STATE OF MINNESOTA

DISTRICT COURT
FIFTH JUDICIAL DISTRICT
COURT FILE NO.: 08-CR-14-113
COURT FILE NO.: 08-CV-14-186

COUNTY OF BROWN

THE STATE OF MINNESOTA,
Plaintiff,

vs.

John George Hansen II,
Defendant.

Robert Hinnenthal,
Brown County Attorney,

Plaintiff,

vs.

One two-bulb florescent light with two bulbs, et. alia,
Defendants.

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S MOTIONS TO DISMISS

TO: THE ABOVE NAMED COURT, AND GEORGE KENNEDY, ASSISTANT BROWN COUNTY ATTORNEY, 519 CENTER ST, P.O. BOX 428, NEW ULM, MINNESOTA 56073-0428, AND THE ATTORNEY GENERAL, 445 MINNESOTA STREET, SUITE 1800, ST. PAUL, MINNESOTA 55101:

The above entitled matter came before the above named Court, the Honorable Robert Docherty, District Court Judge, on October 30 and 31, 2014. The State appeared, and was represented by George Kennedy, Assistant Brown County. The Accused, Jon George Hansen II, appeared personally, and with his lawyers, Calvin Johnson and Elizabeth Levine, of Mankato, Minnesota. This Court held a two day Omnibus Hearing, wherein the State did not present any witnesses. Dr. Jackie Vieceli, Dr. Ben Hansen, Dr. Jon Gettman, Diane Miller and Dr. Jacob Mirman all testified for Mr. Hansen. Mr. Hansen also testified on his own behalf.

Mr. Hansen presented the sworn testimony from the United States District Court Eastern District, State of California Case: *U.S. v. Pickard*. Mr. Hansen, now formally objects to this

exclusion of exculpatory and relevant evidence, and requests the Court to preserve Its record should an appeal follow. Included in the proposed evidence is over 700 medical reports and studies authenticating (validating) Mr. Hansen's proof: Marijuana is Not a Schedule I substance.

PREFACE

"It is only with the heart that one can see rightly; what is essential is invisible to the eye." ANTOINE DE SAINT-EXUPERY. THE LITTLE PRINCE. (Irene Testot-Ferry trans. Wordsworth Editions 1995) (1943)

INTRODUCTION

Minnesota is at a crossroads in Its history. Mr. Hansen asks this Court to recognize the political, legal, and scientific shift, evolving from the use and cultivation of an ancient crop: Cannabis/Hemp.

Mr. Hansen asks the Court to recognize his fundamental right to treat his depression and anxiety in the most effective, natural, cost effective and socially responsible method developed, to date, with the least side effects. In doing so, the Court would endorse the age old principles of self determination, agrarian subsistence, compassionate health care, and the right to care for and love one's self and others.

Mr. Hansen addresses the issues as follows:

I. Statutory construction. The Court is called upon to declare what the present law is. The Minnesota Legislature has legalized marijuana for medical purposes. This declaration puts it at odds with a long standing position that marijuana has no medical purpose, and negates marijuana's inclusion in Schedule I. The Court now has the job of cleaning up the inconsistencies in the existing law.

Hemp and Cannabis are of the same genus. The Court has no power to determine a difference based upon this simple scientific principle.

In the event the Court determines that statutory construction is inapplicable, the Court must then turn to the more difficult constitutional principles embodied in Mr. Hansen's arguments, put forth initially in his brief submitted on April 17, 2014, as well as these arguments before the Court, including the right to be free from unreasonable governmental intrusion.

II. Whether the State has impermissibly infringed on Mr. Hansen's fundamental rights. These rights go to the very heart of what it means to be a citizen of this great state, as well as the United States of America. Mr. Hansen will be asking the Court to conduct a strict scrutiny analysis of any law that impinges upon these fundamental rights:

1. **We have a fundamental right of self determination:** the inviolable right of individual consciousness, separate and apart from all others. **Love is a fundamental right**, going to the very core of our being. This is perhaps the single greatest attribute of human beings on this earth.

2. **We have the right to earn a living,** including the primary principles upon which this nation was founded: farming and gardening.

3. **We have the right to privacy.** This includes the right to be left alone.

4. **We have the right to food, shelter, and clothing.** Included in this right is the concept of our home as being our castle.

5. **We have the right to adequate health care.** This right emerges from life, liberty, and the pursuit of happiness.

6. **We have the right to use our own property,** i.e. to grow one's farm or garden.

III. Whether Art. 13 § 7 of the Minnesota constitution bars the State from punishing Mr. Hansen from growing marijuana on a farm, in his home.

IV. This Court must decide whether the general welfare clause of the Minnesota Constitution has been violated.

Should the Court reject strict scrutiny in Its analysis, Mr. Hansen will demonstrate that the State lacks a rational basis to classify marijuana as Schedule I, on the same basis as those arguments previously presented, as well as the information submitted to the Court, conclusively establishing that marijuana has numerous medical, general welfare, and personal well-being benefits.

V. The charges violate Mr. Hansen's right to equal protection of the law. As a person suffering from a mental illness, and as a member of a lower economic class, Mr. Hansen has standing to challenge the law. The Court has an affirmative duty to enforce non-discriminatory laws. Current marijuana laws, although laxly enforced (4% chance of conviction in Minnesota), overwhelmingly discriminate against others who merit personal autonomy.

VI. (Forfeiture matter only) The County Attorney is barred under Minn. Stat. § 388.08 from seeking forfeiture of Mr. Hansen's property.

In addition, Mr. Hansen objects to the Court's exclusion of the proposed exhibits from *U.S.A. v. Pickard*, No. 2:11-CR-00449-KJMM-16 (E.D. Cal. 2014). Those exhibits further demonstrate that marijuana is not properly classified as a Schedule I drug, under the Federal Controlled Substance Act, or Minnesota Statute § 152.02.

FACTS

On February 1, 2014, New Ulm police officers obtained a warrant and raided the home of the accused, John George Hansen II. The State confiscated cannabis plants and growing materials from Mr. Hansen's home. Mr. Hansen was charged with violating Minnesota Statutes §§ 152.024 subd. 1(4), 152.025 subd. 1(a)(1), 2(a)(1) and 152.092. Because Mr. Hansen was

growing cannabis, he is charged with sale, even though he did not sell any cannabis.

Mr. Hansen was born and grew up in Sleepy Eye, Minnesota. He has resided in New Ulm since 2012. He is gainfully employed, and has one young son. As he testified, he suffers from depression and anxiety. He explained that he has feelings of worthlessness and struggles with being out in the world and socializing. When he is feeling the effects of his depression, he does not feel motivated to go to work. He would not wish his experience on anyone else.

Mr. Hansen's doctor prescribed Trazodone and Escitalopram. Mr. Hansen researched those medications and was concerned about their significant side effects, including memory loss, sleep issues, muscle and bone pain, and significantly, as Dr. Mirman explained, *depression*. Less common side effects include nervousness, hearing loss, general feelings of discomfort or illness, and convulsions. Thus, Mr. Hansen chose not to take those medications. Instead, he smoked marijuana, which relieved his depression, without the side effects of the prescription medicines.

Whem Mr. Hansen told his doctor about his marijuana use, his doctor was unreceptive and unwilling to discuss it. The doctor lacked the tools necessary for open patient/physician communication. Communication is broken by the State's placing marijuana in Schedule I. Yet Mr. Hansen, the best judge of his own body, explained that when he is able to smoke marijuana, he is focused and out in the world, he looks forward to school, work, exercising, and life in general. Marijuana also serves as a substitute for tobacco, enabling him to refrain from smoking harmful cigarettes. As a less effective substitute, during the pendency of his case, Mr. Hansen smokes cigarettes to alleviate the effects of his depression and anxiety, an ironic twist, further illustrating the need for change. At trial, if necessary, the evidence will show that marijuana is a safe and effective palliative, easing withdrawal from the drug of alcohol that killed 88,000 people in the United States last year, alone.

When Mr. Hansen became uncomfortable asking a seller to commit a felony every time he bought marijuana off the street, he began to research how to grow cannabis. Importantly, Mr. Hansen values his health and is conscious of the health effects of what he is putting into his body. To that end, he began growing marijuana in the privacy of his home. He grew marijuana in a closed off bedroom, and did not invite others in to see his garden. He also saves money and doesn't support any international drug cartels, growing a crop that his ancestors grew for generations.

Mr. Hansen is declaring the sanctity of his body and asserting his right to care for his body and his mind, consistent with his own values. When the police seized Mr. Hansen, they neglected to ask him why he smoked marijuana.

The State has yet to show any harm occurred from the "crimes" for which It has charged Mr. Hanson of committing.

Marijuana the Crop, a Brief History

On July 12, 1937, during the hearings regarding the Marihuana Tax Act, attorney Royal C. Johnson, as a representative of Chempsco Inc., of Winona, Minnesota, and Hemp Chemical Corp. of Mankato, Minnesota, testified regarding the language of the proposed Act. Mr. Johnson explained that with regard to the cannabis plant, "[t]he fiber, stalk, or hurd has nothing in it and the fiber in which [the companies he represented] are interested is an important part of the industry. It is used in the making of fine papers, condenser tissues, carbon paper, bible paper, and all other types of papers, including cigarette papers." U.S. Congress, Senate Committee on Finance, Taxation of Marihuana, hearing on H.R. 6906, 75th Cong., 1st. sess. July 12, 1937 (Washington: GPO, 1937), pp. 29-32. Mr. Johnson explained that if "marihuana" was to be taxed, then the tax should exclude "mature stalks known as hemp stalks, which contain no resin

or harmful properties, which are used for various legitimate commercial purposes, and which are grown by producers under contract with licensed processors or manufacturers." *Id.* Mr. Johnson asked that farmers be "made to realize" they were not growing marijuana when they were growing the cannabis plant to use the stalk and fiber. Senator Brown cogently pointed out that one "cannot grow the stalk and fiber without growing the resin plant," and thus cannot grow the plant without growing the flowers and the leaves. *Id.* Mr. Johnson concluded by noting that "the finest grades of paper . . . even a great deal of the paper that goes into our money is being imported -- must have hemp fiber. It is just a ridiculous situation because it can be made out of our local products in this country." *Id.*

In 1791, Gouverneur Morris observed that "the best Hemp and the best Tobacco grow on the same Kind of Soil. The former Article is of first Necessity to the Commerce and Marine in other Words to the Wealth and Protection of the Country. The latter never useful . . .." Letter from Gouverneur Morris to Thomas Jefferson (March 16, 1971), *in* The Papers of Thomas Jefferson, vol. 19, 576-578 (Julian P. Boyd ed.) (1974), *available at http://founders.archives.gov/documents/Jefferson/01-19-02-0140*. Morris observed that hemp requires more labor than tobacco, "but being a Material for Manufactures of various Sorts becomes afterwards the Means of Support to Numbers of People hence it is to be preferred in a populous Country." *Id.* At that time, America imported hemp and articles made of hemp such as "Cordage[,] Sail[,] Cloth[,] Drilling[,] Linnen [sic] and Stockings . . .." *Id.*

In more recent times, Gatewood Gilbraith, American author and constitutional attorney, commented:

> You take this tall hemp stalk if you want methanol or gasoline, and you take that biomass. But then you get twenty barrels of petroleum off an acre of hemp. That's all hemp is, is petroleum. . . .. Hemp is the most effective photosynthesizing biomass on the planet. It more readily traps and stores the

> sun's energy than any other growing thing. If we planted 7% of the U.S. agricultural land, in the end we wouldn't have to import another drop of oil. . . .. The other fuel source is the hemp seed, the marijuana seed, the cannabis seed. Every one of those seeds is a little oil capsule. . . . [T]he hemp oil will lubricate your engine.

Truth on Hemp vs. Marijuana, available at https://www.youtube.com/watch?v=D5loJEQYP8A.

A recent study confirmed that hemp biodiesel is an attractive and competitive alternative due in part to the high seed yield and high oil content. Si-Yu Li et. al. *The Feasibility of converting Cannabis Sativa L. Oil into BioDiesel*, BioSource Tech. 101:8457-8460 (2010).

If this Court properly recognizes that marijuana is not a Schedule I substance, as mandated by current Minnesota legislation, then the Commissioner of Agriculture is required to list Minnesota as one of the primary states to receive benefits under the Agriculture Act for the production of hemp. Minnesota can return to Its roots, producing items necessary for the full use and enjoyment of Its citizens' property.

Marijuana, the Medicine

According to written records from China and India, the use of marijuana to treat a wide range of ailments goes back more than 2,000 years. Congressional Research Service. *Medical Marijuana: Review and Analysis of Federal and State Policies.* p. 1 RL33211 (April 2, 2010). Ancient texts from Africa, the Middle East, classical Greece, and the Roman Empire also describe the use of cannabis to treat disease. *Id.* From 1850 to 1941 cannabis was recognized as medicine in the United States Pharmacopoeia. *Id.* In 2009, the American Medical Association ("AMA") amended its Policy H-95.952, affirming that marijuana has therapeutic uses. To name just one, a 2004 study of ALS patients, cannabis was found to be "moderately effective at reducing symptoms of appetite loss, depression, pain, spasticity, and drooling." Dagmar

Amtmann et. al. *Survey of cannabis use in patients with amyotrophic lateral sclerosis*. AM. .J HOSP. PALLIAT. CARE 21(2):95-104 (2004).

There are at least three species of the cannabis genus; cannabis sativa, cannabis indica, and cannabis ruderalis. Gregory T. Carter, Mitchell Earleywine, and Jason T. McGill. *Statement of Grounds*. 3 Submitted to the DEA as an Exhibit to "Rulemaking petition to reclassify cannabis for medical use from a Schedule I controlled substance to a Schedule II" (2011)[1] [hereinafter, "Carter et. al."]. Any of these can be used for medicinal purposes. *Id.* Schedule I claims the genus Cannabis including all agronomical varieties, and is not limited to Cannabis Sativa L. *State v. Vail*, 274 N.W.2d 127, 130-33 (Minn. 1978).

