraphs 1 through 155.

157. KRS §§ 218A.1421 and 218A.1422, which prohibit the trafficking and possession of marijuana respectably, are unconstitutional when applied to Plaintiffs Mr. Seum, Ms. Stalker, Mr. Belcher, and thousands of other medical cannabis users in Kentucky as a violation of the Kentucky Constitution, Section 2.

158. The Kentucky Constitution Section 2 states that "[a]bsolute and arbitrary power over the lives, liberty and property of freemen exists nowhere in a republic, not even in the largest majority."

159. KRS § 218A.1422(1) defines "possession" as "[a] person is guilty of possession of marijuana when he or she knowingly and unlawfully possesses marijuana."

160. KRS § 218A.1422(2) states that "[p]ossession of marijuana is a Class B misdemeanor...the maximum term of incarceration shall be no greater than forty-five (45) days."

161. Under KRS § 218A.1422, Plaintiffs and thousands of other medical cannabis users in Kentucky are prohibited from possessing and using marijuana even when a medical professional has recommended or prescribed it.

162. Under KRS § 218A.1422, Plaintiffs and thousands of other medical cannabis users in Kentucky face the risk of incarceration for up to 45 days for possessing a small amount of a safe, non-addictive, medicinal substance in the privacy of their own homes.

163. KRS § 218A.010(50) defines "traffic" as "to manufacture, distribute, dispense, sell, transfer, or possess with intent to manufacture, distribute, dispense, or sell a controlled substance[.]"

164. KRS § 218A.1421(1) states that "[a] person is guilty of trafficking in marijuana when he knowingly and unlawfully traffics in marijuana."

165. KRS § 218A.1421(2)-(5) lists the penalties for trafficking cannabis into the Commonwealth of Kentucky.

> (2) Trafficking in less than eight (8) ounces of marijuana is:
> a. For a first offense a Class A misdemeanor.
> b. For a second or subsequent offense a Class D felony.
> (3) Trafficking in eight (8) or more ounces but less than five (5) pounds of marijuana is:
> a. For a first offense a Class D felony.
> b. For a second or subsequent offence a Class C felony.

(4) Trafficking in five (5) or more pounds of marijuana is:
a. For a first offense a Class C felony.
b. For a second or subsequent offense a Class B felony.
(5) *The unlawful possession by any person of eight (8) or more ounces of marijuana shall be prima facie evidence that the person possessed the marijuana with the intent to sell or transfer it.*

166. Under KRS § 218A.1421, Plaintiffs and thousands of other medical cannabis users in Kentucky are prohibited from possessing and using marijuana in quantities of eight or more ounces even when a medical professional has recommended or prescribed it.

167. Under KRS § 218A.1421, Plaintiffs and thousands of other medical cannabis users in Kentucky face the risk of up to a Class B felony conviction for using a safe, non-addictive, medicinal substance in their homes.

168. KRS §§ 218A.1421 and 218A.1422 place an unconstitutional burden on the Plaintiffs and thousands of other medical cannabis users in Kentucky under the Kentucky Constitution Section 2 by absolutely and arbitrarily denying them the liberty to possess and use marijuana as their property even where a medical professional aware of its well-known medicinal qualities recommends or prescribes its use for treatment.

169. The freedom from arbitrary action by the state is a broad protection which encompasses due process laws, and ensures Kentucky citizens are governed by fundamentally fair laws. (*Pritchett v. Marshall*, 375 S.W.2d 253, 258 (Ky. 1963).)

170. To determine the constitutionality of a statute, the standard is whether the statute is unreasonable or arbitrary. (*Moore v. Ward*, 377 S.W.2d 881, 883 (Ky. 1964).)

171. KRS §§ 218A.1421 and 218A.1422 can only be constitutional if "a reasonable and legitimate public purpose for [them] exist[]." (*Commonwealth v. Harrelson*, 14 S.W.3d 541, 548 (Ky. 2000).)

172. The interests of the state in promoting the health, safety, and welfare of the Commonwealth through the prohibition of cannabis produces "consequences [] so unjust as to work a hardship" on the Plaintiffs and thousands of other medical cannabis users in Kentucky, which therefore allows "judicial power [to] be interposed to protect the rights of persons adversely affected." (*Kentucky Milk Mktg. and Antimonopoly Commn. v. Kroger Co.*, 691 S.W.2d 893, 899 (Ky. 1985).).

