District Court, City and County of Denver, State of Colorado 1437 Bannock St. Denver, CO 80523 Phone: (720) 865-8301	DATE FILED: July 1, 2021 8:10 AM FILING ID: D804B876302AD CASE NUMBER: 2021CV32075
Plaintiff: BENJAMIN M. WANN v. Defendant: JARED S. POLIS, in his official capacity as Governor of the State of Colorado	▲ COURT USE ONLY ▲ Case No: Division: Ctrm:
Attorney for the Plaintiff: Buscher Law LLC Alexander Buscher #52729 3900 E Mexico Avenue Suite 300 Denver, CO 80210 Tel: (720) 258-6940 alex@buscherlaw.com	

COMPLAINT

Plaintiff submits the following Complaint against Defendant:

1. On May 14, 2021, HB21-1317 ("HB 1317") was introduced in the Colorado General Assembly (the "General Assembly") with the bill title "*Concerning the Regulation of Marijuana for Safe Consumption, and in Connection Therewith, Making an Appropriation*."

2. HB 1317 passed unanimously in the Senate on June 3, 2021, the House voted to concur with Senate amendments on June 8, 2021, and HB 1317 was officially signed into law by Governor Jared S. Polis on June 24, 2021.

3. HB 1317, captioned "*Regulating Marijuana Concentrates*" on the website of the General Assembly, was portrayed as a statute to limit youth access to high-potency THC. HB21-1317: Regulating Marijuana Concentrates, Colorado General Assembly Official Website, https://leg.colorado.gov/bills/hb21-1317 (last visited June 30, 2021).

4. HB 1317 contains very few provisions that regulate marijuana for safe consumption or regulate marijuana concentrate.

5. Instead of regulating marijuana for "*safe consumption,*" HB 1317 unconstitutionally regulates patients and physicians, and violates two (2) separate and distinct articles and five (5) separate and distinct sections of the Colorado Constitution (the

"Constitution"): Colo. Const. art. XVIII, § 14, Colo. Const. art. XVIII, § 16, Colo. Const. art. V, § 17, Colo. Const. art. V, § 21, and Colo. Const. art. V, § 22.

6. Therefore, Plaintiff Benjamin M. Wann, by and through attorney Alexander Buscher, of Buscher Law LLC, brings this lawsuit to challenge the Constitutionality of HB 1317.

PARTIES

7. Plaintiff Benjamin Wann ("Plaintiff") is a Colorado resident with a principal place of residence in Douglas County, Colorado.

8. Plaintiff currently maintains a confidential medical marijuana registry card, is nineteen (19) years of age, and will be immediately and irreparably harmed if HB 1317 is allowed to go into effect.

9. Plaintiff maintains a confidential medical marijuana registry card due to Plaintiff's diagnosis of intractable epilepsy with a rare GRIN2a gene mutation. Plaintiff failed multiple pharmaceutical treatments for his condition prior to high school, leaving him with continued seizures and significant developmental delays.

10. Plaintiff originally obtained a medical marijuana recommendation as a minor, through his parents as required by state law, and subsequently began a medical cannabis regimen.

11. After starting the regimen, his seizures became fully controlled and Plaintiff is now celebrating five-years seizure-free. Plaintiff entered the 9th grade reading and writing at or below a 4th grade level, but since starting his medical cannabis regimen has graduated high school, is enrolled in the Douglas County School's Bridge program, holds down a part-time job, and excels at programming 3D printers.

12. Plaintiff is not eligible to purchase retail marijuana, which is only available to persons twenty-one (21) years of age or older ("Retail Marijuana"), leaving Plaintiff without access to his medical cannabis regimen in the state of Colorado if Colorado's medical marijuana Constitutional protections ceased to be available to Plaintiff.

13. Defendant is Governor Jared S. Polis, acting in his official capacity as Governor of the State of Colorado in enacting and administering HB 1317 ("Defendant").

JURISDICTION AND VENUE

14. This Court has jurisdiction over this matter pursuant to Colo. Const. art. VI, § 9. This Complaint is a civil action, requests a constitutional review of a statute, and falls under the general jurisdiction granted to the district courts.

15. This Court has jurisdiction over this matter pursuant to the Colorado Uniform Declaratory Judgments Law, which provides that any person "*whose rights, status, or other legal relations are affected by a statute . . . may have determined any question of construction or validity arising under the . . . statute . . . and obtain a declaration of rights . . . thereunder*." C.R.S. § 13-

51-106; C.R.C.P. 57(b). This Court has jurisdiction to provide a declaratory judgment because this matter involves Plaintiff's constitutional rights provided by Colo. Const. art. XVIII, § 14 directly affected by statute HB 1317, giving rise to the Claims for Relief asserted below. Id.

16. Venue is proper in the District Court of Denver County pursuant to C.R.C.P. 98(b)(2) because Defendant is a public official of the state of Colorado, because Defendant acted in Defendant's official capacity when signing HB 1317 into law, and because Denver County is the physical location where most of the events leading to this Complaint arose. This includes the drafting, voting, amending, and signing of HB 1317, giving rise to the Claims for Relief asserted below.

CONSTITUTIONAL BACKGROUND (the "Constitutional Section")

17. "*The constitution is the supreme law of the state, solemnly adopted by the people, which must be observed by all departments of government; and if any of its provisions seemingly impose too great a limitation, they must be remedied by amendment, and cannot be obviated by the enactment of laws in conflict with them."* In re Senate Bill No. 9, 56 P. 173, 174 (Colo. 1899).

18. The precedent is clear; the Colorado Constitution cannot be edited or violated by the General Assembly. Only through a validly passed amendment to the Constitution, voted on by the people of the state of Colorado, can the Constitution be amended. Id.

19. Plaintiff alleges sections of HB 1317 violate Colo. Const. art. XVIII, § 14 both facially and in effect.

20. Plaintiff also alleges sections of HB 1317 facially violate Colo. Const. art. XVIII, § 16.

21. Plaintiff also alleges sections of HB 1317 violate Colo. Const. art. V, § 17 and Colo. Const. art. V, § 21.

22. Furthermore, Plaintiff alleges HB 1317 violated the mandatory and express procedure required by Colo. Const. art. V, § 22.

(I) Colo. Const. art. XVIII, § 14 – Medical Marijuana

23. In 2000, Colorado voters passed Amendment 20, codified as Colo. Const. art. XVIII, § 14, one of the first medical marijuana laws in the country. Colo. Const. art. XVIII, § 14 created two separate and distinct regulatory schemes for persons with debilitating medical conditions to purchase and/or possess marijuana: the Affirmative Defense System found in Section 2, and the Confidential Registry System found in Section 3. Id. The following is a review of the relevant provisions of Colo. Const. art. XVIII, § 14.

(1) Colo. Const. art. XVIII, § 14(1) – Definitions

Medical Use

24. "'*Medical use' means the acquisition, possession, production, use, or transportation of marijuana… to address the symptoms or effects of a patient's debilitating medical condition...*" Colo. Const. art. XVIII, § 14(1)(b).

Physician

25. "'*Physician' means a doctor of medicine who maintains, in good standing, a license to practice medicine issued by the state of Colorado.*" Colo. Const. art. XVIII, § 14(1)(e).

Useable Form of Marijuana

26. *"'Usable form of marijuana' means the seeds, leaves, buds, and flowers of the plant (genus) cannabis, and any mixture or preparation thereof…*" Colo. Const. art. XVIII, § 14(1)(i).

Written Documentation

27. *"'Written Documentation' means a statement signed by a patient's physician or copies of the patient's pertinent medical records…*" (emphasis added). Colo. Const. art. XVIII, § 14(1)(j).

(2) Colo. Const. art. XVIII, § 14(2) – Affirmative Defense

28. Colo. Const. art. XVIII, § 14(2) creates an Affirmative Defense for patients and primary care-givers to any "*violation of the state's criminal laws related to the patient's medical use of marijuana*" if the following conditions are met: *"(I) The patient was previously diagnosed by a physician as having a debilitating medical condition; (II) The patient was advised by his or her physician, in the context of a bona fide physician-patient relationship, that the patient might benefit from the medical use of marijuana in connection with a debilitating medical condition; and (III) The patient and his or her primary care-giver were collectively in possession of amounts of marijuana only as permitted under this section.*" Colo. Const. art. XVIII, § 14(2) (emphasis added).

29. This Affirmative Defense has been successfully asserted most recently in the unpublished opinion of People v. Cox, 2021 COA 68, ¶ 19, where the court held the General Assembly is not permitted to add additional substantive elements to the affirmative defense. "*The addition of substantive elements to an affirmative defense makes it more difficult for a defendant to establish the defense.* See Garcia*, 113 P.3d at 784. Therefore, when, as here, the Colorado Constitution specifically prescribes and defines an affirmative defense and does not authorize the General Assembly to add additional substantive elements, courts must apply the constitution as written*." People v. Cox, 2021 COA 68, ¶ 19.