The drug's chemistry is remarkably well known and highly reproducible compared even to other legal drugs. The plant contains over 400 chemicals, over 60 of which are considered cannabinoids. Irma B. Adams, and Billy R. Martin. *Cannabis: Pharmacology and toxicology in animals and humans*. 91 ADDICTION 11:1585-1614 (1996). Cannabinoids are biologically active compounds found only in the plant cannabis. Delta-9-tetrahydrocannabinol ("THC") is among the most psychoactive of the cannabinoids. Carter et. al. at 6. These 400 compounds are essential units of a whole, working in harmony. In other words, a recipient may ingest marijuana, not for THC content, but for cannabinoids, or for how cannabinoids interact with THC. Some strains of marijuana produce no THC effect. As Dr. Mirman instructed, in his testimony, the medical benefits of marijuana are present without the need to get "high."

There are two known cannabinoid receptors in the human body, CB1 and CB2. Dagmar C. Kapeller, Stefan Bräse. *Versatile solid-phase synthesis of chromenes resembling classical cannabinoids*. 13 ACS COMB SCI. 5:554-61 (2011). CB1 is expressed primarily in the brain, whereas CB2 is expressed primarily in the periphery. *Id.* The endocannabinoid system helps

[1] *available at http://www.digitalarchives.wa.gov/GovernorGregoire/priorities/healthcare/petition/exhibit_b.pdf.*

regulate the function of major systems in the body, making it an integral part of the central homeostatic modulatory system, which is the molecular signaling network that keeps the human body healthy. Sunil Kumar Aggarwal et. al. *Medicinal use of cannabis in the United States: historical perspectives, current trends, and future directions*. 5 J. OPIOID MGMT. 3:153-168 (2009). (Author's note: While some may view as a coincidence the fact that humans have cannabinoid receptors that are exactly matched to the cannabis/hemp plant, I will remind the reader that coincidences are miracles where we fail to see God's hand.) The discovery of the endogenous cannabinoid signaling system and its "known involvement in human physiology, specifically in the regulation of movement, pain, appetite, memory, immunity, mood, blood pressure, bone density, reproduction, and inflammation, among other" things, has led to medical professionals having solid underpinnings to "understand the therapeutic actions of cannabinoid botanical medicines." Carter et. al. at p. 8. There is a dense concentration of endocannabinoid receptors in the cerebellum, basal ganglia, and hippocampus, accounting for the effects on motor tone, coordination and *mood state*. *Id.* (emphasis added). It doesn't shut down essential body functions, such as breathing, heart beating, and other necessary organ functions. Nobody dies.

When someone consumes too much cannabis "agitation and confusion, progressing to sedation, is generally the result." *Id.* at 9. As Dr. Mirman testified, these mal effects disappear entirely once the cannabis has fully coursed through the individual. In addition, you do not have to become intoxicated, i.e. obtain the psychoactive effects of THC to receive the medical benefits of smoking marijuana. Carter et. al. at 10. While smoking may not be the most conducive of all means of application, it does allow for self-titration, the ability for one to determine how much to take, and to stop ingesting once the desired effect is achieved. Self-titration can occur through smoking or vaporizing, but not with oil or pills such as Marinol.

Dronabinol (Marinol) is 100 percent THC and is potentially very psychoactive. Natural cannabis typically would be no more than 15% THC by weight. It is inconsistent that cannabis, with as little as 5% THC, remains a Schedule I drug, while Dronabinol, at 100% THC, is Schedule III. Carter et. al.at 4.

Unlike natural cannabis, Dronabinol does not contain cannabidiol (CBD) and cannabinol (CBN). Carter et. al. at 12. CBD and CBN provide their own therapeutic benefits and modify the effects of THC. *Id.* CBD modulates and reduces mal effects of THC, while CBN has significant anticonvulsant, sedative, and other effects which may provide some protection against seizures for epileptics. *Id.* In regards to pain management, these items provide benefits regarding "muscle relaxation, anti-inflammatory effects, neuroprotection in ischemia and hypoxia, enhanced wellbeing, and anxiolysis." *Id.* The ratios of the cannabinoids depends on the plant strain, and how the plant is grown. *Id.*

Dr. Mirman explained that he does not prescribe Marinol/Dronabinol because it is not a suitable substitute for herbal cannabis. Dr. Mirman pointed out that patients are the best reporters of their conditions, and they need to be invested in their treatment. Marijuana is a plant with medicinal properties, i.e. an herb. Currently, the best way to consume marijuana is by smoking or vaporizing. That makes the dose easy to control, and allows a user to titrate for the desired effect.

As we come to realize the safety and efficacy of cannabis, we are also seeing a significant increase "in deaths related to prescription opioid analgesics. *Id.* Multiple studies have linked the risk of fatal and nonfatal opioid overdose to prescription use. *Id.* The Center for Disease Control and Prevention (CDC) reports that from 1999 through 2006, the number of prescription opioid poisoning deaths in the U.S. nearly doubled, from an estimated 20,000 to 37,000. CDC. *Overdose deaths involving prescription opioids among Medicaid enrollees -Washington, 2004-*

2007. Morb Mortal Wkly Rep. 58(42):1171-5 (2009). During that time, use of prescription opioids increased almost fourfold. *Id.* Moreover, studies demonstrate that if cannabis had been an available alternative, potentially much of the morbidity and mortality caused by opioid toxicity over the past 70 years could have been reduced or prevented. Carter et. al. at 10.

Over 20 years ago, in 1988, DEA Administrative Law Judge Francis L. Young concluded that, "the evidence in this record clearly shows that marijuana has been accepted as capable of relieving the distress of great numbers of very ill people, and doing so with safety under medical supervision. ***It would be unreasonable, arbitrary and capricious for the DEA to continue to stand between those sufferers and the benefits of this substance in light of the evidence in this record***." *In Re Marijuana Rescheduling Petition*, No. 86-22, Drug Enforcement Administration, Dep't of Justice, Sept. 6, 1988, p 68. (emphasis added). The DEA overruled the opinion, and denied two subsequent petitions despite mounting scientific evidence refuting the appropriateness of placing marijuana in Schedule I. *See* 54 Fed. Reg. 53767-02 (Dec. 29, 1989).

The State questioned Dr. Mirman regarding an article in the New England Journal of Medicine which explains that the ill effects it cites may not be contributable to marijuana use, "[m]ost of the long-term effects of marijuana use that are summarized here have been observed among heavy or long-term users, but multiple (often hidden) confounding factors detract from our ability to establish causality (including the frequent use of marijuana in combination with other drugs)." Nora D. Volkow et. al., *Adverse Health Effects of Marijuana Use*, NEW ENG. J. MED. 370:2219-27 (June 5, 2014). Dr. Mirman concluded by explaining that it is sensible to regulate marijuana, but not to prohibit its use. Dr. Mirman related that he is not aware of any reported deaths from marijuana. It is a non-lethal pain reliever that promotes life.

Dr. Jacqueline Vieceli spoke to the court regarding the current state of our recognition of

Human Rights, and the Legitimacy of government, along with obligations to obey the law. Dr. Vieceli explained that under natural law, we recognize the autonomy of a person as a rational agent, along with the government's obligation to rectify inequalities and protect vulnerable citizens. Natural law involves the general moral principles that we know intuitively, as human beings. It includes the idea that the individual has a right and a duty to seek knowledge. As John Locke, whose ideas influenced the Framers of the Constitution, explained, human beings have a natural understanding of and conception of justice. Rational beings are members of the kingdom of ends. We have autonomy to be virtuous or vicious. This is the basis of moral law. Basically, we are to treat humanity, in ourselves or in others, as an end rather than a means only. We are not to use others for our own aims and plans.

More importantly, the State of Minnesota has already established the legal framework for regulating marijuana. As an herb, it is regulated under the Federal Dietary Supplement Act, and further regulated under the Complementary and Alternative Health Act, in Minnesota. We have given every single physician in this State the ability to practice beyond their standard of care, and into their scope of practice. This enables physician/patient communication to become pertinent. Doctors can prescribe Schedule III Marinol, and medical marijuana, in 2015. Because of pre-existing, well-established authority, once a medicine becomes acceptable for one purpose, it may be used for other "off-label" purposes (i.e. chemotherapy). The Legislature has specifically ensured that Its citizenry will be best served by those who care to become proficient in this arena.

Marinol/Dronapinol is pure THC, and is not an appropriate pain reliever. It cannot be self-titrated, and frequently causes people to fall asleep. The intense high that Marinol produces is not conducive to a productive life. More importantly, it is not the way that people have come to live with marijuana as their medicine. According to Dr. Gettman's research, there are 484,000

annual users of marijuana in Minnesota. Exh. 9.

We are at a turning point in our consciousness, and this case delineates our responsibilities to ourselves, to our fellow humans, our community, state, and nation. "Constitutional history. . . is of almost limitless extent, because to comprehend it fully one must have in mind social and industrial change and movement. Institutions and principles do not develop or move in a vacuum; they bear the impress of actual social need and of imperative adjustment, even though the waves of time often seem to dash in vain against the walls of habit and of established practice." MCLAUGHLIN, ANDREW. A CONSTITUTIONAL HISTORY OF THE UNITED STATES 10-11 D. Appleton-Century Co., Inc., New York (1936) [hereinafter McLaughlin].

Mr. Hansen is a man in full possession of his faculties. He has depression. He has refrained from the standard medical protocol of a life-long ingestion of expensive prescription medications and their side effects. He recognizes the economic benefit of his actions. He saves money. The hallmark of American entrepreneurship is to allocate our resources effectively. Mr. Hansen operates within his strict zone of privacy. As stated in our previous legal memorandum, human beings in the United States, and in each state, possesses those constitutional fundamental rights that exist for all human beings.

We require "liberty of tastes and pursuits; of framing the plan of our life to suit our own character; of doing as we like, subject to such consequences as may follow: without impediment from our fellow creatures, so long as what we do does not harm them," even though others "should think our conduct foolish, perverse, or wrong." ON LIBERTY at 238. (London: Longman, Roberts & Green 4th ed. 1869) (1859), *reprinted in* The Collected Works of John Stuart Mill, Volume XVIII – Essays on Politics and Society Part I (ed. John M. Robson) (Toronto:

University of Toronto Press 1977). *available at* http://oll.libertyfund.org/titles/233> [hereinafter "ON LIBERTY"].

The belief in the 'horrors' caused by marijuana, brought to force by numerous inaccurate and racist reports during the early years of the 20th century, and described by the Commissioner of the Federal Bureau of Narcotics, Mr. Harry J. Anslinger, in pushing forth the Marihuana Tax Act of 1937, has been shown to be foolish. These false beliefs led to the ban on marijuana, as a medicine, food, source of clothing, textiles, and other necessary items of living. We have become a society of individuals that have "let[] the world, or his own portion of it, choose his plan of life for him, [and therefore have] no need of any other faculty than the ape-like one of imitation." John Stuart Mill. On Liberty at 267. Mr. Hansen chose his own life plan, and uses:

> observation to see, reasoning and judgment to foresee, activity to gather materials for decision, discrimination to decide, and when he has decided, firmness and self-control to hold to his deliberate decision. And these qualities he requires and exercises exactly in proportion as the part of his conduct which he determines according to his own judgment and feelings is a large one. It is possible that he might be guided in some good path, and kept out of harm's way, without any of these things. But what will be his comparative worth as a human being? . . ..

ON LIBERTY at 267. After all, "[h]uman nature is not a machine to be built after a model, and set to do exactly the work prescribed for it, but a tree, which requires to grow and develop itself on all sides, according to the tendency of the inward forces which make it a living thing." *Id.*

Dr. Vieceli explained the human rights distinction between negative and positive rights. Negative rights, i.e. the right to freedom, are rights that the state is not to impose on unless there is a compelling interest, but that the state has no duty to provide. Positive rights involve areas where the state has a *duty* to assist. The constitution of the World Health Organization and the International Covenant on Economic Social and Cultural Rights, article 12, recognize that "human beings have the right to the highest attainable standard of health."

Dr. Vieceli also expounded on the philosophies of John Stuart Mill, and the harm principle. Mill focused on the difference in self-regarding and other regarding action. For adults of sound mind, self-regarding actions, that is actions primarily affecting that individual, are the province of an individual's liberty. Society has no right to force one to act or forbear in that regard. For example, we do not criminalize ingestion of alcohol. But, when, while under the influence of alcohol, one gets into a car that one can no longer maintain proper control of, then society regulates, punishes, and prohibits that other regarding *driving* behavior, but not the act of drinking in and of itself. Similarly, Minnesota does not prohibit the ingestion of marijuana, nor does It criminalize the possession of up to one and a half ounces of marijuana. We just can't grow it, if the State's prosecution is to be believed.

In September 2014, the U.N. Global Commission released a report, "Taking Control," aimed at changing the international communities' thinking on drug policy. Exh. 1. Dr. Vieceli commented that the report takes a utilitarian perspective, seeking to maximize the greatest happiness for the greatest number, and minimize suffering. Harm reduction has become the policy of choice. The present "war on drugs" has failed miserably, creating nonviolent criminals in astounding numbers, exacerbating the effects of poverty, and hampering individuals' rights.

For example, current drug policies worldwide prevent approximately 5 billion people from getting essential pain medicine. Here in the U.S., doctors prescribe strong addictive opioids that have led to an exploding opiate addiction problem. When the patient uses too much, the doctor cuts them off, often leading to heroin and other street drug use. Dr. Jon Gettman pointed out that marijuana laws corrupt the social fabric and support illegal markets. It is more secure to grow your own plant because you'd have greater control over the quality and avoid risky interactions with criminal elements. These criminal elements, drug cartels, have been suffering

since marijuana has been legalized in some form or fashion in a number of states. John Burnett. *Legal Pot in the US, May Be Undercutting Mexican Marijuana*, National Public Radio (Dec. 1, 2014). Because Minnesota has legalized medical marijuana, we have shifted the paradigm, turning use into a public health issue, and removing it from the criminal forum, as it no longer fits the classification of a Schedule I drug.