173. KRS §§ 218A.1421 and 218A.1422 impose an unjust and arbitrary hardship on Mr. Seum, Ms. Stalker, Mr. Belcher, and thousands of other Kentucky citizens who have a legitimate and dire need for medical cannabis.

174. In the cases of Mr. Seum, Ms. Stalker, Mr. Belcher, and thousands of other medical cannabis users in Kentucky, conventional medicine either does not work for their medical needs or is unavailable to them. It is only through using cannabis for medicinal purposes that Mr. Seum, Ms. Stalker, and Mr. Belcher are able to acquire the relief they need to live pursuant to their "safety and happiness," a right long recognized in Kentucky. (*Commonwealth v. Campbell*, 117 S.W. 383, 385 (Ky. 1909).)

175. The exercise of the Commonwealth's police powers to criminalize cannabis for medicinal purposes is an unjust result of the broad prohibition against cannabis and has wrought an unjust hardship for Mr. Seum, Ms. Stalker, Mr. Belcher, and thousands of other medical cannabis users in Kentucky who were left with the unconscionable choice to either live in permanent pain from their illnesses, risk taking highly addictive and proven deadly opioids or benzodiazepines, or live as criminals for their use of cannabis to treat their illnesses.

176. The overbroad prohibition against cannabis through KRS §§ 218A.1421 and 218A.1422 violates Section 2 of the Kentucky Constitution because the challenged statute arbitrarily creates

an unjust hardship against Plaintiffs Mr. Seum, Ms. Stalker, and Mr. Belcher. There is no rational basis for the overbroad prohibition against cannabis that encompasses patients seeking cannabis for medicinal purposes because the police powers of the state do not extend to situations where its exercise creates "consequences [] so unjust as to work a hardship." (*Kentucky Milk Mktg. and Antimonopoly Com.*, 691 S.W.2d at 899.)

177. But for Defendants' enforcement of KRS §§ 218A.1421 and 218A.1422, Plaintiffs Mr. Seum, Ms. Stalker, Mr. Belcher, and thousands of other medical cannabis users in Kentucky would be able to treat their illnesses without the risks of taking highly addictive and deadly opioids and being convicted of crimes.

COUNT II - VIOLATION OF THE KENTUCKY CONSTITUTION'S PRIVACY PROTECTIONS

Against Defendants Matt Bevin and Andy Beshear, both in their official capacities.

178. Plaintiffs incorporate paragraphs 1 through 177.

179. KRS §§ 218A.1421 and 218A.1422, which prohibit the trafficking and possession of marijuana respectably, are unconstitutional when applied to Plaintiffs Mr. Seum, Ms. Stalker, Mr. Belcher, and thousands of other medical cannabis users in Kentucky as a violation of the Kentucky Constitution's robust privacy protections, which have long been recognized in the Commonwealth.

180. The right to privacy as established in the Kentucky Constitution's privacy protections "has long been considered an inalienable right." (*Commonwealth v. Wasson*, 842 S.W.2d 496 (Ky. 1992).) "It is not within the competency of government to invade the privacy of a citizen's life and to regulate his conduct in matters in which he alone is concerned, or to prohibit him any liberty the exercise of which will not directly injure society." (*Commonwealth v. Campbell*, 117 S.W. 383, 385 (Ky. 1909).)

181. Plaintiffs incorporate paragraphs 157 through 167 and their descriptions of KRS §§ 218A.1421 and 218A.1422 as well as the statutes' applications to Plaintiffs and thousands of other medical cannabis users in Kentucky.

182. The right to privacy has a long tradition in Kentucky's jurisprudence. The right is based upon Ky. Const. § 1, which guarantees the right to enjoy life and liberty and the right to pursue happiness and safety, and Ky. Const. § 2, which protects against the arbitrary exercise of governmental power.

183. The right to privacy in Kentucky directly stems from the Kentucky Constitution, and is, in many areas, more protective of that right than the federal right to privacy. (*Commonwealth v. Wasson*, 842 S.W.2d 487 (Ky. 1992).)

184. The right to privacy is, additionally, tied to the right to refuse treatment, which is in turn a corollary of the right to self-determination and informed consent.

185. By broadly prohibiting the use of cannabis for medicinal purposes, the Commonwealth is infringing upon the privacy and self-determination rights of Plaintiffs and thousands of other medical cannabis users in Kentucky by improperly imposing itself in the doctor-patient relationship and preventing the Plaintiffs and thousands of other medical cannabis users in Kentucky from seeking medicine which would adequately treat their illnesses.