30. The Affirmative Defense provided in Colo. Const. art. XVIII, § 14(2) is incredibly broad, and some patients will turn to the unregulated medical marijuana marketplace operating under the protection of the Affirmative Defense if HB 1317 goes into effect and eventually dismantles the Confidential Registry system.

31. If there is no functional ability for patients to use the Confidential Registry system found in Colo. Const. art. XVIII, § 14(3) to purchase medical marijuana at licensed medical

marijuana stores, or to purchase the quantities and products necessary to treat patients' specific conditions, patients will be encouraged to seek out unregulated caregiver marijuana or produce their own medical marijuana-based therapeutics at home.

32. The Affirmative Defense protects patients and caregivers from state criminal laws related to the patient's medical use of marijuana. This includes protection from being successfully prosecuted for exceeding plant count limits and manufacturing marijuana concentrates on residential property, further encouraging patient production of medical marijuana concentrates at home. Colo. Const. art. XVIII, § 14(2).

33. Manufacturing marijuana concentrates on residential property creates an immediate public health concern because flammable solvents are many times used in the manufacture of marijuana concentrates leading to fires and explosions. This is not speculative. The state of Colorado has seen disasters like this before. *"At least five people were hospitalized in [Colorado]'s 32 hash oil explosions in 2014 and 17 received treatment for severe burns."* Taylor Wofford, Hash Oil Linked to Dozens of Home Explosions in Colorado, Newsweek, (Jan. 19, 2015), http://www.newsweek.com/hash-oil-linked-dozens-home-explosions-colorado-300549.

(3) Colo. Const. art. XVIII, § 14(3) – The Colorado Department of Public Health and Environment's "Confidential Registry"

34. Colo. Const. art. XVIII, § 14(3) created a "*confidential registry of patients*" (the "Confidential Registry") overseen by the Colorado Department of Public Health and Environment ("CDPHE").

35. Colo. Const. art. XVIII, § 14(3) expressly states the confidentiality standards of such Confidential Registry, as well as mandatory and express procedures CDPHE must follow when issuing and denying a "*registry identification card"* ("Registry Card").

36. The benefit of registering for the Confidential Registry is that it creates an "*exception*" to all criminal laws of Colorado related to a patient's medical use of marijuana and enables a patient to shop at medical marijuana dispensaries regulated by the Marijuana Enforcement Division (the "MED"). Id.

(a) Confidential Registry Confidentiality Provisions

37. Colo. Const. art. XVIII, § 14(3)(a) plainly states the confidentiality standards for the Confidential Registry. Barring (1) CDPHE employees "*in the course of their official duties*;" and (2) law enforcement officers verifying a stopped or arrested person's registration, no person is permitted to gain access to any information about patients, physicians, or primary care-givers maintained by CDPHE. This prohibition applies whether the information appears in the Confidential Registry or is "*otherwise maintained"* by CDPHE. Id.

(b) Patient Registry Application

38. Colo. Const. art. XVIII, § 14(3)(b)(I)-(IV) states that to be placed on the Confidential Registry, a patient must reside in Colorado and submit a completed application

including the following information: *"(I) The original or a copy of written documentation stating that the patient has been diagnosed with a debilitating medical condition and the physician's conclusion that the patient might benefit from the medical use of marijuana; (II) The name, address, date of birth, and social security number of the patient; (III) The name, address and telephone of the patient's physician; and (IV) The name and address of the patient's primary care-giver, if one is designated at the time of application."* (emphasis added).

(c) Verification, Denial, and Mandatory Issuance of Registry Card

39. Colo. Const. art. XVIII, § 14(3)(c) states that CDPHE "*shall verify*" the information required by (3)(b) "*within thirty days of receiving the information referred to in (3)(b)(I)-(IV)*." Barring CDPHE determining: (1) the information required by Colo. Const. art. XVIII, § 14(3)(b) was not provided; (2) the information required by Colo. Const. art. XVIII, § 14(3)(b) was falsified; (3) the documentation fails to state that a patient has a qualifying debilitating medical condition; or (4) the physician is not licensed in Colorado, CDPHE "*shall issue*" a Registry Card "*not more than five days after verifying such information."* Id.

(d) Automatic Approval if CDPHE Fails to Verify and Issue

40. Colo. Const. art. XVIII, § 14(3)(d) states that for any patient above the age of eighteen (18), if CDPHE fails to issue a Registry Card or fails to issue a notice of denial for the reasons enumerated above within thirty-five days of receiving an application, the application will be deemed to have been approved regardless of a Registry Card being issued.

41. A patient, approved through Colo. Const. art. XVIII, § 14(3)(d), who is questioned by any law enforcement official about his or her medical use of marijuana shall provide a copy of the application submitted to CDPHE, including the written documentation and proof of the date of mailing or other transmission of the application. This shall be accorded the same legal effect as a Registry Card, until such time as the patient receives notice that the application has been denied. Id.

42. Colo. Const. art. XVIII, § 14(3)(b)-(d) is clear; CDPHE must follow the Constitutional procedures enumerated above, without addition from the General Assembly. Any other reading would require a change to the well-established definition of "*shall."*

(4) Colo. Const. art. XVIII, § 14(4) – Lawful Amounts of Medical Marijuana

43. Colo. Const. art. XVIII, § 14(4)(a) states "*A patient's medical use of marijuana, within the following limits, is lawful: (I) No more than two ounces of a usable form of marijuana; and (II) no more than six marijuana plants, with three or fewer being mature… (b) For quantities of marijuana in excess of these amounts, a patient or his or her primary care-giver may raise as an affirmative defense to charges of violation of state law that such greater amounts were medically necessary to address the patient's debilitating medical condition."*

(II) Colo. Const. art. XVIII, § 16 - Retail Marijuana

44. In 2012, Amendment 64 passed, making Colorado the first state in the nation to legalize and regulate Retail Marijuana. Amendment 64 was codified as Colo. Const. art. XVIII, §

16 and directed the state to create a licensing scheme for "Retail Marijuana," while directing that "Hemp" be regulated separately from higher-THC potency forms of cannabis.

(1) Colo. Const. art. XVIII, § 16(1) - Purpose and Findings

45. Colo. Const. art. XVIII, § 16(1)(b) states "*the people of the state of Colorado further find and declare that marijuana should be regulated in a manner similar to alcohol so that: (I) Individuals will have to show proof of age… (II) Selling, distributing or transferring marijuana to minors and other individuals under the age of twenty-one shall remain illegal; (III) Driving under the influence of marijuana shall remain illegal; (IV) Legitimate, taxpaying business people, and not criminal actors, will conduct sales of marijuana; and (V) Marijuana sold in this state will be labeled and subject to additional regulations to ensure that consumers are informed and protected*."

46. The Constitution is clear; marijuana is to be regulated like alcohol in the state of Colorado. Furthermore, marijuana is subject only to "*additional regulations*" ensuring consumer protection which would apply to alcohol as well, since these "*additional regulations*" are a subset of the provision that commands marijuana be "*regulated in a manner similar to alcohol,*" and not in addition to that provision. Id.

(2) Colo. Const. art. XVIII, § 16(2)(f) – Definition of Marijuana

47. Colorado's Constitutional definition of marijuana is *"all parts of the plant of the genus cannabis whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation thereof…"* Colo. Const. art. XVIII, § 16(5)(c).

(3) Colo. Const. art. XVIII, § 16(5)(c) - Privacy

48. Colo. Const. art. XVIII, § 16(5)(c) states "*in order to ensure that individual privacy is protected, notwithstanding paragraph (a), the Department shall not require a consumer to provide a retail marijuana store with personal information other than government-issued identification to determine the consumer's age, and a retail marijuana store shall not be required to acquire and record personal information about consumers other that information typically acquired in a financial transaction conducted at a liquor store*."

(III) Colo. Const. art. V, § 17 - No Law Passed by Amendments

49. Separate and apart from claims based on Colo. Const. art. XVIII, Plaintiff is also seeking review of a provisions of HB 1317 under Colo. Const. art. V, § 17, which states that "*no law shall be passed except by bill, and no bill shall be so altered or amended on its passage through either house as to change its original purpose*."

50. The Office of Legislative Services states that *"an amendment that alters the original purpose of the bill may cause the bill to embrace two subjects"* and the purpose of this provision is to "*avoid 'log-rolling' (the joining together of unrelated measures to gain votes for passage of a measure)*" and "*provide helpful public notice of the contents of a bill.*" Memorandum from the Office of Legislative Legal Servs. to the Colo. Gen. Assemb., (Aug. 19, 2020) (on file at

http://leg.colorado.gov/sites/default/files/bill-titles-single-subject-and-original-purpose-requirements.pdf).