Dr. Gettman testified regarding the history of marijuana prohibition, including our nation's use of hemp for cloth, sails, and fiber during the Revolutionary War. Marijuana is still an important commodity in world agriculture. American manufacturers currently import fiber for paper, paneling in cars, seed oil, paint, cosmetics, and a variety of other items. Dr. Gettman explained that you cannot get the hemp seed without the flower, and that there is no evidence that ingesting marijuana causes an individual to commit crimes. Marijuana arrests are expensive for the State and the individual, diverting resources away from other areas, forcing the people of Minnesota to suffer. Of the approximate 12,000 marijuana cases charged in 2013, less than 500 resulted in conviction. (See attached summary of omnibus Exhibit 16.)

Dr. Gettman also clarified that there are a broad number of compounds in marijuana that can treat a consumer. In addition, the plant can be genetically manipulated.

Marijuana is defined as "all parts of the plant of any species of the genus Cannabis, including all agronomical varieties. . .; the seeds thereof; the resin extracted from any part of such plant; and every compound. . . or preparation of such plant, its seeds or resin," but not "mature stalks of such plant, fiber from such stalks, oil or cake made from the seeds of such plant, any other compound, . . .of such mature stalks, except the resin extracted therefrom, fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination." Minn. Stat. § 152.01 subd. 9 (2013). Minnesota Statute § 152.02 subd. 2(h) classifies marijuana as a Schedule

I substance. Substances are deemed to belong on Schedule I when they have "[a] high potential for abuse, no currently accepted medical use in the United States, and a lack of accepted safety for use under medical supervision." Minn. Stat. § 152.02 subd. 7(1).

The Minnesota State "Board of Pharmacy may, by rule, add substances to or delete or reschedule substances listed in this section." Minn. Stat. § 152.02 subd. 8. In 2011, subd. 8 was amended, adding the provision that "The Board of Pharmacy *may not delete or reschedule a drug that is in Schedule I*," unless the Federal Government has done so first. § 152.02 subds. 8, 12 (2013) (emphasis added). (See Minnesota Board of Pharmacy attachments.)

On May 29, 2014 Minnesota's laws were amended to allow for limited use of marijuana as a medicine for (1) cancer, if the underlying condition or treatment produces severe or chronic pain, nausea, severe vomiting, cachexia or severe wasting; (2) glaucoma; (3) HIV or AIDs; (4) Tourette's syndrome; (5) amyotrophic lateral sclerosis; (6) seizures; (7) severe and persistent muscle spasms; (8) Crohn's disease; and (9) terminal illness with life expectancy of less than one year, if the illness or its treatment produces: sever or chronic pain, nausea, severe vomiting, cachexia or severe wasting. Minn. Stat. 152.22 subd. 14 (2014). In passing this sweeping reform, the Minnesota Legislature has removed marijuana from Schedule I by 1) refusing to find that it has a high potential for abuse compared to other Schedule II drugs, 2) that it is currently accepted for medical use in treatment, and 3) evidence is clear of accepted safety for use of cannabis under medical supervision. Cannabis no longer fits the definition of a Schedule I substance.[2]

I. DOCTRINES OF STATUTORY CONSTRUCTION SUPPORT A FINDING THAT MINNESOTA HAS REMOVED CANNABIS FROM SCHEULE I

[2] Once a drug has been approved for a particular purpose, it can be used "off label" for other purposes, under "Standard of Care" of protocol. Many drugs used in the cancer industry are used this way. *See*: Robert Irons attachment, to Parent's Legal Memorandum of Law, In Re The Matter of Danny Hauser, Brown Co., Dist. Ct. 2009. Consequently, the Minnesota Legislature has, with deft subtleness, established a right for all Minnesota physicians to prescribe marijuana for a necessary "off label" medical purpose, in much the same way that chemotherapy is now used.

"Statutory interpretation presents a question of law . . .." *Nielsen v. 2003 Honda Accord*, 845 N.W.2d 754, 756 (Minn. 2013). "If a general provision in a statute conflicts with a special provision in the same or another statute, we interpret the two provisions, if possible, in a manner that gives effect to both provisions." *Id.* "[I]f the conflict between two statutes is irreconcilable, the special provision prevails and will be interpreted as an exception to the general provision, unless the general provision was enacted at a later session and it is the manifest intent of the Legislature that the general provision prevail." *Id. See also,* Minn. Stat. § 645.26.

"[W]here the intention of the legislature is clearly manifested by plain and unambiguous language, we have neither the need nor the permission to engage in statutory interpretation." *Hyatt v. Anoka Police Dept.*, 691 N.W.2d 824, 827 (Minn. 2005) (quotation omitted). "In ascertaining the intention of the legislature the courts may be guided by the following presumptions: (1) the legislature does not intend a result that is absurd, impossible of execution, or unreasonable . . .." Minn. Stat. § 645.17.

Minnesota recognizes Its citizens' right to use "medical cannabis," meaning "any species of the genus cannabis plant, or any mixture or preparation of them, including whole plant extracts and resins . . .." Minn. Stat. 152.22 subd. 6. Health care practitioners can provide a patient with a certificate of diagnosis that allows the patient to enroll in a patient registry program, and to use cannabis for medical treatment. Minn. Stat. §§ 152.22-.37. However, marijuana/cannabis is still listed on Schedule I. Minn. Stat. § 152.02 subd. 2 (h).

Substances on Schedule I have "[a] high potential for abuse, no currently accepted medical use in the United States, and a lack of accepted safety for use under medical supervision." Minn. Stat. § 152.02 subd. 7(1).[3]

[3] Again, Mr. Hansen objects to the exclusion of the *U.S.A. v. Pickard* exhibits. The evidence, as an offer of proof, conclusively establishes that marijuana does not meet the statutory definition of Schedule I. Mr. Hansen has

Statutes § 152.02 and § 152.22 are in direct conflict. Only substances with "no currently accepted medical use in the United States, and a lack of accepted safety for use under medical supervision" qualify for placement on Schedule I. The Legislature, by enacting Minn. Stat. §§ 152.22-.37 has signaled its recognition that marijuana has accepted medical use in the U.S., and can be safely used under medical supervision. The medical benefits of marijuana have also been recognized by the legislatures in: Alabama, Alaska, Arizona, California, Colorado, Connecticut, Washington D.C., Delaware, Florida, Hawaii, Illinois, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, Oregon, Rhode Island, Tennessee, Vermont, Washington, and Wisconsin. Over half of the United States recognizes that marijuana has a medical use, and can safely be used under medical supervision.

Minnesota Statutes § 152.22-.37 are the more specific statutes, creating a comprehensive system for regulating the medical use of marijuana, whereas § 152.02 regulates all controlled substances, covering a broad swath. Minnesota's law, and the medical marijuana laws of 28 states and the District of Columbia compel a finding that marijuana is not a Schedule I drug. Marijuana has been classified as Schedule I drug since as early as 1971 (It was then listed in 152.02 subd. 2 (3)). Minnesota decriminalized possession of up to 1.5 ounces of marijuana in 1976. Medical marijuana was legalized in Minnesota in 2014. Thus, the 2014 statute, recognizing marijuana's medical benefits, is the statute that is most recent in time, and thus takes precedence where it conflicts with § 152.02. *See* § 645.26 subd. 4 ("When the provisions of two or more laws passed at different sessions of the legislature are irreconcilable, the law latest in date of final enactment shall prevail."). Minnesota also expanded the "standard of care" for all doctors to "scope of practice," leaving no doubt that we have an adequate safety net when

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specifically pleaded this in his complaint, and has standing to challenge the classification.

prescribing this as a medicine. (2014) Further, in 2000, the Minnesota Legislature granted substantial power in health care matters to the consumer, with the strict regulation of the alternative practitioner. Moreover, federal regulatory structure for this "herb" was established under the Dietary Supplement Act of 1994.

In essence, once we clearly see that marijuana is no longer a Schedule I substance, we see the quiet and deliberate action of the Minnesota legislature preparing us for this day.

Minnesota has regulatory structure in place to effectively monitor the marijuana issue.

Because the new laws take priority over old, the Court is obligated to find that marijuana is no longer a Schedule I drug, thus justifying dismissal of the charges, and return of the property seized.

Other measures that serve to inform the Court that marijuana is not (and truly never has been) a Schedule I drug, but rather fits within the framework and construction of more recent and cogent laws based upon scientific reality, and reliable medical principles, include:

1) The State, through Minnesota Statute § 297D.01, has already recognized the right to farm cannabis. Section 297D.01 states that "'Controlled substance' does not include marijuana."

2) The entire chapter of 297D, regarding taxation, separates marijuana from controlled substances. Moreover, the legislature has carved out a tax exception exclusively for marijuana, "[n]othing in this chapter requires persons registered under chapter 151 *or otherwise lawfully in possessio*n of marijuana or a controlled substance to pay the tax required under this chapter." Minn. Stat. § 297D.06 (2013) (emphasis added).

3) DWI laws do not allow for a test for THC (*See* Minn. Stat. § 169A).

4) Doctors are now allowed to prescribe marijuana, as part of their expanded "scope of practice," rather than "standard of care." By legitimizing the medical use of marijuana, doctors

can now prescribe marijuana in Minnesota for off label use. This eradicates the lack of physician/patient communication, that has hitherto existed (as demonstrated by the facts of this case), promoting an essential function of encouraging the free dissemination of information necessary for proper medical care.

5) Minnesota decriminalized marijuana in 1976 for possession of up to 1.5 ounces.

6) Minnesota does not prohibit the consumption of marijuana, for any reason.

7) We don't seem to criminalize it much, anymore. As Exhibit 16 demonstrates, only 4% of all 23,858 marijuana cases in Minnesota from 2012-2013 resulted in a conviction. These were all cases in which the Federal Government refused prosecution.

In addition, the Federal Government has initiated de facto decriminalization of marijuana, thus removing it from Schedule I, by Its own acts and deeds. These are demonstrated as follows:

1) The Attorney General has allowed all States within the United States free reign in determining their own classification of marijuana for use by the citizens of each state.

2) The 2013 Farm bill, legitimizing production of low THC cannabis. The Attorney General has failed to legally intervene in a law suit brought by the State of Kentucky over hemp seeds being imported form Italy. (See attachment *Kentucky v. U.S. DEA*, for illustrative purposes.) This is in reliance upon the 2013 Farm Act, now legitimizing hemp as an agricultural product, and not a Schedule I substance. Jurisdiction now goes to agriculture, not to the DEA.

3) The District of Columbia has voted to legitimize all marijuana for recreational, as well as medical purposes. The Attorney General is not endorsing the repeal of the law. The vote by 70% of the citizens voting in the District of Columbia, is the only relevant and salient vote demonstrating that marijuana no longer meets the criteria of Schedule I, in an election involving federal law, **not** state law.

4) The Attorney General has decided, by his actions and deeds, to apply a discriminatory and non legal application of laws as it relates to those states that have decriminalized and legitimized marijuana use for recreational as well as medical purposes. In other words, the Attorney General is not enforcing federal law relating to marijuana in those states that have legalized it. Minnesota has legalized marijuana. This is discriminatory law enforcement at its worst. It breeds contempt for the law. (See *Pickard*, direct exam of Christopher Conrad, p. 5).

5) The Attorney General has allowed all traditional Native American nations free reign to determine freedom to use marijuana as they see fit. The basis for the United States Attorney General's ability to control marijuana on separate Indian Nations, is marijuana's classification as a Schedule I substance.

6) *U.S.A. v. Pickard*, No. 2:11-CR-00449-KJMM-16 (E.D. Cal. 2014)– California case to decide whether pot is a Schedule I substance.

By denying Mr. Hansen the right to grow and use cannabis, he has turned to cigarettes, known to cause cancer. If Mr. Hansen smokes enough cigarettes, and becomes ill from cancer, he will be allowed by the State to use the marijuana he now needs for his depression. It is time that we get on board and see reality: Minnesota has a free market marijuana system with old criminal laws that do little to prevent use, primarily because the benefits of this drug are worthwhile. The state and federal legislatures have remedied that. We must recognize their decisions.

II. THE CONSTITUTIONALITY OF STATE INFRINGEMENT ON A RETAINED RIGHT DETERMINED UNDER A DUE PROCESS ANALYSIS

"Should Congress . . . under the pretext of executing its powers, pass laws for the accomplishment of objects not entrusted to the government, it would become the painful duty of

this tribunal . . . to say that such an act was not the law of the land." *McCulloch v. Maryland*, 4 Wheaton 316, 423 (1819). "The power the Constitution grants it also restrains." *U.S. v. Windsor*, 133 S. Ct. 2675, 2695 (2013). "Every natural right not expressly given up, or, from the nature of a social compact, necessarily ceded, remains." Samuel Adams, *The Rights of the Colonists*, 417 (Nov. 20, 1772).

Summarizing Mr. Hansen's first legal memorandum to the Court, rights inure to the individual. Governments (state and federal) exist only through a grant of power from individual citizens. Government exists to protect the individual, and has limited power.

"It is a promise of the Constitution that *there is a realm of personal liberty which the government may not enter.*" *Planned Parenthood v. Casey*, 505 U.S. 833, 847 (1992) (emphasis added). "The Constitution is made for people of fundamentally differing views, and the accident of our finding certain opinions natural and familiar or novel and even shocking ought not to conclude our judgment upon the question whether statutes embodying them conflict with the Constitution of the United States." *Roe v. Wade*, 410 U.S. 113, 117 (quoting *Lochner v. New York*, 198 U.S. 45, 76 (1905) (Holmes, J. dissenting)).