186. The right to privacy is a protected liberty interest that, when violated, requires the court to perform a balancing test to determine the constitutionality of the challenged action. (*See Hyatt v. Commonwealth*, 72 S.W.3d 566, 573-74 (Ky. 2002), *Kentucky Bd. of Examiners v. Courier-J.*, 826 S.W.2d 324, 327-28 (Ky. 1992) (noting that only by "comparative weighing of antagonistic interests" can a court decide whether a privacy interest outweighs the state interest).)

187. In the cases of Mr. Seum, Ms. Stalker, Mr. Belcher, and thousands of other medical cannabis users in Kentucky, the right to privacy, self-determination, and informed consent is denied to them when they are prohibited from procuring from their doctors the medicine they need to live a life reasonably free from pain and discomfort.

188. But for Defendants' enforcement of KRS §§ 218A.1421 and 218A.1422, Plaintiffs Mr. Seum, Ms. Stalker, Mr. Belcher, and thousands of other medical cannabis users in Kentucky would be able to treat their illnesses without the risks of taking highly addictive and deadly opioids and being convicted of crimes.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Dan Seum, Amy Stalker, and Danny Belcher pray that this Court:

A. Issue a judgment declaring that KRS §§ 218A.1421 and 218A.1422 are unconstitutional and unenforceable as applied to Plaintiffs Mr. Seum, Ms. Stalker, and Mr. Belcher insofar as they seek to use cannabis for valid medicinal purposes, and issue a preliminary and permanent injunctive order to that effect;

B. Award such further relief as may follow from the entry of a declaratory judgment;

C. Award reasonable attorneys' fees and costs, and disbursements; and

D. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

/s/ *Daniel J. Canon*
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Counsel for Plaintiffs

STATE OF COLORADO

Medical Marijuana Registry

Patient | **Provider**

Date of Birth

Name AMY E STALKER

Address

MANITOU SPRINGS CO 80829

SSN

Issue Date 06/26/2013

Expiration Date 06/26/2014

M M R D 3 5 1 3 5

WARNING: IT IS ILLEGAL TO DUPLICATE THIS CARD. VOID IF LAMINATED.

The above named patient is certified to the Department of Public Health and Environment as a person who has a debilitating medical condition that the patient may address with the medical use of marijuana. Any changes in the above information should be reported to the Medical Marijuana Program, Colorado Department of Public Health and Environment, HSVR-ADM-A1, 4300 Cherry Creek Drive South, Denver, Colorado 80246-1530.

VALID ONLY IN COLORADO

AMERICAN BANK NOTE COMPANY

ANY ALTERATION OR ERASURE VOIDS THIS CERTIFICATE

STATE OF COLORADO · 1876

Bainbridge Women's Health Care

Audrey C. Van Voorhis , MN, ARNP
LIC #: AP30004804 • DEA #: MV0695099
123 Bjune Drive, Suite 111
Bainbridge Island , WA 09110
Tel: 206-842-2278

Name. Amy Stalker SEX . . DOB. . . . . Order # 1590848-1

Address. . . . . Date 4.15.15

℞ with diagnosis, instructions and number of refills.

Ref: consult Dr Bubble Hour
has chronic fatigue.
IBS Bipolar.

- ☐ 1-24
- ☐ 25-49
- ☐ 50-74
- ☐ 75-100
- ☐ 101-150
- ☐ 151 and over

Units

SCRIPT# 2586

VERIFICATION SEAL: HOLD BETWEEN THUMB AND FOREFINGER OR BREATHE ON IT. COLOR WILL DISAPPEAR, THEN REAPPEAR.

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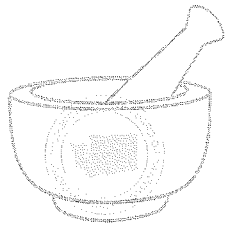
☐ Label ☐ Refill ____ times PRN NR

MN, ARNP
Substitution Permitted

Dispense as Written
MN, ARNP



SAFETY FEATURES: COLORED VOID BACKGROUND - MICROPRINT LINES - IMPRINT ERASURE PROTECTION
REVERSE Rx - THERMOCHROMIC INK * ON BACK: ARTIFICIAL WATERMARK - COIN REACTIVE INK