(IV) Colo. Const. art. V, § 21 – Single Subject Bill Title

51. Separate and apart from the claims based on Colo. Const. art. XVIII, Plaintiff is also seeking review of provisions of HB 1317 under Colo. Const. art. V, § 21, which states "*no bill, except general appropriation bills, shall be passed containing more than one subject, which shall be clearly expressed in its title; but if any subject shall be embraced in any act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed."*

52. "*If legislation in the body of a statute is germane to the general subject expressed in the title; if it is relevant and appropriate to such subject, or is a necessary incident to the object of the act, as expressed in the title, it does not violate this provision of the Constitution. One test is 'whether the legislation in the body of a bill is upon matters properly connected with its subject, as expressed in its title, or proper to the more full accomplishment of the object so indicated.' In the title, particularity is neither necessary nor desirable; generality is commendable*." Driverless Car Co. v. Armstrong, 14 P.2d 1098, 1099 (Colo. 1932)

53. The Office of Legislative Legal Services explains *"these sections of the Colorado Constitution mandate that each bill contain one subject, and that the subject be clearly expressed in the bill title."* Memorandum from the Office of Legislative Legal Servs. to the Colo. Gen. Assemb.

54. Provisions or amendments outside of the single subject expressed by the title of the bill that "*fail to comply will invalidate the portion of the bill that is not expressed in the bill title*." Id.

(V) Colo. Const. art. V, § 22 – Passage of Bills

55. Separate and apart from the Constitutional sections above, Plaintiff challenges the validity of HB 1317 as a violation of Colo. Const. art. V, § 22, which requires the following: "*all substantial amendments made thereto shall be printed for the use of the members before the final vote is taken on the bill, and no bill shall become a law except by a vote of the majority of all members elected to each house taken on two separate days in each house...*" Id.

56. The requirements of Colo. Const. art. V, § 22 are mandatory. If either house of the General Assembly fails to follow these requirements, the law enacted is invalid. In re: House Bill 250, 57 P. 49, 50 (Colo. 1889).

STANDARD OF REVIEW FOR CONSTITUTIONAL CHALLENGE OF A COLORADO STATUTE

57. The standard of review when a Plaintiff challenges a Colorado statute for unconstitutionality is clear and settled law: "*A statute is presumed to be constitutional, and the*

party challenging the statute must prove unconstitutionality beyond a reasonable doubt." People v. Schwartz, 678 P.2d 1000 (Colo.1984).

FIRST CLAIM FOR RELIEF
(HB 1317 was not passed per the required procedures found in Colo. Const. art. V, § 22)

58. Plaintiff repeats and realleges the paragraphs above as if fully set forth here.

59. Colo. Const. art. V, § 22 requires that "*no bill shall become a law except by a vote of the majority of all members elected to each house taken on two separate days in each house*."

60. On June 3, 2021, the Senate passed rerevised HB 1317 on third reading. HB21-1317: Regulating Marijuana Concentrates, Colorado General Assembly Official Website, https://leg.colorado.gov/bills/hb21-1317 (last visited June 30, 2021).

61. The rerevised HB 1317 did not include amendment L042 introduced by Senate Minority Leader Holbert and passed by the Senate on second reading. Id.

62. The same statute was not passed twice in the Senate because the version of HB 1317 passed containing L042 on second reading differed substantially from the current version of HB 1317 passed without amendment L042 on third reading, signed by the Governor, and challenged herein. Id.

63. Because the incomplete statute voted on during third reading in the Senate and signed by the Governor was not the same statute passed by the Senate on second reading, HB 1317 did not follow the required Constitutional procedure to pass HB 1317 on two separate days in each house. Colo. Const. art. V, § 22.

64. Thus, HB 1317's passage violated the Constitutional procedure in Colo. Const. art. V, § 22.

65. Plaintiff hereby requests this Court grant the injunctive and declaratory relief sought on this claim, as requested below.

SECOND CLAIM FOR RELIEF
(The entirety of C.R.S. § 44-10-501(10)(a) amended by HB 1317 facially violates Colo. Const. art. XVIII, § 14(1)(i))

66. Plaintiff repeats and realleges the paragraphs above as if fully set forth here.

67. "*'Usable form of marijuana' means the seeds, leaves, buds, and flowers of the plant (genus) cannabis, and any mixture or preparation thereof…"* Colo. Const. art. XVIII, § 14(1)(i).

68. Colo. Const. art. XVIII, § 14(4)(a) states "*A patient's medical use of marijuana, within the following limits, is lawful: (I) No more than two ounces of a usable form of marijuana…"*

69. C.R.S. § 44-10-501(10)(a) states that a medical marijuana store "*shall not sell, individually or in any combination, more than two ounces of medical marijuana flower, forty grams of medical marijuana concentrate, or medical marijuana product containing a combined total of twenty thousand milligrams to a patient in a single day."*

70. C.R.S. § 44-10-501(10)(a) amended by HB 1317 reduced "*forty grams*" to "*eight grams*."

71. The Constitution is clear that a patient is entitled to two (2) ounces or fifty-six (56) grams of a "*usable form marijuana.*" Colo. Const. art. XVIII, § 14(1)(i); Colo. Const. art. XVIII, § 14(4)(a).

72. The Constitutional definition of a "*usable form of marijuana"* includes both marijuana flower, "*flowers of the plant*", and marijuana concentrates, "*any mixture or preparation thereof".* Colo. Const. art. XVIII, § 14(1)(i).

73. Thus, Constitutionally, patients are allowed to purchase fifty-six (56) grams of medical marijuana concentrate, just as patients are allowed to purchase fifty-six (56) grams of medical marijuana flower. Colo. Const. art. XVIII, § 14(1)(i).

74. The entirety of C.R.S. § 44-10-501(10)(a) amended by HB 1317 facially violates Colo. Const. art. XVIII, § 14(1)(i) by unlawfully restricting patients from accessing their constitutionally protected right to the amount of medical marijuana provided for in Colo. Const. art. XVIII, § 14(4)(a).

75. Plaintiff hereby requests this Court grant the injunctive and declaratory relief sought on this claim, as requested below.

THIRD CLAIM FOR RELIEF
(The entirety of C.R.S. § 44-10-501(10)(b) amended by HB 1317 facially violates Colo. Const. XVIII, § 14(1)(i))

76. Plaintiff repeats and realleges the paragraphs above as if fully set forth here.

77. "*'Usable form of marijuana' means the seeds, leaves, buds, and flowers of the plant (genus) cannabis, and any mixture or preparation thereof…"* Colo. Const. art. XVIII, § 14(1)(i).

78. Colo. Const. art. XVIII, § 14(4)(a) states "*A patient's medical use of marijuana, within the following limits, is lawful: (I) No more than two ounces of a usable form of marijuana…"*

79. Section 8 on Page 17 of HB 1317 adds a provision to C.R.S. § 44-10-501(10)(b)(III), which states that a medical marijuana store "*shall not sell more than eight grams of medical marijuana concentrate to a patient in a single day."*

80. The same Section of HB 1317 also limits patients ages eighteen (18) to twenty (20) to "*two grams of medical marijuana concentrate*."

81. Additionally, Section 8 on Page 16 of HB 1317 adds a strikethrough to C.R.S. § 44-10-501(10)(b)(II) which removes the sales limit exemption for purchases of more than eight (8) grams of concentrate from a store, even when the patient's physician recommendation, or certification as required by HB 1317, allows for more.

82. The Colorado Constitution is clear that a patient is entitled to two (2) ounces or fifty-six (56) grams of a "*usable form marijuana."* Colo. Const. art. XVIII, § 14(4)(a).

83. The Constitutional definition of a "*usable form of marijuana"* includes both marijuana flower, "*flowers of the plant*", and marijuana concentrates, "*any mixture or preparation thereof".* Colo. Const. art. XVIII, § 14(1)(i).

84. Thus, patients holding a medical marijuana Registry Card, no matter their age, are allowed to purchase fifty-six (56) grams of medical marijuana concentrate, just as patients are allowed to purchase fifty-six (56) grams of medical marijuana flower. Colo. Const. art. XVIII, § 14(4)(a); Colo. Const. art. XVIII, § 14(1)(i).

85. The entirety of C.R.S. § 44-10-501(10)(b) facially violates Colo. Const. art. XVIII, § 14(1)(i) by unlawfully restricting patients from accessing their Constitutionally protected right to the amount of medical marijuana provided for in Colo. Const. art. XVIII, § 14(4)(a).

86. Plaintiff hereby requests this Court grant the injunctive and declaratory relief sought on this claim, as requested below.

FOURTH CLAIM FOR RELIEF
(The entirety of C.R.S. § 25-1.5-106(5)(g) created by HB 1317 facially violates Colo. Const. XVIII, § 14(3)(a))

87. Plaintiff repeats and realleges the paragraphs above as if fully set forth here.

88. Plaintiff specifically repeats and realleges the section above titled "*(a) Confidential Registry Confidentiality Provisions,"* in the Constitutional Section above, as if fully set forth here.