In Mr. Hansen's first legal memorandum to the Court, he has stated numerous constitutional grounds and bases for his ability to exercise his inherent power to grow this crop. The fundamental rights that we as human beings possess in the State of Minnesota are summarized, again:

1. Right of self determination, including the right to love.
2. Right to earn a living.
3. Right to privacy. This includes the right to be left alone.
4. Right to food, shelter, and clothing.

5. Right to adequate health care.

6. Right to use our own property.

The substantive component of the Due Process Clause bars "certain government actions regardless of the fairness of the procedures used to implement them." *Daniels v. Williams*, 474 U. S. 327, 331 (1986). The Supreme Court's jurisprudence recognizes "a right of privacy" and "acknowledge that some state regulation in areas protected by that right is appropriate. . . . [A] State may properly assert important interests in safeguarding health, in maintaining medical standards, and in protecting potential life." *Roe v. Wade*, 410 U.S. at 154. Where fundamental rights are involved, "regulation limiting these rights may be justified only by a compelling state interest, and [] legislative enactments must be narrowly drawn to express only the legitimate state interests at stake." *Id.* at 155 (internal citations omitted).

Even if a particular interest has not been deemed fundamental in the past, "an emerging awareness" of a liberty interest in modern times may require protection of an asserted right. *Lawrence v. Texas*, 539 U.S. 558, 572, 123 S.Ct. 2472 (2003).

A. Federal Due Process

The Supreme Court's "established method of substantive-due-process analysis has two primary features." *Washington v. Glucksberg*, 521 U.S. 702, 720, 117 S. Ct. 2258, 2268 (1997). First is "that the Due Process Clause specially protects those fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and tradition." *Glucksberg*, 521 U.S. at 720-21 (citing *Snyder v. Massachusetts,* 291 U.S. 97, 105 (1934) ("so rooted in the traditions and conscience of our people as to be ranked as fundamental"). These rights are "'implicit in the concept of ordered liberty', such that 'neither liberty nor justice would exist if they were sacrificed.'" *Glucksberg*, 521 U.S. at 721 (quoting *Palko v. Connecticut,* 302 U.S. 319,

325, 326, 58 S.Ct. 149, 152 (1937)). Second, in substantive-due-process cases, the Court requires "a careful description of the asserted fundamental liberty interest." *Glucksberg*, 521 U.S. at 721 (internal quotation omitted). "Our Nation's history, legal traditions, and practices thus provide the crucial guideposts for responsible decisionmaking, that direct and restrain our exposition of the Due Process Clause." *Id.* (internal quotations omitted.).

The "Fourteenth Amendment forbids the government to infringe fundamental liberty interests *at all,* no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest." *Id.* (internal quotations omitted). "If the right in question is fundamental, the state must show a compelling interest in the regulation; if the right is not fundamental, the regulation must pass only rational basis review." *Kuromiya v. U.S.*, 37 F.Supp.2d 717.

> Marijuana (cannabis sativa L.) is a psychoactive drug made of the leaves, flowers, and stems of the Indian Hemp plant. It derives its psychoactive properties from delta-9-tetrahydrocannabinol (THC), which exists in varying concentrations in the plant, depending on its origin, growing conditions, and cultivation. . . . The concentration of THC within the sections of the plant also varies widely. The resin contains the greatest concentration of THC; smaller amounts are found, respectively, in the flowers, the leaves, and the stems.

NORML et. al. v. Bell, 488 F. Supp. 123, 128 (D. D.C. 1980) (internal citations omitted). "[M]arijuana is not a narcotic, not addictive, and generally not a stepping-stone to other, more serious drugs. Furthermore, it causes neither aggressive behavior nor insanity." *Bell*, 488 F. Supp. at 129. *Bell* recognized the Supreme Court's precedents affirming that "the right of 'privacy of the home' was hardly more than a reaffirmation that 'a man's home is his castle,'" and "[a]s such, it receives 'special safeguards,' but the protection "is restricted to a place, the home." *Bell*, 488 F. Supp. at 132(quoting *Paris Adult Theatre I v. Slaton*, 413 U.S. 49, 66, 93 S.Ct. 2628, 2640 (1949) and *United States v. Orito*, 413 U.S. 139, 142, 93 S.Ct. 2674, 2677

(1973)). However, the court in *Bell* defined the right at issue as one to smoke marijuana, claiming that:

> Smoking marijuana receives no explicit or implicit constitutional protection. The act of smoking does not involve the important values inherent in questions concerning marriage, procreation, or child rearing. *Moreover, its use predominantly as a "recreational drug" undercuts any argument that its use is as important as, e.g., use of contraceptives*, *see Eisenstadt v. Baird*, . . . As the Alaska Supreme Court noted in discussing a right to private use of marijuana, "few would believe they have been deprived of something of critical importance if deprived of marijuana." *Ravin v. State*, 537 P.2d at 502. Private possession of marijuana, not being what Justice Stewart called an "established constitutional right," cannot be deemed "fundamental."

488 F. Supp. at 133 (emphasis added). Mr. Hansen does not assert that the fundamental right he is asking this Court to recognize is merely to "smoke marijuana." Mr. Hansen asks this Court to uphold his liberty to determine his own medical treatment, to be free to ingest the foods or herbs that he deems appropriate, to be allowed to grow this plant, *in his home*, for any use he deems correct, as long as it does not infringe on the rights of others. This includes his fundamental right to clothe himself, feed himself, seek medical treatment, and to pursue his own happiness. His fundamental right to self-determination, implicit with the declaration to pursue life, liberty and the pursuit of happiness, enable him to seek the greatest good and highest purpose for himself, as well as others. Mr. Hansen takes great effort in caring for himself, and has determined that marijuana helps him be who he wants to be. Moreover, as previously noted, ALJ Young has already concluded that "the evidence in this record clearly shows that marijuana has been accepted as capable of *relieving the distress of great numbers of very ill people, and doing so with safety under medical supervision. It would be unreasonable, arbitrary and capricious for the DEA to continue to stand between those sufferers and the benefits of this substance* in light of the evidence in this record." *In Re Marijuana Rescheduling Petition*, No. 86-22 at 68. (emphasis added). This is not about what toys Mr. Hansen gets to play with in the

sandbox. He is complaining about the State's irrational decision to prevent him from using a natural herbal remedy that he believes makes him a better person. As a mature adult, he has a right to make that decision and use cannabis. "For also fundamental is the right to be free, except in very limited circumstances, from unwanted governmental intrusions into one's privacy." *Stanley v. Georgia*, 394 U.S. 557, 564 (1969).

> The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of man's spiritual nature, of his feelings and of his intellect. . . . They sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. They conferred, as against the Government, *the right to be let alone—the most comprehensive of rights and the right most valued by civilized man*."

Stanley v. Georgia, 394 U.S. 557, 564 (1969) (quoting *Olmstead v. U.S.*, 277 U. S. 438, 478 (1928) (Brandeis, J., dissenting)).

In *Stanley*, the appellant was asserting the right to read 'obscene' materials in the privacy of his own home, "the right to satisfy his intellectual and emotional needs in the privacy of his own home." 394 U.S. at 565. The state contended "that appellant d[id] not have these rights, that there are certain types of materials that the individual may not read or even possess." *Id.* The state claimed that the mere fact that the films were obscene prevented appellant from having any right to them. *Id.* The Court held that "mere categorization of these films as 'obscene' is insufficient justification for such a drastic invasion of personal liberties guaranteed by the First and Fourteenth Amendments. Whatever may be the justifications for other statutes regulating obscenity, we do not think they reach into the privacy of one's own home. . . . Our whole constitutional heritage rebels at the thought of giving government the power to control men's minds." *Id.*

While *Stanley* dealt with the First Amendment as well as the Fourteenth, its teachings are persuasive here. The State has invaded the privacy of Mr. Hansen's home, an area provided

special protections by our Bill of Rights. Among our enumerated rights "are the guarantee against quartering of troops in a private house in peacetime (Third Amendment) and the right to be 'secure in their . . . houses . . . against unreasonable searches and seizures . . .' (Fourth Amendment). *Ravin v. State*, 537 P.2d 494, 503 (Alaska Sup. Ct. 1975). "The First Amendment has been held to protect the right to 'privacy and freedom of association in the home.' The Fifth Amendment has been described as providing protection against all governmental invasions 'of the sanctity of a man's home and the privacies of life.*" Id.* (citations omitted).

"[I]n connection with the penumbra of home related rights, the right of privacy in the sense of immunity from prosecution is absolute only when the private activity will not endanger or harm the general public." *Id.* at 500. "[T]he Constitution extends special safeguards to the privacy of the home, just as it protects other special privacy rights such as those of marriage, procreation, motherhood, child rearing, and education." *U. S. v. Orito*, 413 U.S. 139, 142, 93 S.Ct. 2674, 2677 (1973). There are "a 'myriad' of activities which may be lawfully conducted within the privacy and confines of the home, but may be prohibited in public." *Id.* at 142-43, *Ravin*, 537 P.2d at 503. The *Ravin* Court went on to explain that "one aspect of a private matter *is that it is private*, that is, that it does not adversely affect persons beyond the actor, *and hence is none of their business*." *Id.* at 504. This comports with the philosophies underpinning our Constitution.

As Dr. Vieceli explained, the Declaration of Independence declares our inalienable rights to Life, Liberty, and the Pursuit of Happiness. Happiness refers to human flourishing, recognizing the fulfillment of an individual's capacity for good and ability to live in a community with others. Happiness also includes the ability to be enlightened. The right to health and happiness are basic tenets of human right's philosophy. According to Augustin,

Thomas Aquinas, John Stuart Mill, and John Locke, health is an integral part of happiness. Dr. Vieceli explained that the founders were certainly influenced by and in agreement with these ideas. In Andrew McLaughlin's Pulitzer Prize winning book, he explained that in 1772 Samuel Adams relied on the theories of Locke, Montesquieu, and Vattel to support "resistance to measures endangering [Adams'] conception of American liberty." MCLAUGHLIN at 54. "[T]he Revolutionists did more than announce doctrines and quote authorities; they took the theories of the philosophers and the declarations of men like Locke and wove them into an actual constitutional structure. Locke and others like him were to the Americans more than visionaries." *Id.* at 73. Locke declared that power, "in the utmost bounds of it is limited to the public good of the society.... Thus the law of Nature stands as an eternal rule to all men, legislators as well as others." *Id.* (quoting John Locke, TWO TREATISES ON CIVIL GOVERNMENT. (Henry Morley, ed. 1764)). Locke further declared that the legislature must install laws "designed for no other end ultimately but the good of the people." JOHN LOCKE, TWO TREATISES ON CIVIL GOVERNMENT, BOOK II 323 §142 (Thomas Hollis, ed. 4th ed. 1764). Thomas Aquinas explained natural law as thus: "Every human law has just so much of the nature of law, as it is derived from the law of nature. But if in any point it deflects from the law of nature it is no longer a law; it is but a perversion of law." THOMAS AQUINAS, SUMMA THEOLOGICA, part 2, no. 3, q. 95, art. *2*, p. 57 (1915 ed.).

Dr. Vieceli explained that from a human rights and political philosophy perspective, along with the 9th Amendment to our Constitution, there is a limit on governmental authority, which arises out of the natural rights that all individuals have. Locke, Hobbs, and Roseau, philosophers from whom the Framers drew their ideas, all explained that individuals come together to form a political society to protect one's material goods, property, honor and

reputation. It is a social compact for mutual help. The people gave the government a grant of power to achieve a common good. But the individual comes prior to the State. Dr. Vieceli explained that in the Bill of Rights, we retain our rights to individual autonomy, and to do what is not prohibited. "The theory of our governments, State and National, is opposed to the deposit of unlimited power anywhere.... There are limitations on such power which grow out of the essential nature of all free governments. Implied reservations of individual rights, without which the social compact could not exist, and which are respected by all governments entitled to the name." *Loan Association v. Topeka*, 20 Wallace 655, 663 (1875). The word "reservations" "unquestionably implies the existence of rights before governments were established. MCLAUGHLIN at 142 n.19. This "is similar to . . . the theory of a body of natural rights under natural law anterior to the constitution of social order. . . [T]here is a *standard* of justice beyond which legislation must not go and which is protected by the due process clause of the fourteenth amendment." *Id.*

The Supreme Court of Alaska determined that the right to privacy encompassed "the possession and ingestion of substances such as marijuana in a purely personal, non-commercial context in the home" and therefore could not outlaw such, short of a showing that it would achieve a "legitimate state interest" to do so. *Ravin*, 537 P.2d at 504.

The State of Minnesota does not punish nor criminalize ingestion. Minnesota decriminalizes possession of a small amount of marijuana. Discharge and dismissals routinely provided, don't even need a PSI in the Fifth Judicial District.

In the 1972 case of *Hawaii v. Kantner*, 493 P.2d 306, a dissenting Justice Levinson emphasized the guarantees of privacy and personal autonomy in the Hawaii Constitution and the due process clause of the Fourteenth Amendment. Justice Levinson articulated that the Ninth

Amendment was the Framers' recognition that individual freedom is not susceptible to full definition by verbal enunciation, and that the "right to personal autonomy lies at the heart of our system of government." *Id.* at 313-314. Justice Levison continued, "marihuana produces experiences affecting the thoughts, emotions and sensations of the user. These experiences being mental in nature are thus among the most personal and private experiences possible," and concluded that the "State's power to restrain private conduct is limited by the need to show social injury." *Id.* at 315.

Similarly, in *People v. Sinclair*, 194 N.W.2d 878 (Mich. 1972), Justice T. G. Kavanagh, concurring, explained that the statute at issue, criminalizing marijuana, "violates the Federal and State Constitutions in that it is an impermissible intrusion on the fundamental rights to liberty and the pursuit of happiness, and is an unwarranted interference with the right to possess and use private property." 194 N.W.2d at 896. Justice Kavanagh quoted John Stuart Mill before concluding that "Big Brother cannot, in the name of *Public* health, dictate to anyone what he can eat or drink or smoke in the *privacy* of his own home." 194 N.W.2d at 896.

Under federal law, Mr. Hansen has a right to privacy that is particularly strong in his home. Moreover, his right to use marijuana as a medicine is similar to the right protected in *Eisenstadt*, that to use contraceptives, which themselves pose some risks (like all medicines), are made to change our biological workings (particularly in the case of birth control pills), and are within the realm of decisions to be made by individuals. Mr. Hansen was growing marijuana privately in his home, for his use. The State has not alleged that Mr. Hansen received any remuneration in regards to his plants. In addition, the State took *all parts* of Mr. Hansen's plants, regardless of whether they were high in THC or low in THC, and the State has prevented him from using it in *any* manner.

B. Minnesota Constitutional Protection

The right of privacy is protected by Minnesota Constitution Article I, §§ 1, 2, and 10. *Jarvis v. Levine*, 418 N.W.2d 139, 148 (Minn. 1988). The right of privacy protects fundamental rights and any law that impermissibly infringes upon a fundamental right is unconstitutional for violating the right of privacy. *State v. Gray*, 413 N.W.2d 107, 111 (Minn. 1987). "Fundamental rights are those which have their origin in the express terms of the Constitution or which are necessarily to be implied from those terms." *Women of the State v. Gomez*, 542 N.W.2d 17, 27 (Minn. 1995) (quotations omitted). "[T]he constitution reserves to the individual, free of governmental intrusion, certain fundamental personal decisions about how he or she will conduct his or her life." *Minn. State Bd. Of Health v. Brainerd*, 241 N.W.2d 624, 630-31 (1976).

> At the core of the privacy decisions . . . is the concept of personal autonomy – the notion that the Constitution reserves to the individual, free of governmental intrusion, certain fundamental decisions about how he or she will conduct his or her life. . . .[T]his right is not an absolute one and must give way to certain interests of the state, the balance turning on the impact of the decision on the life of the individual. As the impact increases, so must the importance of the state's interest. . . .. But once justified, the extent of the state's intrusion is not unlimited. It must also appear that the means utilized to serve the state's interest are necessary and reasonable, or, in other words, in light of alternative means, the least intrusive.

Price v. Sheppard, 239 NW 2d 905, 910 (Minn. 1976). When there is an allegation of interference by the state with a protected right of privacy," we must, "balance the interest in the privacy against the state's need to intrude on that privacy." *LaChapelle v. Mitten*, 607 N.W.2d 151, 164 (Minn. App. 2000), *review denied* (Minn. May 16, 2000). It is up to the State to prove that it has an interest worthy of interfering with Mr. Hansen's privacy. The State did not elicit any testimony in that regard. Nor has the State shown any compelling interest to override Mr. Hansen's fundamental right of love, to obtain the highest good available under the circumstances, especially where he has done no harm to another. "State courts are, and should

be, the first line of defense for individual liberties within the federalist system." *State v. Fuller*, 374 N.W.2d 722, 726 (Minn. 1985).

1. Fundamental Rights to Self-Determination, Property, Adequate Food Shelter and Clothing, and Privacy.

> Minnesota possesses a long tradition of affording persons on the periphery of society a greater measure of government protection and support than may be available elsewhere. This tradition is evident in legislative actions on behalf of the poor, the ill, the developmentally disabled and other persons largely without influence in society. This court too, has acted to establish that tradition during other times when the nation was divided on an important issue. . . . [T]his court [has] held that government must protect the rights of each of its citizens, regardless of the fact that the larger community may hold them in low esteem.

Gomez, 542 N.W.2d 17, 30 (Minn. 1995) (citing *Davis v. Pierse*, 7 Minn. 1, 6 (1862); accord *Thiede v. Town of Scandia Valley*, 217 Minn. 218, 224-26, 14 N.W.2d 400, 405 (Minn. 1944)).

In *Gomez*, the court broadened the U.S. Supreme Court's privacy protections, holding that under the Minnesota Constitution, "the difficult decision whether to obtain a therapeutic abortion will not be made by the government, but will be left to the woman and her doctor." 542 N.W.2d at, 32. The right of privacy "begins with protecting the integrity of one's own body and includes the right not to have it altered or invaded without consent." *Jarvis v. Levine*, 418 N.W.2d 139, 148 (Minn. 1988).

Mr. Hansen possesses these same rights. He asks that this Court recognize that the serious decisions, of how he manages and treats his depression and anxiety, be left to him in accordance with Minnesota's historical idea on individual autonomy. In other words, recognition that Mr. Hansen "is not accountable to society for his actions, in so far as these concern the interests of no person but himself. Advice, instruction, persuasion, and avoidance by other people if thought necessary by them for their own good, are the only measures by which society can justifiably express its dislike or disapprobation of his conduct." ON LIBERTY at 291.

The State fails to overcome Mr. Hansen's compelling interests of love, privacy, personal autonomy, and requirement for the most effective medicine. Whether considered within the scope of his right to privacy, or as a separate fundamental right, Mr. Hansen's also enjoys the fundamental right of self-determination. That is his right to do what he believes is right for his mental, emotional, physical, and spiritual well-being:

> [D]ifferent persons also require different conditions for their spiritual development; and can no more exist healthily in the same moral, than all the variety of plants can in the same physical, atmosphere and climate. *The same things which are helps to one person towards the cultivation of his higher nature are hindrances to another.* . . .. Such are the differences among human beings in their sources of pleasure, their susceptibilities of pain, and the operation on them of different physical and moral agencies, that unless there is a corresponding diversity in their modes of life, they neither obtain their fair share of happiness, nor grow up to the mental, moral, and aesthetic stature of which their nature is capable.
>
> ON LIBERTY at 273.

Mr. Hansen determined for himself to ingest marijuana. Consent remains the first principle of greatest concern in any intrusion of the body. A knife wielding attacker does not obtain the same excuse as a doctor does for opening the body with a scalpel in an operation. Similarly, the State can regulate what Its licensed physicians prescribe, and can prevent non-licensed people from distributing medicine to others, but it cannot prevent an individual from determining his own course of treatment, and using whatever items he sees fit to ensure his well-being. Mr. Hansen also has a fundamental right to his health and happiness as expressed by Dr. Vieceli. The State does not need to make Mr. Hansen happy, but it is not able to prevent him from taking measures that insure his happiness, unless he is doing harm to the public good.

Joseph Campbell reminds us that love is a central ingredient of every major religion upon the earth. *The Power of Myth: Joseph Campbell and Bill Moyers* (PBS television broadcast 1988), *available at* http://billmoyers.com/spotlight/download-joseph-campbell-and-the-power-

of-myth-audio. This component advances our species, and asks the central questions necessary for survival. "Each is the proper guardian of his own health, whether bodily, or mental and spiritual. Mankind are greater gainers by suffering each other to live as seems good to themselves, than by compelling each to live as seems good to the rest." ON LIBERTY at 238. Our right of Self-determination permit us to seek the highest values and aspirations. Love is recognized as a fundamental right the world over. As with the "right to pursue happiness," love is described as an action, or verb. When frozen in time, it is simply a word to be examined. A noun. As a verb, it is active. Alive. In John Lennon's immortal words:

> There are two basic motivating forces: fear and love. When we are afraid, we pull back from life. When we are in love, we open to all that life has to offer with passion, excitement, and acceptance. We need to learn to love ourselves in all our glories and our imperfections. If we cannot love ourselves, we cannot fully open to our ability to love others or our potential to created. Evolution and all hopes for a better world rest in the fearlessness and openhearted vision of people who embrace life.

John Lennon

Love, as a fundamental right, is a function of our highest core values as discussed by Dr. Vieceli.

Love has a strong scientific history, perhaps best remembered by the conflict created by Charles Darwin. In his first book, *On the Origin of Species*, he repeats the concept of "survival of the fittest." He mentions that term of art twice. On the other hand, he observes and articulates the need and necessity of love, among all animal kind, 95 times. It remains the strongest basis for our survival.

With love comes the ability to sympathize by seeing and knowing what another is experiencing. Love enables us to give help; to propel the world forward. John Hansen II endures the struggle of these charges, as he doesn't want another to go through the same charges.

Included as an essential component is that we first learn to love ourselves, before we can love another. Each major religion has, as its axiom, an inability to love another greater than our ability to love ourselves. We see this embedded in Mr. Hansen's decision to require the best remedy for his depression, enabling a life rich in activity, work, exercise and diet, as well as an ability to be in a long term relationship.

> Love is absolute. But the conception of love varies with the individual consciousness. No man can say when the individual consciousness has been developed to the point where further unfoldment is impossible.
>
> Love is not a matter of belief. It is a matter of demonstration. It is not a question of authority, but one of perception and action.
>
> ***
>
> It is love that imparts vitality to our minds and hearts and enables it to germinate.

(P. Twitchell, *Stranger by the River*, Ch. 8, Pg. 38).

As the fox taught, "It is only with the heart that one can see rightly; what is essential is invisible to the eye." ANTOINE DE SAINT-EXUPERY. THE LITTLE PRINCE (Irene Testot-Ferry trans. Wordsworth Editions 1995) (1943).

Now let us examine the role of marijuana in our everyday lives, and how our view has been altered by this simple concept: **love is a fundamental right.**

1) When a soldier comes before the Court, s/he may be using marijuana to combat TBI, or PTS. We presently have 750,000 soldiers that suffer from these two serious maladies, from our last two "wars". Marijuana is the best, and only reliably proven remedy that's available, that does not produce severe side effects. Importantly, it doesn't kill. Soldier suicides from our last two foreign conflicts are at an all time high. We allow the soldier the best remedy.

2) Consider the words of a former chief public defender of the 9th Judicial District at our

last Criminal Justice Seminar, every single person that comes through court has been subjected to trauma. Marijuana is an excellent remedy for trauma, as our soldiers know.

3) Consider the alcoholic who goes to an AA meeting and reads in the Big Book that a mild sedative is recommended to alleviate the cravings from a substance that will kill (88,000 deaths in the U.S., last year). How many lives have been lost from this terrible, terrible drug alcohol (fully legal)?

4) Consider the man or woman who is hopelessly addicted to cigarettes, a substance that kills 420,000 people in the United States, every year. It is an age-old remedy for addictions. Love enables us to see the smoker choosing the lesser of two evils, in an attempt to live, and to prevent an unnecessary death.

5) Consider Lou Gehrig, who has a disease named after him. He suffers from slobbering, and spasticity. One of the greatest ball players of all time cannot tie his shoes. Does Lou Gehrig deserve this remedy? The Minnesota Legislature believes that he does.

6) Consider the wife suffering from nausea in cancer pain, trying to hide the effects of her cancer, and the treatment effects from her two small children. Now, in 2015, we allow a remedy for this human being.

7) Consider the soldier who had his elbow blown off and was hopelessly addicted to prescription pain killers. (See *Pickard* exhibit, Statement of Sergeant Ryan D. Begin).

8) Consider a man who suffers from depression, and who has contemplated suicide on more than one occasion. He knows, as we are all convinced, that his use of marijuana as a medicine is highly effective. He fights his case in Brown County District Court, so that other may benefit from a remedy that saved his life. This is a good example of seeking the greatest good, the best outcome.

9) Consider the words of a governor who encourages a mom to go and buy marijuana to give to her child who suffers from innumerable seizures on a regular basis. That is an example of love, trumping old, archaic laws that prevent the milk of kindness for all in need. Our governor advocated a mom to do the very thing Mr. Hansen is accused of doing, a felony marijuana crime.

Love knows the answer. Fear may be defined as a construct of power. Power takes, love gives. The State attempts to take, with insufficient justification.

Are we so cruel? It is time for necessary change. Change that we all have the power to effectuate, because we all have the wisdom to know better. Our children look to us, with our pretended knowledge of truth, and know that we are strange. Our grand children will laugh at our folly.

Let us awaken to a new reality where love, understanding, and kindness for our fellow human beings prevail over the hollow words of a Court that claims to possess a rational basis for Its rulings.

The earth revolves around the sun. It is time for us to take action.

The State has also taken away cannabis as a food. Hemp seeds contain all the essential amino acids. Xian-Sheng Wang et. al. *Characterization, amino acid composition and in vitro digestibility of hemp (Cannabis Sativa L.) proteins*. FOOD CHEM. 107:11-18 (2008). In addition, its oil contains the fatty acids, the "good fats" for proper brain, nerve, mood, and healing functions. B. Dave Oomah et. al. *Characteristics of hemp (Cannabis Sativa L.) seed oil*. 76 FOOD CHEM. 1:33-43 (2001). Neither the State of Minnesota, nor the United States of America, can take these essential components of foods from the diets of every Minnesotan. Presently, Minnesota imports cannabis/hemp oil and protein, products that Minnesota farmers can and have

easily produced, especially within the confines of the rich farming traditions of Brown County. Mr. Hansen also has a right, as discussed earlier, to grow his farm, and retain full enjoyment of his property, to the extent that he does not harm others. He has, at base, the right to be let alone. He has the right to determine what to do in his own home, as his castle, and to grow a crop that can be used to provide other necessities of living—food, medicine, elements for shelter, etc.

Minnesota has already recognized the right to bodily integrity, giving Mr. Hansen the power to determine what to ingest. If he cannot be prevented from ingesting marijuana, then how can the State prevent him from growing it? Section III, below, discusses Mr. Hansen's fundamental right to sell his farm products as established by Art. 13, § 7. Inherent in that must be the right to raise his farm as he chooses. Minnesota has always been an agrarian society, and we have not given the legislature the power to decide what is on our farms. Especially considering marijuana can and does often grow on its own, without human intervention. The State may be able to regulate the items sold in the stream of commerce, but that does not allow them to regulate what is grown or raised on any one farm, unless those items cause a nuisance or other harm to our neighbors.