89. Barring CDPHE employees "*in the course of their official duties*" and law enforcement officers verifying a stopped or arrested person's registration, no person is permitted

to gain access to any information about patients, physicians, or primary care-givers, in the Confidential Registry or "*otherwise maintained*" by CDPHE. Colo. Const. art. XVIII, § 14(3)(a).

90. Section 2 on Page 8 of HB 1317 states "*the department shall report on or before Jan 31 of each year the number of physicians who made medical marijuana recommendation in the previous year and without identifying the physician the number of recommendations each physician made and the aggregate number of homebound patients ages eighteen to twenty in the Confidential Registry.*"

91. Thus, the entirety of C.R.S. § 25-1.5-106(5)(g) created by HB 1317 facially violates Colo. Const. art. XVIII, § 14(3)(a) by allowing access to Constitutionally protected confidential information about physicians and patients maintained by CDPHE without satisfying either of the two enumerated exceptions to Confidential Registry confidentiality.

92. Plaintiff hereby requests this Court grant the injunctive and declaratory relief sought on this claim, as requested below.

FIFTH CLAIM FOR RELIEF
(Changes to C.R.S. § 44-10-203(2)(dd)(IX) created by HB 1317 facially violate Colo. Const. XVIII, § 14(3)(a))

93. Plaintiff repeats and realleges the paragraphs above as if fully set forth here.

94. Plaintiff specifically repeats and realleges the section above titled "*(a) Confidential Registry Confidentiality Provisions,"* in the Constitutional Section above, as if fully set forth here.

95. Barring CDPHE employees "*in the course of their official duties*" and law enforcement officers verifying a stopped or arrested person's registration, no person is permitted to gain access to any information about patients, physicians, or primary care-givers, in the Confidential Registry or "*otherwise maintained*" by CDPHE. Colo. Const. art. XVIII, § 14(3)(a).

96. Section 7 on Page 13 of HB 1317 requires inventory tracking systems to include the ability to determine the amount of medical marijuana a patient has purchased that day in real time by searching the "*patient registration number*."

97. HB 1317 institutes a patient tracking system directly in violation of the confidentiality provisions of Colo. Const. art. XVIII, § 14(3)(a).

98. The "*patient registration number*" and other information maintained by CDPHE regarding patients, physicians, and care-givers is Constitutionally protected confidential information except for the enumerated exceptions found in Colo. Const. art. XVIII, § 14(3)(a).

99. Thus, the changes to C.R.S. § 44-10-203(2)(dd)(IX) made by HB 1317 facially violate Colo. Const. art. XVIII, § 14(3)(a) by allowing access to Constitutionally protected

confidential information maintained by CDPHE without satisfying either of the two enumerated exceptions to Confidential Registry confidentiality.

100. Plaintiff hereby requests this Court grant the injunctive and declaratory relief sought on this claim, as requested below.

SIXTH CLAIM FOR RELIEF
(The entirety of C.R.S. § 44-10-203(2)(dd)(IX) created by HB 1317 violates Colo. Const. XVIII, § 14(3)(a) in effect)

101. Plaintiff repeats and realleges the paragraphs above as if fully set forth here.

102. Plaintiff specifically repeats and realleges the section above titled "*(a) Confidential Registry Confidentiality Provisions,"* in the Constitutional Section above, as if fully set forth here.

103. Barring CDPHE employees "*in the course of their official duties*" and law enforcement officers verifying a stopped or arrested person's registration, no person is permitted to gain access to any information about patients, physicians, or primary care-givers, in the Confidential Registry or "*otherwise maintained*" by CDPHE. Colo. Const. art. XVIII, § 14(3)(a).

104. Section 7 on Page 13 of HB 1317 requires inventory tracking systems to include the ability to determine the amount of medical marijuana a patient has purchased that day in real time by searching a "*patient registration number*."

105. HB 1317 institutes a patient tracking system directly in violation of the confidentiality provisions of Colo. Const. art. XVIII, § 14(3)(a).

106. This tracking system is direct and irrefutable evidence of a Schedule I Controlled Substance purchase by a patient.

107. This database will be maintained in Florida by METRC, a private Florida LLC. METRC, http://www.metrc.com/ (last visited 29 June 2021).

108. Because the purchase records will have entered interstate commerce, they will be subject to the power of U.S. Congress and the subpoena power of the Department of Justice. U.S. Const. Art. I, Sec. 8, Cl. 3.

109. Obtaining a Registry Card itself is not illegal under federal law, as it is not a purchase of a federal Schedule I Controlled Substance.

110. As soon as HB 1317 goes into effect, Plaintiff and all other patients are at risk of a permanent record of federal Controlled Substance violations when purchasing medical marijuana in Colorado.

111. In effect, HB 1317 will keep patients from signing up for the medical marijuana program by equalizing the sales limitations for both medical and Retail Marijuana, while tracking only medical marijuana purchases via a private Florida company.

112. In effect, HB 1317 will make maintaining a medical marijuana business unreasonably impractical for medical marijuana licensees due to lack of patients and revenue.

113. The drafters of Colo. Const. art. XVIII, § 14(3)(a) and the people of the state of Colorado understood that purchase tracking would significantly hinder the medical marijuana program when passing the Colo. Const. art. XVIII, § 14(3)(a) confidentiality provisions over two decades ago.

114. Thus, the changes to C.R.S. § 44-10-203(2)(dd)(IX) violate Colo. Const. XVIII, § 14(3)(a) in effect.

115. Plaintiff hereby requests this Court grant the injunctive and declaratory relief sought on this claim, as requested below.

SEVENTH CLAIM FOR RELIEF
(Changes to C.R.S. § 44-10-501(1)(b)(I)-(III) created by HB 1317 facially violate Colo. Const. XVIII, § 14(3)(a))

116. Plaintiff repeats and realleges the paragraphs above as if fully set forth here.

117. Plaintiff specifically repeats and realleges the section above titled "*(a) Confidential Registry Confidentiality Provisions,"* in the Constitutional Section above, as if fully set forth here.

118. Barring CDPHE employees "*in the course of their official duties*" and law enforcement officers verifying a stopped or arrested person's registration, no person is permitted to gain access to any information about patients, physicians, or primary care-givers, in the Confidential Registry or "*otherwise maintained*" by CDPHE. Colo. Const. art. XVIII, § 14(3)(a).

119. Section 8 on Page 14 of HB 1317 requires the seed-to-sale inventory system to "*continuously monitor entry of patient data to identify discrepancies with daily authorized quantity limits and THC potency authorizations; access and retrieve real-time sales data based on patient identification number; and respond with a user error message if a sale will exceed the patient's daily authorized quantity limit for that business day or THC potency authorization*."

120. A "*patient identification number*" is Constitutionally protected medical marijuana patient information maintained by CDPHE in the Confidential Registry.

121. The changes made by HB 1317 to C.R.S. § 44-10-501(1)(b)(I)-(III) facially violate Colo. Const. art. XVIII, § 14(3)(a) by allowing access to Constitutionally protected confidential

information maintained by CDPHE without satisfying either of the two enumerated exceptions to Confidential Registry confidentiality.

122. Plaintiff hereby requests this Court grant the injunctive and declaratory relief sought on this claim, as requested below.

EIGTH CLAIM FOR RELIEF
(The entirety of C.R.S. § 44-10-501(1)(b)(I)-(III) created by HB 1317 violates Colo. Const. XVIII, § 14(3)(a) in effect)

123. Plaintiff repeats and realleges the paragraphs above as if fully set forth here.

124. Plaintiff specifically repeats and realleges the section above titled "*(a) Confidential Registry Confidentiality Provisions,"* in the Constitutional Section above, as if fully set forth here.

125. Barring CDPHE employees "*in the course of their official duties*" and law enforcement officers verifying a stopped or arrested person's registration, no person is permitted to gain access to any information about patients, physicians, or primary care-givers, in the Confidential Registry or "*otherwise maintained*" by CDPHE. Colo. Const. art. XVIII, § 14(3)(a).

126. Section 8 on Page 14 of HB 1317 requires the seed-to-sale inventory system to "*continuously monitor entry of patient data to identify discrepancies with daily authorized quantity limits and THC potency authorizations; access and retrieve real-time sales data based on patient identification number; and respond with a user error message if a sale will exceed the patient's daily authorized quantity limit for that business day or THC potency authorization*."

127. This tracking system is direct and irrefutable evidence of a federal Schedule I Controlled Substance purchase by a patient.

128. This database will be maintained in Florida by METRC, a private Florida LLC, meaning the purchase records will have entered interstate commerce, subject to the power of U.S. Congress and the subpoena power of the Department of Justice. METRC, http://www.metrc.com/ (last visited 29 June 2021); Const. Art. I, Sec. 8, Cl. 3.