Mr. Hansen was growing plants on his property. He was paying his bills. He was not a nuisance to his neighbors. Per Locke, protection of one's property is a major reason to engage in society. Under society's rules, your property receives protection from outsiders and intruders. And at this nation's founding, our property was protected from the government. Like all units of power, the government has gradually claimed more and more ability to control its citizens, broadening its reach to invade Mr. Hansen's home. Mill's dire prediction, that we would see:

> an increasing inclination to stretch unduly the powers of society over the individual, both by the force of opinion and even by that of legislation; and as the tendency of all the changes taking place in the world is to strengthen society, and diminish the power of the individual, this encroachment is not one of the evils

> which tend spontaneously to disappear, but, on the contrary, to grow more and more formidable.

ON LIBERTY at 239, has come to fruition. The State is reaching further into the privacy of our lives, and beyond the power we as citizens granted to It.

2. Medical Necessity is An Available Defense

The Supreme Court has spoken regarding the defense of medical necessity under the federal controlled substances act. In *U.S. v. Oakland Cannabis Buyers' Co-op.*, 532 U.S. 483, 491 (2001) the Court explained that the defense could not succeed because the legislature had already made a "determination of values" by recognizing that placement in Schedule I meant marijuana did not provide any "medical benefits worthy of an exception . . .." *Id.* ("for purposes of the Controlled Substances Act, marijuana has "no currently accepted medical use" at all."). In Minnesota however, the legislature has recognized that marijuana has medical use, through the enactment of Minn. Stat. § 152.22.

Mr. Hansen has a right to health care of his choosing. Diane Miller, the Law & Public Policy Director for the National Health Freedom Coalition, a key player in forming the Complementary and Alternative Health Care Act, Minn. Stat. § 146A, enacted in 2000, testified regarding health freedom. Ms. Miller explained that this past legislative term, she worked to successfully convince the Legislature to expand doctors' privileges, allowing them to use practices, including holistic medicines that are outside the "standard of care" which is the standard, of old. As a practical effect of this change, Mr. Hansen argues that "scope of practice" allows doctors to open the door to discussions about marijuana use, past, present and future, without fear of risking their licenses, while strengthening the essential physician/patient communication necessary for providing complete medical services.

Because as Mr. Hansen argues, the State and Federal government have removed

marijuana as a Schedule I substance, doctors are now able to supervise and prescribe marijuana as a medicine, in Minnesota. Ms. Miller testified that a motivating factor behind the change to scope of care was the recognition that consumers have a right to access options for themselves that those consumers deem will improve their health. She explained that *people know themselves better than anyone else will, and that laws often block access to what the people want*. The 2014 change expands consumers' options while *still allowing the State to regulate "bad players*." Mrs. Miller testified that she has worked in thirty states, and has found that Minnesota is one of the most progressive states in ensuring consumers can make health care decisions regarding their whole holistic health. Finally, Mrs. Miller testified that the burden of proof under the dietary supplement statute is on the government to show harm before a food is taken off the shelves.

This is the burden that the State of Minnesota must meet before being allowed to retain any restriction on marijuana, a plant with medical benefits recognized by 28 other states and the District of Columbia. Doctor Mirman, licensed in the State of Minnesota, testified that he has studied much of the available research on the medical benefits of marijuana, and that he believes that cannabis is a legitimate medical treatment. As a doctor, he is obligated to make a patient feel better in every respect, both mentally and physically. Mood is an important indicator of health, he said. If a substance is useful, i.e. it helps treat a symptom, then it is unethical to prohibit a patient from using it, or a doctor from prescribing it. As to marijuana, Dr. Mirman confirmed that it is one of the safest herbal preparations and is helpful for a variety of conditions. Dr. Mirman explained that marijuana is known to be effective in treating nausea, loss of appetite, toxicity, glaucoma, *mood disorders* including *depression* and *anxiety*, pain, attention deficit disorder, and obsessive compulsive disorder. Mr. Hansen knows the truth of Dr. Mirman's testimony, as he explained the benefits of his medicine of choice in treating his depression and anxiety. The

Court must be vigilant in seeing that many defendants endure these traits, and benefit from using marijuana, also.

Dr. Mirman explained that depression causes joylessness, a loss of interest in work, relationships, pleasure and living, and that it can be fatal because it leads to suicide. Dr. Mirman stated that in the majority of cases, the bad effects of antidepressants outweigh the benefits, explaining that it is believed that antidepressants work 9-13% of the time. In his experience, patients often refuse to take anti-depressants because of too many negative effects. Dr. Mirman gave his professional opinion that marijuana has some potential for abuse, but less than with other mind altering substances. He expanded that marijuana, like caffeine, has a 9% addiction rate; less than cocaine or alcohol. Dr. Mirman confirmed that marijuana is mind altering in the sense that it can impair a person's ability to operate machinery. As a doctor, he explains the options to his patients and listens closely to their issues, than he develops ideas, presents them to his patients, and lets his patients decide. Dr. Mirman clarified that marijuana, like many other substances, is not generally appropriate for children and teens because it may alter their brain development, and is only advisable where there are no other, less harmful options. He explained that more dangerous drugs are prescribed all the time to adults. Dr. Mirman does not prescribe any Scheduled drugs.

Copernicus proved how the Earth revolves around the Sun. His words were considered hearsay, and he was condemned to death. The church, and all countries authorities, took the word of the church for law. The Sun revolves around the Earth. The change in consciousness came as a result of people's greater understanding of a simple concept. By their direct experiences, people came to know the truth of Copernicus', and later Galileo's words.

The same is happening today. It is essential that we move forward to a world that allows

far greater possibilities than our present limiting restrictions. The people of Minnesota can see that claims of danger, doom and gloom, from marijuana ingestion are simply false. No deaths, unlike tobacco, alcohol, and opioids. The government possesses no compelling basis to remove this plant from Mr. Hanson's life.

C. **Rational Basis**

> We may assume for present purposes that no pronouncement of a Legislature can forestall attack upon the constitutionality of the prohibition which it enacts by applying opprobrious epithets to the prohibited act, and that a statute would deny due process which precluded the disproof in judicial proceedings of all facts which would show or tend to show that a statute depriving the suitor of life, liberty, or property had a rational basis.

U.S. v. Carolene Products Co., 304 U.S. 144, 152 (1938). "It is unnecessary to consider now whether legislation which restricts those political processes which can ordinarily be expected to bring about repeal of undesirable legislation, is to be subjected to more exacting judicial scrutiny under the general prohibitions of the Fourteenth Amendment than are most other types of legislation." *Carolene Products Co.*, 304 U.S. at 153 n.4 .

Where the alleged rational basis for legislation depends upon facts beyond the scope of judicial notice, the court may subject the facts to judicial inquiry. *Id.* at 153. Where the constitutionality of a statute is based on the existence of a particular state of facts, the statute may be challenged on the basis that those facts have ceased to exist. *Id.* (citing *Chastleton Corp. v. Sinclair*, 264 U.S. 543, 44 S.Ct. 405 (1924)). Legislation that *rests on grounds irrelevant* to the achievement of a plausible governmental objective will fail rational basis review. *Heller v. Doe*, 509 U.S. 312, 324 (1993). The objection to listing a substance in a particular schedule "raises the question of whether there are *facts* which support the legislation." *State v. Vernon*, 283 N.W.2d 516, 518 (Minn. 1979) (citing *U.S. v. Carolene Products Co.*, 304 U.S.144 (1938)).

A statute that is facially valid may be attacked with "proof of facts tending to show that

the statute as applied to a particular article is without support in reason because the article, although within the prohibited class, *is so different from others of the class as to be without the reason for the prohibition*. *Carolene Products Co.*, 304 U.S. at 153-4 (emphasis added). In those instances, "the effect of such proof depends on the relevant circumstances of each case, as for example the administrative difficulty of excluding the article from the regulated class. *Id.* at 154. Such inquiries, challenging the legislative judgment, are restricted to "whether any state of facts either known or which could reasonably be assumed affords support for it." *Id.*

Carolene Products Co. was a challenge to Congress' regulation of filled milk under the Commerce Clause power. The Court held that it was "at least debatable whether commerce in filled milk should be left unregulated, or in some measure restricted, or wholly prohibited." *Id.* at 154. The Court upheld the Act, concluding that Congress was entitled to make that decision. In concurrence, Justice Butler noted that at trial, the accused was free to introduce evidence showing that the Act's declaration "that the described product is injurious to public health and that the sale of it is a fraud upon the public are without any substantial foundation." *Id.* at 155. Justice Butler went on to explain that if legislative acts were "construed to exclude from interstate commerce wholesome food products that demonstrably are neither injurious to health nor calculated to deceive, they are repugnant to the Fifth Amendment." *Id.* (Butler, J. concurring) (citing *Weaver v. Palmer Bros. Co.*, 270 U.S. 402, 412-13, 46 S. Ct. 320, 322 (1926)).

In 1937, the Marihuana Tax Act was passed. In the hearings before Ways and Means Committee, Dr. Woodward of the AMA explained that there was no relationship between any alleged addiction to cannabis, and prescriptions by doctors, i.e. none of the alleged addicts received cannabis from doctors. Hearing on H.R. 6385 Before the House Comm. on Ways and Means, 75th Cong, 1st Sess. 20 (1937) [hereinafter cited as Tax Act Hearings]. . It was a non-

issue. Dr. Woodward also explained that cannabis had psychological uses which were recognized by "John Stuart Mill in his work on psychology . . .." *Id.* at 91. Dr. Woodward further pointed out that no one from the Children's Bureau, Bureau of Prisons, the Office of Education, or the Division of mental hygiene were called to testify regarding the alleged use by children, prisoner, school children, or addicts committed to mental health farms. *Id.* at 92. Dr. Woodward contacted all these institutes and was told marijuana was to them a non issue. *Id.* at 92. In response the Chairman, Robert L. Doughton, deflected, stating, "If you want to advise us on legislation, you ought to come here with some constructive proposals, rather than criticism, rather than trying to throw obstacles in the way of something that the Federal Government is trying to do. It has not only an unselfish motive in this, but they have a serious responsibility." *Id.* at 116. Dr. Woodward responded that the bill was prepared in secret for 2 years without any intimation, even, to the [medical] profession . . .." *Id.* Of course, Mr. Anslinger had already warned the committee that marijuana was "not like opium. Opium has all of the good of Dr. Jekyll and all the evil of Mr. Hyde. This drug is entirely the monster Hyde, the harmful effect of which cannot be measured." Tax Act Hearings at 19. Mr. Anslinger later contradicted himself explaining, "[t]here is its use in medicine. Then the hemp product is used in some parts of Kentucky, Minnesota and Wisconsin. . . ..It makes very fine cordage . . . ." *Id.* at 25.

On June 14 the bill emerged on the House floor, and four representatives asked, each in their own way, that the proponents explain the provisions of the Act. Instead of an answer, they heard a repetition of the lurid criminal acts Anslinger had attributed to marijuana users. Prior to final passage in the House, there was a question whether the AMA supported the bill. Mr. Fred Vinson not only said they did not object when in fact Mr. Woodward had dissented, but he also claimed that the bill had AMA support. Thus the committee worked a falsity on the rest of the

government, and the public. All the while we debate this issue, the competitors: big oil, coal, timber and plastics industries thrive, while the Minnesota farm family becomes a distant memory, instead of a legitimate means of running this State.

In 1970, the federal government placed marijuana on Schedule I temporarily, due to the lack of information regarding its effects, and questions as to whether it produced "severe psychological or physical dependence as required by Schedule I or even Schedule II criterion." H.R. Rep. No. 91-1444, P.L. 91-513, U.S. Code Cong. Admin. News, reprinted in 1970, 4566, 4629-30 (Letter from Dr. Roger O. Egeberg, Ass't Sec. for Health and Scientific Affairs, Dep't of Health, Edu. And Welfare); *See Gonzales v. Raich*, 545 U.S. 1, 14 (2005). Minnesota adopted "in large part the Uniform Controlled Substances Act. L. 1971, c. 937," with the purpose of achieving uniformity with the Federal drug laws. *State v. King*, 257 N. W. 2d 693, 695 (Minn. 1977). For a time, it was left to the Board of Pharmacy to evaluate the drug schedules, and delete or reschedule any substances. § 152.02 subd. 8.

On March 16, 2011, NORML petitioned the Minnesota Board of Pharmacy to remove marijuana from schedule I. The Board denied the petition. Letter from Cody Wiberg to Kurtis Hanna and Edwin Engelmann (May 16, 2011). The Board of Pharmacy also responded by asking the Legislature to amend § 152.02, subds. 8 to remove the Board's authority to reschedule a Schedule I drug. MINN. BD. OF PHARMACY. REPORT TO THE LEGISLATURE ON CHANGES THE BOARD HAS MADE TO THE CONTROLLED SUBSTANCE SCHEDULES MAINTAINED BY THE BOARD IN MINNESOTA RULES p. 24 (2011). The legislature amended § 152.02 subd. 8 (Chapter 53--H.F.No. 57) as requested by the Board. *Compare* Minn. Stat. § 152. 02 (2009), and § 152.02 (2011) ("The Board of Pharmacy may not delete or reschedule a drug that is in Schedule I," unless the Federal Government has done so first.) (See Minnesota Board of Pharmacy attachments.)

Thus, the Board of Pharmacy and the Legislature have restricted "those political processes which can ordinarily be expected to bring about repeal of undesirable legislation." While the *Carolene* court did not determine what measure of scrutiny was required in that instance, it implied that something beyond the highly deferential rational basis review was necessary.