129. Obtaining a Registry Card itself is not illegal under federal law, as it is not a purchase of a federal Schedule I Controlled Substance.

130. As soon as HB 1317 goes into effect, Plaintiff and all other patients are at risk of a permanent record of federal Controlled Substance violations when purchasing medical marijuana in Colorado.

131. In effect, HB 1317 will keep patients from signing up for the medical marijuana program by equalizing the sales limitations for both medical and Retail Marijuana, while tracking only medical marijuana purchases via a private Florida company.

132. In effect, HB 1317 will make maintaining a medical marijuana business unreasonably impractical for medical marijuana licensees due to lack of patients and revenue.

133. The drafters of Colo. Const. art. XVIII, § 14(3)(a) and the people of the state of Colorado understood that purchase tracking would keep patients from signing up for the medical marijuana program when passing the Colo. Const. art. XVIII, § 14(3)(a) confidentiality provisions over two decades ago.

134. Thus, the entirety of C.R.S. § 44-10-501(1)(b)(I)-(III) created by HB 1317 violates Colo. Const. XVIII, § 14(3)(a) in effect.

135. Plaintiff hereby requests this Court grant the injunctive and declaratory relief sought on this claim, as requested below.

NINTH CLAIM FOR RELIEF
(The entirety of C.R.S. § 44-10-501(4)(a)(III) created by HB 1317 facially violates Colo. Const. XVIII, § 14(3)(a))

136. Plaintiff repeats and realleges the paragraphs above as if fully set forth here.

137. Plaintiff specifically repeats and realleges the section above titled "*(a) Confidential Registry Confidentiality Provisions,"* in the Constitutional Section above, as if fully set forth here.

138. Barring CDPHE employees "*in the course of their official duties*" and law enforcement officers verifying a stopped or arrested person's registration, no person is permitted to gain access to any information about patients, physicians, or primary care-givers, in the Confidential Registry or "*otherwise maintained*" by CDPHE. Colo. Const. art. XVIII, § 14(3)(a).

139. Section 8 on Page 15 of HB 1317 requires a medical marijuana store employee to "*verify that the patient's or caregiver's purchase… aligns with the purchase authority information in the seed-to-sale tracking system*."

140. Because the records of the seed-to-sale tracking system are based on "*patient identification number,"* this provision facially conflicts with Colo. Const. art. XVIII, § 14(3)(a) by requiring access to Constitutionally protected confidential information maintained by CDPHE without satisfying either of the two enumerated exceptions to Confidential Registry confidentiality.

141. Thus, this portion of HB 1317 facially violates Colo. Const. XVIII, § 14(3)(a).

142. Plaintiff hereby requests this Court grant the injunctive and declaratory relief sought on this claim, as requested below.

TENTH CLAIM FOR RELIEF
(The entirety of C.R.S. § 44-10-501(4)(c) created by HB 1317 facially violates Colo. Const. XVIII, § 14(3)(a))

143. Plaintiff repeats and realleges the paragraphs above as if fully set forth here.

144. Plaintiff specifically repeats and realleges the section above titled "*(a) Confidential Registry Confidentiality Provisions,"* in the Constitutional Section above, as if fully set forth here.

145. Barring CDPHE employees "*in the course of their official duties*" and law enforcement officers verifying a stopped or arrested person's registration, no person is permitted to gain access to any information about patients, physicians, or primary care-givers, in the Confidential Registry or "*otherwise maintained*" by CDPHE. Colo. Const. art. XVIII, § 14(3)(a).

146. Section 8 on Page 16 of HB 1317 requires a medical marijuana store employee verify the patient's "*certification*" at time of purchase.

147. A patient's "*certification*," unconstitutionally created by HB 1317 as discussed in claims below, is information maintained by CDPHE and protected by the confidentiality provisions found in Colo. Const. XVIII, § 14(3)(a).

148. This provision facially conflicts with Colo. Const. art. XVIII, § 14(3)(a) by requiring patients to grant access to Constitutionally protected confidential information maintained by CDPHE without satisfying either of the two enumerated exceptions to Confidential Registry confidentiality.

149. Plaintiff hereby requests this Court grant the injunctive and declaratory relief sought on this claim, as requested below.

ELEVENTH CLAIM FOR RELIEF
(Changes to C.R.S. § 25-1.5-106(2)(a.5) made by HB 1317 facially violate Colo. Const. XVIII, § 14(3)(b)-(d))

150. Plaintiff repeats and realleges the paragraphs above as if fully set forth here.

151. Plaintiff specifically repeats and realleges the section titled "*Colo. Const. art. XVIII, § 14(3) – CDPHE Confidential Registry,"* and specifically subsections (b), (c), and (d), in the Constitutional Section above, as if fully set forth here.

152. Colo. Const. art. XVIII, § 14(3)(b)(I)-(IV) states that to be placed on the Confidential Registry, a patient must reside in Colorado and submit a completed application including only *"(I) the original or a copy of written documentation stating that the patient has been diagnosed with a debilitating medical condition and the physician's conclusion that the patient might benefit from the medical use of marijuana; (II) the name, address, date of birth, and social*

security number of the patient; (III) the name, address and telephone of the patient's physician; and (IV) the name and address of the patient's primary care-giver, if one is designated at the time of application." Id.

153. Colo. Const. art. XVIII, § 14(3)(c) states that CDPHE "*shall verify*" the information required by (3)(b) "*within thirty days of receiving the information referred to in (3)(b)(I)-(IV)*." Barring CDPHE determining: (1) the information required by Colo. Const. art. XVIII, § 14(3)(b) was not provided; (2) the information required by Colo. Const. art. XVIII, § 14(3)(b) was falsified; (3) the documentation fails to state that a patient has a qualifying debilitating medical condition; or (4) the physician is not licensed in Colorado, CDPHE "*shall issue*" a Registry Card "*not more than five days after verifying such information."* Id.

154. Section 2 on Page 5 of HB 1317 requires an "*in-person"* assessment of a patient.

155. Furthermore, Section 2 on Page 5 of HB 1317 states "*if the recommending physician is not the patient's primary care physician, the recommending physician shall review the existing records of the diagnosing physician or a licensed mental health provider."*

156. Because CDPHE has no discretion to deny a patient's application outside of the reasons and procedures described in Subsections of Colo. Const. art. XVIII, § 14(3)(b)-(d), these novel statutory requirements, requiring in-person consultations, records reviews from other physicians, and a mental health assessment, facially violates Const. art. XVIII, § 14(3)(b), (c), and (d).

157. Plaintiff hereby requests this Court grant the injunctive and declaratory relief sought on this claim, as requested below.

TWELFTH CLAIM FOR RELIEF
(Changes to C.R.S. § 25-1.5-106(5)(b)(I)-(III) made by HB 1317 facially violate Colo. Const. XVIII, § 14(3)(b)-(d))

158. Plaintiff repeats and realleges the paragraphs above as if fully set forth here.

159. Plaintiff specifically repeats and realleges the section titled "*Colo. Const. art. XVIII, § 14(3) – CDPHE Confidential Registry,"* and specifically subsections (b), (c), and (d), in the Constitutional Section above, as if fully set forth here.

160. Section 2 on Page 6 of HB 1317 requires a physician "*certification*" to include "*the date of issue and effective date of the recommendation; patient's name and address; authorizing physician's name, address, and federal Drug Enforcement Agency number; maximum THC potency level recommended; recommended product, if any; the patient's daily authorized quantity, if such quantity exceeds the maximum statutorily allowed amount for the patient's age; directions for use; and the authorizing physician's signature*."

161. Because CDPHE has no discretion to deny a patient's application outside of the reasons and procedures described in Colo. Const. XVIII, § 14(3)(b)-(d), requiring one physician's "*conclusion"* that the patient has been diagnosed with a debilitating medical condition and that the patient "*might benefit"* from the medical use of marijuana, this novel statutory requirement facially violates Colo. Const. XVIII, § 14(3)(b)-(d).

162. Plaintiff hereby requests this Court grant the injunctive and declaratory relief sought on this claim, as requested below.

THIRTEENTH CLAIM FOR RELIEF
(Changes to C.R.S. § 25-1.5-106(5)(b)(I)-(III) made by HB 1317 violate Colo. Const. XVIII, § 14(3)(b)-(d) in effect)

163. Plaintiff repeats and realleges the paragraphs above as if fully set forth here.

164. Plaintiff specifically repeats and realleges the section titled "*Colo. Const. art. XVIII, § 14(3) – CDPHE Confidential Registry,"* and specifically subsections (b), (c), and (d), in the Constitutional Section above, as if fully set forth here.