In determining whether and where to schedule a substance, the Board of Pharmacy is expected to determine (1) "The actual or relative potential for abuse, [2] the scientific evidence of its pharmacological effect, if known, [3] the state of current scientific knowledge regarding the substance, [4] the history and current pattern of abuse, [5] the scope, duration, and significance of abuse, [6] the risk to public health, [7] the potential of the substance to produce psychic or physiological dependence liability, and [8] whether the substance is an immediate precursor of a substance already controlled . . ." § 152.02 Subd. 8. Finally, the Board of Pharmacy may not "include any nonnarcotic drug authorized by federal law for medicinal use in a schedule" unless that drug is already required to be sold only by prescription. *Id.*

These eight factors are addressed by Carter et. al., concluding that marijuana has lower potential for abuse then drugs on Schedule II (pp. 19-27); cannabis' chemistry is known and reproducible, there have been adequate safety studies, studies prove efficacy, the drug is accepted by qualified experts, and the scientific evidence regarding cannabis is widely available (pp. 6-17); current scientific knowledge reflects that "cannabis has significant therapeutic efficacy in the treatment of a wide range of clinical applications," and some possible negative effects for treating MS patients (p. 18); history and current pattern of abuse are low; cannabis dependence has less severe consequences than other Schedule II drugs (pp. 26-27); cannabis does not have a high rate of significant impairment or distress related directly to drug use (pp.

27-29); low public health risk with little correlation between use and either amotivational syndrome, aggression, and lower driving related risks then alcohol (pp. 30-41); cannabis has low relative dependence risk (pp. 23-25); and cannabis is not an immediate precursor to any other controlled substance (p. 19).

The State failed to present *any* evidence regarding Its prohibition on the manufacture of marijuana, or relating to the placement of marijuana on Schedule I. The historical placement of marijuana on Schedule I has been based on folly and error. "[A]ges are no more infallible than individuals; every age having held many opinions which subsequent ages have deemed not only false but absurd; and it is as certain that many opinions now general will be rejected by future ages, as it is that many, once general, are rejected by the present." ON LIBERTY at 241.

Cannabis can be used for a variety of medical conditions, including depression and anxiety, as well as nausea, glaucoma, and to relieve pain. Minnesota, by passing a medical marijuana law, has officially recognized the medical uses of marijuana. Marijuana is less addictive then cocaine, heroin, and methamphetamines. It causes less harm to the public than those drugs, and much less harm than alcohol. Marijuana can be tailored to a person's need, depending on their pain or symptom for which they are seeking treatment. Mr. Hansen asks that this Court hold that the State does not have basis for including marijuana on Schedule I.

III. MINNESOTA'S FARMERS AMENDMENT PROVIDES CONSTITUTIONAL PROTECTION FOR FARMERS AND GARDENERS

When examining constitutional provisions, Courts "give effect to the clear, explicit, unambiguous and ordinary meaning of the language" of constitutional provisions. *State v. Hartmann*, 700 N.W.2d 449, 453 (citation omitted). We will not "substitute for words used in the constitution having a well-defined meaning other words having a different meaning." *Id.* (quoting *State v. Pett*, 92 N.W.2d 205, 207 (1958) (holding that the phrase "capital offenses" has

a clear and well-defined meaning, which is "crimes punishable by death," and that interpreting it to mean only first degree murder would constitute a de facto amendment to the Minnesota Constitution, and would be an impermissible act by this court). Courts must construe words in accordance with their ordinary meaning “in the light of the social, economic, and political situation of the people at the time of its adoption, as well as subsequent changes in such conditions.” *Hartmann*, 700 N.W.2d at 453 (quotation omitted).

Courts exercise the power to declare a statute unconstitutional with extreme caution and only when absolutely necessary. *In re Haggerty*, 448 N.W.2d 363, 364 (Minn. 1989). “The party challenging a statute has the burden of demonstrating beyond a reasonable doubt a violation of some provision of the Minnesota Constitution.” *Id.*

Article 13, Section 7 of the Minnesota Constitution states: “Any person may sell or peddle the products of the farm or garden occupied and cultivated by him without obtaining a license therefor.”

The Minnesota Court of Appeals has once dealt with this question in *State v. Wright*, 588 N.W.2d 166 (Minn. App. 1998), recognizing that “[s]tatutes enacted pursuant to the state's police power ‘must be reasonable and not arbitrary and must not invade the fundamental liberties of the citizens.’” 588 N.W.2d at 168 (quoting *State ex rel. Larson v. City of Minneapolis*, 251 N.W. 121 (Minn. 1933)). The *Wright* court relied on a previous Minnesota Supreme Court decision, upholding “the constitutionality of Minnesota's marijuana laws as valid exercises of the state's police power.” 588 N.W.2d at 168 (citing *State v. Vail*, 274 N.W.2d 127, 134-36 (Minn. 1979). The *Wright* court relied on *Vail* as rejecting the equal protection challenge and holding “that the classification of marijuana as a Schedule I controlled substance was within the proper power of

the state to provide for the health and welfare of its citizens. We do not have the prerogative to disregard the supreme court's analysis of marijuana laws." 588 N.W.2d at 168.

It must be noted that the *Vail* court relied on "the continued debate over possible short- and long-term physical and psychological effects," and explained that at that time, it could not "fairly be said that continued apprehension and reluctance of the state board of pharmacy to reschedule marijuana is so arbitrary and unreasonable as to render it unconstitutional." *Vail*, 274 N.W.2d at 136.

The Court of Appeals thus analyzed "only whether Article 13, Section 7 creates for the farmers or growers of this state a fundamental liberty to sell or peddle their products." *Wright*, 588 N.W.2d at 168. The court determined:

> [n]othing suggests that this privilege, intended to help farmers bring their crops to market, creates for farmers a fundamental liberty to sell farm products. To the contrary, numerous reasonable restrictions, other exercises of the state's police powers, govern the manner in which a farmer's products may enter the market. See, e.g., The Minnesota Food Law, Minn. Stat. ch. 31 (prohibiting the sale of unwholesome, misbranded or adulterated food). The right to sell or peddle farm products is not a fundamental liberty.

588 N.W.2d at 168. The court wholeheartedly ignored that Minnesotans amended their Constitution, no easy task, to ensure that farmers would not be barred from selling the products of their farm. Nor did the Court address the history of the family farm as evidence of rights of self determination, and a foundation upon which this nation was founded. Instead, the *Wright* court treated Art. 13 § 7 as something more akin to a statute, claiming that its position in the Minnesota Constitution does not make it a fundamental right. However, the Minnesota Supreme Court has since held that Art. 13, § 7 "grants farmers the right to sell products of the farm or garden that they are not otherwise legally prohibited from selling, without obtaining a license. . . .. Defining "products of the farm" to include any farmer's product for which a license may issue"

effectuates the language of, and the intent behind, Art. 13 § 7. *Hartmann*, 700 N.W.2d at 455-56. (In Minnesota, the farmer can still sell raw milk, which some believe to be harmful and some believe to be beneficial, to the consumer, whereas the act is prohibited to commercial sellers.).

The family farm is an outward manifestation of our fundamental rights, giving us promise of our own self-sustaining lifestyle with income sufficient to pay our wage, and products that benefit all of humankind, other animals, and the earth. As Minnesota gets this crop back, it will see another significant source of income and production.

Under Minn. Stat. §§ 152.22 subd. 7, 152.25, and 152.29, medical cannabis manufacturers can register with the Commissioner of Health and be allowed to produce and provide medical marijuana. Thus, the State has created a licensing system for the sale of medical marijuana. Under the *Hartmann* analysis, Mr. Hansen cannot be barred from growing on his farm items which can otherwise be sold in the State under licensing restrictions.

Moreover, the *Hartmann* court expressly refused to address the defendants' due process claim because it had not been briefed. 700 N.W.2d at 457, n.8. And as the three dissenters note, "where the Minnesota Constitution has protected the commercial relationship between a farmer and the farmer's customers, there needs to be at least some minimal showing that the regulation in question actually addresses public safety issues." *Id.* at 460 (Anderson, J. Dissenting). The dissenters also commented that while statutes are usually presumed constitutional, putting the burden on the challenger, that burden may shift when the statute "impinges on a right recognized implicitly or explicitly in the constitution." *Id.* at 461, n.12 (citing *Skeen v. State*, 505 N.W.2d 299, 312 (Minn. 1993)). In that instance, strict scrutiny will apply. *Skeen*, 505 N.W.2d at 312.

Thus, Art. 13, § 7 should be recognized as an explicit recitation of a fundamental right, and this Court should perform the corresponding due process analysis under strict scrutiny, requiring the State to prove that the statute is narrowly tailored to achieve a compelling state interest. *Roe v. Wade*, 410 U.S. 113, 155 (1973).

Art. 13 § 7 was enacted in 1906, a time when Minnesota farmers had an unquestioned right to grow hemp. "Hemp is one of the most profitable productions the earth furnishes in northern climates; as it employs a great number of poor people in a very advantageous manner, if its manufacture be carried on properly: It may also furnish a ready remittance to the mother country, and become a reciprocal advantage to both; and therefore it becomes worthy of the serious attention of the different legislatures of the northern colonies, of every trading man, and of every man, who truly loves his country." Edward Antil. *Observations on the raising and dressing of Hemp*. Transactions of the American Philosophical Society, vol. 1, 2nd ed. corr. (1789), p. 267. By raising hemp, a farmer "can with greater certainty supply all the necessary uses of his family; and by selling the overplus, he can purchase" other necessary or even unnecessary items. *Id.* at 272.

> It must be conceded that there are such rights in every free government beyond the control of the State. *A government which recognized no such rights, which held the lives, the liberty, and the property of its citizens subject at all times to the absolute disposition and unlimited control of even the most democratic depository of power, is after all but a despotism*. It is true it is a despotism of the many, of the majority, if you choose to call it so, but it is none the less a despotism. It may well be doubted if a man is to hold all that he is accustomed to call his own, all in which he has placed his happiness, and the security of which is essential to that happiness, under the unlimited dominion of others, whether it is not wiser that this power should be exercised by one man than by many.

Citizens' Savings & Loan Ass'n v. City of Topeka, 87 U.S. 655, 663 (1874).

In 1931, the Louisiana Supreme Court, relying on dubious beliefs as to the effects of marijuana, ("Occasionally, an entire group of men under the influence of this drug will rush out

to engage in violent or bloody deeds."), rejected a constitutional challenge to a ban of marijuana. *State v. Bonoa*, 172 La. 955, 136 So.15 (La. 1931). A proper reading of the court's concluding paragraph illuminates the impropriety of banning the cannabis plant:

> It is not a sufficient answer to say against this position that if the possession of the Marajuana plant may be prohibited in the dried or any other form, which includes the plant in its growing form, why not, by a parity of reasoning, prohibit the possession of corn, because whisky may be made out of it, or the possession of grapes, because wine may be made out of them, or the possession of poppies, because opium may be extracted from them, if such be so with the poppies grown here. The situation, however, is entirely different as to these. Not only is whisky and wine less injurious than Marajuana, but it is far more difficult to manufacture them than it is to prepare the Marajuana plant for injurious purposes. *Moreover, to suppress the possession of all things out of which whisky or wine may be made would come near destroying civilization itself.* As to poppies, if opium may be extracted from the species, sometimes grown here, it is obvious that the extraction is too difficult to accomplish to be carried on clandestinely to any extent, and, if it should be done openly, the manufacture and disposition of the product could be comparatively easily controlled by governmental regulations.

172 La. at 964 (emphasis added)(Attached).

It is ironic that President George Washington would have to come before this Court, ask for a special dispensation to grow this crop, so that his troops at Valley Forge could be clothed and fed, as they were by cannabis. The advantage of this plant is that, once planted, it lasts forever. It will keep coming back. That is unfortunate for Dupont and Monsanto, but very fortunate for the agrarian farmer. The double advantage of this plant is that it produces incredible amounts of seeds that are of the highest nutritional value. There is a reason that songbirds sing, more, when they eat this seed.

The State does not claim the power to regulate anything, except the THC in this plant. It is has specifically regulated THC, and put it in Schedule III. (See argument above.)

It permits all licensed physicians to prescribe THC under the law.

If we divide the marijuana flower pedal and leaf into its constituent parts, 60 of its 400

compounds are THC related. (See *Pickard*, Direct Examination of Christopher Conrad). The State cannot claim any more power over the other 340 related compounds than it can over the same compounds found in a rose pedal.

The 340 compounds of the marijuana flower and leaf still belong to the people. Consequently, when the Court decides that the State has already, through Its laws, regulated THC, the Court must reject any claim by the State that It has the ability to regulate anything that is not dangerous. This includes the 340 compounds that remain in the marijuana flower petal or leaves. Hence, Schedule I designation again fails, and this herb becomes regulated under the Dietary Substance Act.

The United States, and the State of Minnesota were founded as agrarian societies, based on producing and maintaining crops and farmland. Cultivating the land was, and is, Minnesota's primary source of wealth. We produce our own food, shelter, and clothing. In a recent report by the Mankato Free Press, the economics of agriculture for our area total $6 billion per year. Tim Krohn. *New Group Aims to Make Region Silicon Valley of Agribusiness* Mankato Free Press (Nov. 17, 2014). All of the other industry for the same area combined totals $3 billion. *Id.*

Why do we deprive our citizens from making a plant that we know produces income, not just for drugs, but for food, shelter, and the essentials of life?

We import oil into Minnesota, and debate the safety of pipelines, when this plant can provide the clean, safe fuel Ford and Diesel imagined when they created the internal combustion engine. Fuel that doesn't pollute. Why must the farmer and citizen still support the oil industry?

Or the plastics industry?

Or the wood industry?

Or the paper industry?

Why do we import marijuana protein and oil from Manitoba Canada, when we can and have grown it right here? It is time we get this plant back!