165. Section 2 on Page 6 of HB 1317 requires a physician "*certification*" to include "*the date of issue and effective date of the recommendation; patient's name and address; authorizing physician's name, address, and federal Drug Enforcement Agency number; maximum THC potency level recommended; recommended product, if any; the patient's daily authorized quantity, if such quantity exceeds the maximum statutorily allowed amount for the patient's age; directions for use; and the authorizing physician's signature*."

166. Physicians who currently recommend medical marijuana have stated publicly that they will cease recommending medical marijuana if HB 1317 goes into effect because HB 1317 directly jeopardizes physicians by requiring them to go beyond their First Amendment protections provided by the Ninth Circuit Court of Appeals in Conant v. Walters, 309 F.3d 629, 632 (9th Cir. 2002).

167. Conant v. Walters protects physicians recommending medical marijuana to patients from retribution by DEA; however, this case does not protect physicians beyond general marijuana recommendations guaranteed under a physician's First Amendment right to free speech. "*The government agreed with plaintiffs that revocation of a license was not authorized where a doctor merely discussed the pros and cons of marijuana use."* Id. The court observed that the *"plaintiffs agreed with the government that a doctor who actually prescribes or dispenses marijuana violates federal law*." Id. at 634.

168. The issue in Conant v. Walters is was what constituted a prescription for marijuana. The court held, to be beyond the scope of First Amendment speech and constitute a prescription, a physician's speech *"must have the requisite 'narrow specificity.'"* Id. The court continued, "*throughout this litigation, the government has been unable to articulate exactly what speech is*

proscribed, describing it only in terms of speech the patient believes to be a recommendation of marijuana. Thus, whether a doctor-patient discussion of medical marijuana constitutes a 'recommendation' depends largely on the meaning the patient attributes to the doctor's words. This is not permissible under the First Amendment." Id at 639.

169. The DEA lost in Conant v. Walters because of the general nature of physician recommendations for marijuana not being analogous to the specificity used by physicians when prescribing a Controlled Substance. If DEA were to make a more specific argument about what constitutes a prescription, then DEA would likely prevail. Id.

170. The new requirements of medical marijuana "*certifications"* required under HB 1317 very likely satisfy the "*narrow specificity*" requirement for DEA. Id.

171. The new medical marijuana "*certifications*," and accompanying requirements under HB 1317, very likely constitute a prescription of a federal Schedule I Controlled Substance.

172. It is clearly unlawful under federal law for a physician to "prescribe" Schedule I substances. 21 U.S.C. § 812(b)(1)(B).

173. Penalties for violations of DEA rules include loss of DEA prescribing privileges through revocation of a physician's registration. 21 U.S.C. § 824(a).

174. "*Revocations carry the harsh consequence of preventing pharmacies, pharmacists, and prescribers from dispensing or prescribing federally controlled substances, which effectively renders the affected provider out-of-business*." Alexandra B. Shalom, Revoking Controlled Substances Registrations: the DEA's Weapon to Fight Abusive Prescribing and Dispensing, FOLEY, (28 Feb. 2019), https://www.foley.com/en/insights/publications/2019/02/revoking-controlled-substances-registrations-the-d.

175. A physician's DEA license is comparable in importance to a physician's license to practice medicine because without the DEA license, their utility to most patients is severely limited, and patients likely will seek other physicians with prescribing privileges.

176. The resulting risk of losing DEA prescribing privileges makes involvement with medical marijuana unreasonably impracticable and risky for physicians.

177. There will effectively cease to be a regulated medical marijuana program of there are no physicians willing to "*authorize*" marijuana within the new requirements of the physician "*certifications.*"

178. This is certainly not what the voters intended when Amendment 20, Colo. Const. art. XVIII, § 14, was passed over two-decades ago.

179. These new requirements will directly injure Plaintiff by making it unreasonably impracticable for physicians to be involved with medical marijuana, effectively quashing Colorado's once highly regarded medical marijuana program, and denying Plaintiff the ability to get a Registry Card to access his medical cannabis regimen.

180. Plaintiff has no access to his cannabis regimen outside of the regulated medical marijuana system as he is under the age of twenty-one (21).

181. Thus, changes to C.R.S. § 25-1.5-106(5)(b)(I)-(III) made by HB 1317 violate Colo. Const. art. XVIII, § 14 in effect.

182. Plaintiff hereby requests this Court grant the injunctive and declaratory relief sought on this claim, as requested below.

FOURTEENTH CLAIM FOR RELIEF
(Changes to C.R.S. § 25-1.5-106(5)(f) made by HB 1317 facially violate Colo. Const. XVIII, § 14(3)(b)-(d))

183. Plaintiff repeats and realleges the paragraphs above as if fully set forth here.

184. Plaintiff specifically repeats and realleges the section titled "*Colo. Const. art. XVIII, § 14(3) – CDPHE Confidential Registry,"* and specifically subsections (b), (c), and (d), in the Constitutional Section above, as if fully set forth here.

185. "'*Physician' means a doctor of medicine who maintains, in good standing, a license to practice medicine issued by the state of Colorado."* Colo. Const. art. XVIII, § 14(1)(e).

186. Section 2 on Page 8 of HB 1317 states "*(f) A Physician who makes medical marijuana recommendations shall take a medical continuing education course regarding medical marijuana that is at least five hours every two-years."*

187. This provision facially conflicts with the Constitutional definition of "*Physician*" which, by its intentionally broad definition, does not allow additional requirements be placed on physicians for the sole reason they recommend marijuana. Colo. Const. art. XVIII, § 14(1)(e).

188. Because CDPHE has no discretion to deny a patient's application outside of the reasons and procedures described in Subsections (3)(b), (c), and (d), and "*Physician*" is expressly defined in Colo. Const. XVIII, § 14(1)(e), there is no mechanism to enforce this novel statutory requirement and it facially conflicts with Colo. Const. XVIII, § 14(3)(b)-(d).

189. There is no constitutional ability to deny a patient a Registry Card because the patient's physician did not take a medical continuing education course only required for those physicians recommending marijuana. Id. The Constitution states a patient is entitled to be on the

registry unless the recommending physician is unlicensed in the state of Colorado. Colo. Const. XVIII, § 14(3)(c).

190. Furthermore, per the confidentiality provision found in Colo. Const. art. XVIII, § 14(3)(a), this provision is entirely unenforceable, as the names of physicians providing marijuana recommendations is Constitutionally protected confidential information.

191. Thus, the entirety of C.R.S. § 25-1.5-106(5)(f) created by HB 1317 facially violates Colo. Const. art. XVIII, § 14(1)(e), and Colo. Const. art. XVIII, § 14(3).

192. Plaintiff hereby requests this Court grant the injunctive and declaratory relief sought on this claim, as requested below.

FIFTEENTH CLAIM FOR RELIEF
(The entirety of C.R.S. § 25-1.5-106(5.5) created by HB 1317 facially violates Colo. Const. XVIII, § 14(3)(b)-(d))

193. Plaintiff repeats and realleges the paragraphs above as if fully set forth here.

194. Plaintiff specifically repeats and realleges the section titled "*Colo. Const. art. XVIII, § 14(3) – CDPHE Confidential Registry,"* and specifically subsections (b), (c), and (d), in the Constitutional Section above, as if fully set forth here.

195. Section 2 on Page 8 of HB 1317 creates new Confidential Registry requirements for patients eighteen (18) to twenty (20) years of age including requiring recommendations by two physicians and follow-up appointments every six months.

196. This is facially unconstitutional as it conflicts with Colo. Const. XVIII, § 14(3)(b) by imposing additional requirements on patients eighteen (18) to twenty (20) years of age when CDPHE has no discretion to deny an application outside of the reasons and procedures described in Colo. Const. XVIII, § 14(3)(b)-(d).

197. Colo. Const. XVIII, § 14(3)(d), (6) only differentiates two groups: under eighteen (18) years of age and over eighteen (18) years of age.

198. The Constitution prohibits CDPHE from treating a patient eighteen (18) to twenty (20) years of age differently from a patient twenty-one (21) years of age or over because CDPHE has no discretion to deny a patient's application outside of the reasons and procedures described in Colo. Const. XVIII, § 14(3)(b)-(d).

199. Thus, the General Assembly has no discretion to impose additional requirements on patients eighteen (18) to twenty (20) years old, as it cannot command an agency to violate the Constitution. In re Senate Bill No. 9, 56 P. 173, 174 (Colo. 1899).

200. Thus, this portion of HB 1317 facially violates Colo. Const. art. XVIII, § 14.

201. Plaintiff hereby requests this Court grant the injunctive and declaratory relief sought on this claim, as requested below.

SIXTEENTH CLAIM FOR RELIEF
(Changes to C.R.S. § 44-10-202(8)(a)(I) made by HB 1317 facially violate Colo. Const. XVIII, § 14(3)(b)-(d))

202. Plaintiff repeats and realleges the paragraphs above as if fully set forth here.

203. Plaintiff specifically repeats and realleges the section titled "*Colo. Const. art. XVIII, § 14(3) – CDPHE Confidential Registry,"* and specifically subsections (b), (c), and (d), in the Constitutional Section above, as if fully set forth here.

204. Section 10 on Page 18 of HB 1317 states that the state licensing authority shall convene a workgroup to develop a uniform physician certification to be used by Patients, Doctors, and Licensees.

205. As stated previously, these certifications are both facially unconstitutional and unconstitutional in effect.

206. Thus, this portion of HB 1317 facially violates Colo. Const. art. XVIII, § 14.

207. Plaintiff hereby requests this Court grant the injunctive and declaratory relief sought on this claim, as requested below.

SEVENTEENTH CLAIM FOR RELIEF
(C.R.S. § 44-10-203(2)(ii) created by HB 1317 facially violates Colo. Const. XVIII, § 16)

208. Plaintiff repeats and realleges the paragraphs above as if fully set forth here.

209. Plaintiff specifically repeats and realleges the section titled "*Colo. Const. art. XVIII, § 16 - Retail Marijuana"* in the Constitutional Section above as if fully set forth here.

210. The voters of the state of Colorado intended, and Colo. Const. XVIII, § 16(1) makes clear, that Retail Marijuana be regulated in a similar manner to alcohol.

211. Section 7 on Page 13 of HB 1317 requires the state licensing authority to promulgate requirements for marijuana concentrate including "*a measuring device that may be used to measure one recommended serving*."

212. Nowhere in regulations for alcohol is it required that a product include a measuring device to measure one serving of alcohol. 1 CCR § 203-2.

213. Thus, portions of C.R.S. § 44-10-203(2)(ii) requiring a measuring device and created by HB 1317 facially violate Colo. Const. art. XVIII, § 16.

214. Plaintiff hereby requests this Court grant the injunctive and declaratory relief sought on this claim, as requested below.

EIGHTEENTH CLAIM FOR RELIEF
(C.R.S. § 44-10-601(17) created by HB 1317 facially violates Colo. Const. XVIII, § 16)

215. Plaintiff repeats and realleges the paragraphs above as if fully set forth here.

216. Plaintiff specifically repeats and realleges the section titled "*Colo. Const. art. XVIII, § 16 - Retail Marijuana"* in the Constitutional Section above as if fully set forth here.

217. The definition of marijuana includes derivatives, mixtures, and preparations of the cannabis plant, which implicitly includes concentrates, a definitional subset of derivatives, mixtures, and preparations. Colo. Const. XVIII, § 16(2)(f).

218. The voters of the state of Colorado intended, and Colo. Const. XVIII, § 16(1) makes clear, that marijuana be regulated in a similar manner to alcohol.

219. Section 9 on Page 18 of HB 1317 states "*a retail marijuana store or retail marijuana stores shall not sell any more than eight grams of retail marijuana concentrate to a person in a single day*."

220. Furthermore, C.R.S. § 44-10-601(3)(a) created equivalency standards which have been enacted through rulemaking and directly violate Colo. Const. XVIII, § 16(2)(f).

221. Nowhere in regulations for alcohol are there sales limitations or equivalencies for consumers outside of the lawful possession amount, which for alcohol is unlimited. 1 CCR § 203-2.

222. Under the plain reading of Colo. Const. XVIII, § 16, Retail Marijuana stores are limited in selling amounts of marijuana only by the personal possession limitation found in law, and equivalencies violate the definition of "*marijuana*."

223. Thus, the creation of C.R.S. § 44-10-601(17) by HB 1317 facially violates Colo. Const. art. XVIII, § 16.

224. Plaintiff hereby requests this Court grant the injunctive and declaratory relief sought on this claim, as requested below.

225. Additionally, Plaintiff requests that anywhere equivalencies for marijuana products appear in law be enjoined and declared unconstitutional, as requested below.

NINETEENTH CLAIM FOR RELIEF
(The entirety of C.R.S. § 39-28.8-501(4.7)(a) created by HB 1317 facially violates Colo. Const. V, § 17)

226. Plaintiff repeats and realleges the paragraphs above as if fully set forth here.

227. Plaintiff specifically repeats and realleges the section titled "*Colo. Const. art. V, § 17 – No Law Passed by Amendment"* in the Constitutional Section above as if fully set forth here.

228. Colo. Const. art. V, § 17 does not allow amendments to change the "*original purpose*" of the bill.

229. Section 11 on Page 19 of HB 1317 directs the state treasurer to transfer Two (2) Million United States Dollars for the enforcement of driving under the influence of drugs. This portion of the bill was amended in.

230. The purpose and title of this bill, subject to the single-subject bill title limitations further discussed in the claims below, do not allow for this provision to be amended into the bill.

231. Providing an expenditure to enforce driving under the influence of drugs does not fall under the title "*Concerning the Regulation of Marijuana for Safe Consumption*" and will cause the bill to not adhere to its "*original purpose*." Colo. Const. art. V, § 17.

232. Thus, this portion of HB 1317 facially violates Colo. Const. art. V, § 17.

233. Plaintiff hereby requests this Court grant the injunctive and declaratory relief sought on this claim, as requested below.

TWENTIETH CLAIM FOR RELIEF
(The entirety of C.R.S. § 25-3-127 created by HB 1317 facially violates Colo. Const. V, § 21)

234. Plaintiff repeats and realleges the paragraphs above as if fully set forth here.

235. Plaintiff specifically repeats and realleges the section titled "*Colo. Const. art. V, § 21 – Single-Subject Bill Title"* in the Constitutional Section above as if fully set forth here.

236. Section 3 on Page 9 of HB 1317 states that CDPHE is to create a "*de-identified report from hospital and emergency discharge data of patients, including demographic information regarding patients' age, race, ethnicity, gender, and geographic location presenting with conditions or a diagnosis that reflect marijuana use…*"

237. Creating a database of discharged hospital patients, identified by demographics, presenting with conditions consistent with marijuana use clearly falls outside of the title "*Concerning the Regulation of Marijuana for Safe Consumption*" and is not "*germane*" nor "*relevant and appropriate*" to the bill title because it does not regulate marijuana for safe consumption, but hospitals instead. Driverless Car Co. v. Armstrong at 1099.

238. Thus, this provision of HB 1317 facially violates Colo. Const. art. V, § 21.

239. Plaintiff hereby requests this Court grant the injunctive and declaratory relief sought on this claim, as requested below.

TWENTY-FIRST CLAIM FOR RELIEF
(The entirety of C.R.S. § 23-20-141 created by HB 1317 violates Colo. Const. V, § 21)

240. Plaintiff repeats and realleges the paragraphs above as if fully set forth here.

241. Plaintiff specifically repeats and realleges the section titled "*Colo. Const. art. V, § 21 – Single-Subject Bill Title"* in the Constitutional Section above as if fully set forth here.

242. Section 1 on Page 1 of HB 1317 creates a study, to study, past studies on high-potency THC. This provision does not authorize any novel studies outside of this regurgitation of previous studies.

243. Section 5 on Page 11 of HB 1317 creates an appropriation of Three (3) Million United States Dollars in support of such study, to study, past studies.

244. Such a study, to study already available research clearly violates the title "*Concerning the Regulation of Marijuana for Safe Consumption*."

245. A study is not regulation. A study which studies already publicly available research, using Three (3) Million United States Dollars of Colorado taxpayer money, is not "g*ermane*" nor "*relevant and appropriate*" to the bill title "*Concerning the Regulation of Marijuana for Safe Consumption*." Driverless Car Co. v. Armstrong at 1099.

246. The study created by HB 1317 causes the bill to embrace two titles: "*Concerning the Study AND Regulation of Safe Marijuana Consumption.*"

247. Thus, this provision of HB 1317 facially violates Colo. Const. art. V, § 21.

248. Plaintiff hereby requests this Court grant the injunctive and declaratory relief sought on this claim, as requested below.

TWENTY-SECOND CLAIM FOR RELIEF

(The entirety of C.R.S. § 30-10-624 created by HB 1317 facially violates Colo. Const. V, § 21)

249. Plaintiff repeats and realleges the paragraphs above as if fully set forth here.

250. Plaintiff specifically repeats and realleges the section titled "*Colo. Const. art. V, § 21 – Single-Subject Bill Title"* in the Constitutional Section above as if fully set forth here.

251. Section 4 on Page 9 of HB 1317 mandates a toxicology screening for THC, alcohol, and scheduled drugs for all Colorado residents under the age of twenty-five who died of non-natural death.

252. The coroners are then required to provide this information for inclusion on the Violent Death Reporting System, a database reserved for suicide, homicide, unintentional firearm, legal intervention, and undetermined deaths that are violent in nature. Colorado Violent Death Reporting System, Department of Public Health and Environment, http://cdphe.colorado.gov/center-for-health-and-environmental-data/registries-and-vital-statistics/colorado-violent-death-reporting-system (last visited June 24, 2021).

253. The Violent Death Reporting System is funded through the National Violent Death Reporting System and is overseen by federal Centers for Disease Control and Prevention ("CDC").

254. This provision of HB 1317 may taint the data and intended purpose of the federally funded Colorado Violent Death Reporting System as the new data is extraneous and irrelevant to the data currently contained in the national system. Id.

255. Requiring a toxicology screen of THC, alcohol, and drugs after a non-natural death of all persons under the age of twenty-five, regulates coroners, invades the privacy of the dead (and their living relatives), is not "g*ermane*" nor "*relevant and appropriate*" to the bill title, and clearly falls outside of the bill title "*Concerning the Regulation of Marijuana for Safe Consumption*." Driverless Car Co. v. Armstrong at 1099.

256. Thus, this provision of HB 1317 facially violates Colo. Const. art. V, § 21.

257. Plaintiff hereby requests this Court grant the injunctive and declaratory relief sought on this claim, as requested below.

TWNETY-THIRD CLAIM FOR RELIEF
(The entirety of C.R.S. § 39-28.8-501(4.7)(a) created by HB 1317 violates Colo. Const. V, § 21)

258. Plaintiff repeats and realleges the paragraphs above as if fully set forth here.

259. Plaintiff specifically repeats and realleges the section titled "*Colo. Const. art. V, § 21 – Single-Subject Bill Title"* in the Constitutional Section above as if fully set forth here.

260. Section 11 on Page 19 of HB 1317 directs the state treasurer to transfer Two (2) Million United States Dollars for the enforcement of driving under the influence of Drugs.

261. The purpose and title of this bill, "*Concerning the Regulation of Marijuana for Safe Consumption*" does not allow for this provision to be included because enforcing driving under the influence of all drugs is not "g*ermane*" nor "*relevant and appropriate*" to the bill title as it clearly falls outside of the "*Regulation of Marijuana* for S*afe Consumption*." Driverless Car Co. v. Armstrong at 1099.

262. Thus, this provision of HB 1317 facially violates Colo. Const. art. V, § 21.

263. Plaintiff hereby requests this Court grant the injunctive and declaratory relief sought on this claim, as requested below.

TWENTY-FOURTH CLAIM FOR RELIEF
(Preliminary Injunction on all Claims set forth Above)

264. Plaintiff repeats and realleges the paragraphs above as if fully set forth here.

265. In considering a motion for a preliminary injunction, the trial court must find that the moving party has demonstrated each of the following factors: (1) a reasonable probability of success on the merits; (2) a danger of real, immediate, and irreparable injury which may be prevented by injunctive relief; (3) lack of a plain, speedy, and adequate remedy at law; (4) no disservice to the public interest; (5) balance of equities in favor of the injunction; and (6) preservation by the injunction of the status quo pending a trial on the merits. Gitlitz v. Bellock, App.2007, 171 P.3d 1274.

266. The unconstitutionality of each challenged provision of HB 1317, along with the unconstitutional procedural violation that occurred during the enactment of HB 1317, shows Plaintiff has a reasonable probability of success on the merits.

267. Plaintiff will be immediately and irreparably injured if HB 1317 is allowed to go into effect as physicians will no longer be able to generally recommend medical marijuana in Colorado, and many have already stated publicly that they will not certify or authorize marijuana as required by HB 1317 for fear of loss of DEA license privileges.

268. Additionally, Plaintiff will be immediately and irreparably injured by the unconstitutional tracking system created by HB 1317 because the new tracking system will create a permanent record of patients purchasing Schedule I Controlled Substances under federal law, subjecting patients to potential future prosecution and loss of liberties.

269. A preliminary injunction is the only remedy available at law which will stop the immediate and irreparable harm to Plaintiff. No other remedy at law will stop patient tracking. No other remedy at law will enjoin the unconstitutional and unreasonable restraints on Colorado physicians; thus, allowing them to continue to recommend medical marijuana.

270. The public interest weighs in favor of Plaintiff as the public has a vested interest in the Constitution being followed by the General Assembly and Governor. This includes Colo. Const. art. XVIII, § 14, passed over twenty years ago by the people of the State of Colorado, serving as the basis for Colo. Const. art. XVIII, § 16, and the booming Retail Marijuana industry in Colorado today.

271. The balance of the equities weighs in favor of Plaintiff, and the approximately 80,000 medical marijuana patients currently registered with CDPHE, because the new requirements of HB 1317 are facially unconstitutional, unconstitutional in effect, and will immediately and irreparably harm Plaintiff and medical marijuana patients statewide. Medical Marijuana Statistics and Data, CDPHE, (Jan. 2021), https://cdphe.colorado.gov/medical-marijuana-registry-data (click "2021" dropdown; then follow "January" hyperlink).

272. Granting an injunction will retain the current Constitutional medical marijuana program and status quo between the Parties.

273. Based on the foregoing, Plaintiff is entitled to immediate injunctive relief pursuant to C.R.C.P. 65.

274. A preliminary injunction should be granted on all Claims for Relief above.

TWENTY-FIFTH CLAIM FOR RELIEF
(Permanent Injunction on all Claims set forth Above)

275. Plaintiff repeats and realleges the paragraphs above as if fully set forth here.

276. Plaintiff specifically restates and realleges the entirety of the previous claim for relief for a preliminary injunction.

277. The elements for a preliminary injunction are the same as for a permanent injunction.

278. A permanent injunction should be granted on all claims herein, or those the Court deems were proved beyond a reasonable doubt by Plaintiff.

TWENTY-SIXTH CLAIM FOR RELIEF
(Declaratory Relief on all Claims set forth Above)

279. Plaintiff repeats and realleges the paragraphs above as if fully set forth here.

280. C.R.S. § 13-51-106 states that any person "*whose rights, status, or other legal relations are affected by a statute . . . may have determined any question of construction or validity arising under the . . . statute . . . and obtain a declaration of rights . . . thereunder*."

281. An actual and justiciable controversy presently exists between the Parties because Plaintiff will be immediately and irreparably harmed once HB 1317 goes into full effect, a direct result of Defendant's actions.

282. Plaintiff is a person whose Constitutional right to medical marijuana, and whose status as a medical marijuana patient under Colo. Const. art. XVIII, § 14 is directly and imminently affected by HB 1317.

283. Defendant's violation of the Constitution through the enactment of HB 1317 presents questions of law, constitutional interpretation, and statutory construction appropriate for resolution through declaratory judgment.

284. Therefore, Plaintiff seeks a declaration that the entirety of HB 1317 is unconstitutional under Colo. Const. art. V, § 22.

285. Additionally, Plaintiff seeks a declaration that the specific sections of HB 1317 challenged in each Claim for Relief above are unconstitutional under Colo. Const. art. XVIII, § 14; Colo. Const. art. XVIII, § 16; Colo. Const. art. V, § 17; or Colo. Const. art. V, § 21.

PRAYER FOR RELIEF

286. Plaintiff prays that this Court:

a. Enter a declaratory judgment that HB 1317 was enacted in violation of Colo. Const. art. V, § 22 and is therefore null, void, and of no effect.

b. Issue preliminary and permanent injunctions enjoining Defendant Jared S. Polis and any officers, agents, and employees of the state of Colorado from administering or enforcing any and all provisions of HB 1317.

c. Enter a declaratory judgment that sections and subsections of HB 1317 violate Colo. Const. art. XVIII, § 14; Colo. Const. art. XVIII, § 16; Colo. Const. art. V, § 17; or Colo. Const. art. V, § 21 as stated in each foregoing Claim for Relief.

d. Issue preliminary and permanent injunctions enjoining Defendant Jared S. Polis and any officers, agents, and employees of the state of Colorado from administering or enforcing the sections and subsections of HB 1317 determined to violate Colo. Const. art. XVIII, § 14; Colo. Const. art. XVIII, § 16; or Colo. Const. art. V, § 17; Colo. Const. art. V, § 21 as stated in each foregoing Claim for Relief.

e. Enter a declaratory judgment that any sections and subsections of *current law* which violate Colo. Const. art. XVIII, § 14; Colo. Const. art. XVIII, § 16; Colo. Const. art. V, § 17; or Colo. Const. art. V, § 21 are unconstitutional, null, void, and of no effect.

f. Issue preliminary and permanent injunctions enjoining Defendant Jared S. Polis and any officers, agents, and employees of the state of Colorado from administering or enforcing the sections and subsections of *current law* which violate Colo. Const. art. XVIII, § 14; Colo. Const. art. XVIII, § 16; Colo. Const. art. V, § 17; or Colo. Const. art. V, § 21.

g. Grant other relief as the Court deems proper.

Respectfully submitted this 1st day of July, 2021.

/s/Alexander S Buscher

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