IV. THE GOVERNMENT IS ACTING CONTRARY TO THE SECURITY, BENEFIT AND PROTECTION OF THE PEOPLE

Article I, Section 1 of the Minnesota Constitution states "Government is instituted for the security, benefit and protection of the people, in whom all political power is inherent, together with the right to alter, modify or reform government whenever required by the public good." The structure and limitations of federalism "allow the States "great latitude under their police powers to legislate as to the protection of the lives, limbs, health, comfort, and quiet of all persons." *Gonzales v. Oregon*, 546 U.S. 243, 270 (2006) (internal quotation omitted).

> The acts of an individual may be hurtful to others, or wanting in due consideration for their welfare, without going to the length of violating any of their constituted rights. The offender may then be justly punished by opinion, though not by law. As soon as any part of a person's conduct affects prejudicially the interests of others, society has jurisdiction over it, and the question whether the general welfare will or will not be promoted by interfering with it, becomes open to discussion. But there is no room for entertaining any such question when a person's conduct affects the interests of no persons besides himself, or needs not affect them unless they like (all the persons concerned being of full age, and the ordinary amount of understanding). In all such cases, there should be perfect freedom, legal and social, to do the action and stand the consequences.

ON LIBERTY. 278-79. In other words, the State has no ability to act, under Its police power, when an individual has not harmed any other individual's interests. Society can exact punishment, and stigmatize such behavior, but it cannot *criminalize* it. We all have a right to be "let alone." The State, in acting as a benevolent big brother is violating each individual's right of self-determination.

> But neither one person, nor any number of persons, is warranted in saying to another human creature of ripe years, that he shall not do with his life for his own benefit what he chooses to do with it. He is the person most interested in his own well-being . . . the interest which society has in him individually (except as to his conduct to others) is fractional, and altogether indirect; while with respect to his

> own feelings and circumstances, the most ordinary man or woman has means of knowledge immeasurably surpassing those that can be possessed by any one else. *The interference of society to overrule his judgment and purposes in what only regards himself must be grounded on general presumptions; which may be altogether wrong, and even if right, are as likely as not to be misapplied to individual cases*, . . . [I]n each person's own concerns his individual spontaneity is entitled to free exercise. Considerations to aid his judgment, exhortations to strengthen his will, may be offered to him, even obtruded on him, by others: but he himself is the final judge. *All errors which he is likely to commit against advice and warning are far outweighed by the evil of allowing others to constrain him to what they deem his good*.

JOHN STUART MILL. ON LIBERTY. 278-79 (emphasis added).

The State is depriving Its citizens of the medical benefits of marijuana along with all other benefits, including that marijuana can be an alcohol substitute that could very well result in less drunk driving fatalities, violent crime, and suicides. Dr. Ben Hansen, Assistant Professor of Economics, spoke to his research on factors behind traffic fatalities, and individual's economic behaviors. He testified that with the passage of medical marijuana laws, traffic fatalities have decreased, as have beer sales. Dr. Hansen concludes that marijuana is used as a substitute for alcohol. People tend to smoke at home, and do not travel the roads as frequently after smoking marijuana as after drinking alcohol. Drunk drivers take more risks, as they are disinhibited. Dr. Hansen further explained that driving high is safer than driving drunk, because people who are high on marijuana are more risk averse than sober people. In addition, marijuana smokers have a tendency to understand the effects of the drug while they are on it, and to compensate for their physical impairments. People impaired by marijuana drive just as good as sober drivers. Alcohol intoxication, on the other hand, causes people to be less risk averse, even though it causes some of the same physical impairments (related to driving ability) as marijuana (this is a special reason why the Courts are wise to allow its use by probationers).

Dr. Hansen further testified that marijuana legalization lowers use amongst teens,

because dealers have less incentive to sell illegally to teenagers when they can sell legally to adults. Dr. Hansen also noted that deaths from use of *legal* drugs have surpassed traffic fatalities, and that the rates of overdosing on *legal* drugs have decreased with the legalization of medical marijuana, because marijuana is used to treat pain. Finally, Dr. Hansen pointed out that studies have shown a decrease in suicides as marijuana laws have changed, because marijuana is an alcohol substitute. Dr. Hansen also explained that marijuana is good for boosting tax revenue, pointing to Colorado and Washington as examples, and adding that that revenue is used to fund drug education and enforcement efforts.

Alcohol contributed to the deaths of approximately 88,000 people in each year from 2006-2010. 1. CDC. Alcohol-Related Disease Impact (ARDI). Atlanta, GA (2014). Excessive alcohol use was responsible for 1 in every ten deaths of adults 20-64 years old. Mandy Stahre et. al. *Contribution of excessive alcohol consumption to deaths and years of potential life lost in the United States*. Prev Chronic Dis 11:130293 (2014). And in 2006 alone, excessive alcohol consumption was estimated to cost the economy $223.5 billion. Ellen E. Bouchery et. al. *Economic costs of excessive alcohol consumption in the United States, 2006*. Am. J. Prev. Med. 41:516–24. (2011). Binge drinking cost Minnesota an estimated $2.64 billion in economic costs in 2006. *Id.*

By pretending that it can prevent citizens from using marijuana, the State has taken away a less harmful, more manageable substitute for alcohol. In addition, it has prevented Mr. Hansen from taking care of himself. A person cannot know the depths and despair of depression, unless s/he has experienced its devastating effects. As Mr. Hansen testified, he would not wish his condition upon anyone. He was helping himself without hurting anyone else, in the privacy of his home. The State came in and told him he was not allowed to treat himself, because the State

had decided to take away a minimally harmful herb. The State has been derelict in Its duty to act only for the benefit of Its citizens, and has overdrawn Its power. And, as discussed elsewhere, local production of marijuana on Minnesota farms and gardens, stops the international drug cartels, who now peddle heroin and meth because the profit margin on marijuana is too little.

We eliminate the social costs, including lives lost to dangerous drugs when we see marijuana as an aid, rather than a hindrance.

For pain management, marijuana is an effective inexpensive replacement for over the counter pain medications which cause thousands of deaths each year. Acetaminophen causes 10,000 deaths per year in the U.S. alone.

This Court must hold this overreaching statute, placing marijuana on Schedule I, as unconstitutional.

V. EQUAL PROTECTION

The Constitution's guarantee of equality 'must at the very least mean that a bare congressional desire to harm a politically unpopular group cannot' justify disparate treatment of that group." *U.S. v. Windsor*, -- U.S. --, 133 S. Ct. 2675, 2693 (2013) (quoting *Dep't of Agric. v. Moreno*, 413 U.S. 528, 534-535 (1973)). The clause "does not deny to State the power to treat different classes of persons in different ways." *Eisenstadt v. Baird*, 405 U.S. 438, 446-47, 92 S. Ct. 1029, 1035 (1972) However, it does prevent the State from legislating "that different treatment be accorded to persons placed by a statute into different classes on the basis of criteria wholly unrelated to the objective of that statute." *Id.* at 447. Any classification must not be arbitrary. *Id.* The classification must be reasonable, "and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike." *Id.* (internal quotation omitted). In the area of

economics and social welfare, a State does not violate the Equal Protection Clause merely because economic and social welfare classifications are imperfect. *U.S. R.R. Ret. Bd. v. Fritz*, 449 U.S. 166, 175, 101 S. Ct. 453, 459 (1980). If there is a reasonable basis for the classification, then "it does not offend the Constitution simply because the classification is not made with mathematical nicety or because in practice it results in some inequality." *Id.*

The judiciary's role where takings are involved is to ensure that the takings are within the government's discretionary power and are "not an arbitrary or discriminatory exercise of the legislative prerogatives." *State ex rel. Com'r of Transp. v. Kettleson*, 801 N.W.2d 160, 165-66 (Minn. 2011). This is particularly so "where such enactments destroy valuable property rights of citizens guaranteed protection under the due process and equal protection clauses of the state and Federal constitutions." *Id.* "The guaranty of 'equal protection of the laws is a pledge of the protection of equal laws.'" *Skinner v. State of Okl. ex rel. Williamson*, 316 U.S. 535, 541, 62 S. Ct. 1110, 1113, 86 L. Ed. 1655 (1942) (quoting *Yick Wo v. Hopkins*, 118 U.S. 356, 369, 6 S.Ct. 1064, 1070 (1886)).

Mr. Hansen has anxiety and depression. The prohibition on his raising marijuana prevents the ill and those of lower economic classes from obtaining their medicine. Mr. Hansen rejected the expensive prescriptions suggested by his doctor, because those would not work for him. He chose not to buy marijuana off the street, an expensive and possibly dangerous activity. Most citizens, at some point, have belonged to the class of people who suffer from illness. The State has an interest in, and under standard human rights law, a duty to "protect[] disabled and terminally ill people from prejudice, negative and inaccurate stereotypes, and 'societal indifference.'" *Glucksberg*, at 732. Marijuana has medical benefit, which is now recognized by the Minnesota legislature through enactment of Minn. Stat. § 152.22.

The government has also affected a taking of Mr. Hansen's property, by preventing him from growing the farm product of his choosing. Mr. Hansen has a fundamental right, recognized by Art. 13 § 7, to grow his farm. The ban on his manufacturing marijuana violates his property rights, and his right to do as he pleases in the privacy of his home. The ban on growing marijuana is not reasonable as discussed in IV C, *supra*.

Marijuana laws discriminate against the poor and minorities. As stated in the October 29, 2014 Star Tribune:

> Blacks are significantly more likely than whites to be arrested for low level crimes such as marijuana possession and loitering, according to a new study.
> The report, released Tuesday by the American Civil Liberties Union of Minnesota, said that blacks are 11.5 times more likely to be arrested for marijuana possession, even though advocates say that white and black people use the drug at similar rates.

Gany, L. (2014, October 29). *The Star Tribune*, Sect. B, Pg. 1.

(See also: *U.S. v. Pickard*, Direct Examination of James J. Nolan, II, Ph.D.)

Finally, Mr. Hansen wants this court to determine, by Its own self policing responsibilities, that the Court should not be in the business of criminalizing the use of a safe plant that produces no deaths, and saves lives. The Court fails to exercise basic due care when It punishes the very substance that has the greatest impact on maintaining important societal interactions. Marijuana stops suicides that come from depression. Marijuana enables an individual to successfully navigate the complicated court system, without excessive anxiety, or further recidivism. The Court must finally ask Itself an important question: Does it hurt? Or does it help? Let us measure pain not from the perspective of the judicial intervention, but on life giving measurements. For example, is the person able to maintain gainful employment. Is s/he engaging in other health giving attributes, such as proper nutrition, interpersonal relationships, exercise, recreational, educational and spiritual activities? Incumbent upon the

Court's analysis will also be the collateral effects of endorsing a system that has morphed from criminalizing, to a regulatory scheme. In fostering change, the Court is able to implement procedures that reduce international drug trade, a change promoted by Vicente Fox, former President of Mexico, and at the same time, reducing the import of very dangerous drugs, including heroine, and meth, from outside of our national borders.

With 75% of the U.S. population believing that marijuana will become legal for all purposes, it is time for us to recognize reality, and get on with the work of change. Pew Research Center, poll of 1821 adults conducted February 14-23, 2014, with 2.6% margin of error. Source: AP.

By continuing to adopt Sergeant Schultz' line in *Hogan's Heroes*, "I know nothing!" the Court ignores the real and positive opportunities for change. The Court loses the respect of Its people, because It fails to properly respect an individuals' right. Discrimination in the Court system occurs, as every judge has his/her own view of marijuana, and applies his/her own interpretation when sentencing and, more importantly, when violating probationers for utilizing a good medicine – pot.

Mr. Hansen has provided this Court with a rough blue print for the future, including the acts of the Minnesota Legislature in enacting the Complimentary and Alternative Health Care Acts, as well as now granting doctors the ability to prescribe marijuana, unlike any other state in this nation.

Incidentally, when the Court properly characterizes the law as it relates to marijuana (the fact that it is not properly a Schedule I substance), the Farm Act of 2013 permits the U.S. Commissioner of Agriculture to list Minnesota as one of the primary states to receive benefits under the Agriculture Act for the production of hemp.

Minnesota is on the verge of tomorrow. A proper reading and understanding of the law will propel us to the head of the class, enabling broad economic development in commercial, medical, and personal matters, for the benefit of all Minnesota.

VI. THE COUNTY ATTORNEY IS BARRED FROM FORFEITING MR. HANSEN'S PROPERTY (Civil Matter)

Minnesota Statute § 609.5315 governs disposition of forfeited property. Section 609.5315 subd. 5 states:

> money or proceeds from the sale of forfeited property . . . *must be distributed* as follows:
>
> . . .
>
> (2) 20 percent of the money or proceeds *must* be forwarded to the prosecuting authority that handled the forfeiture for deposit as a supplement to its operating fund or similar fund *for prosecutorial purposes* . . .

(emphasis added).

However, Minn. Stat. § 388.08 prevents the County Attorney from receiving any reward for prosecutorial services:

> No county attorney or assistant county attorney . . .shall receive or accept any fee or reward from. . . for services rendered or to be rendered in the prosecution or conduct of any official duty or business. . . . Any person offending against any provision of this section shall be guilty of a misdemeanor.

Minnesota Statute § 388.08 (2013). In addition, county officials, and their deputies, clerks, and employees are barred from having any interest in the purchase or sale of any property by the county. Minn. Stat. § 382.18 (2013). Violation of § 382.18 is a gross misdemeanor. By operation of § 609.5315 subd. 5, the Plaintiff has a significant financial interest in this forfeiture action, causing a conflict of interest that §§ 382.18 and 388.08 were created to combat.

On February 28, 1986, the Office of the Attorney General issued an opinion, to the Brown

County Attorney, which stated that a "county attorney's official duties include appearing in all cases in which the county is a party." Minn. Op. Atty. Gen. 121A-9, 1986 Minn. AG LEXIS 12, 1986 WL 288999 (citing Minn. Stat. § 388.051, subd. 1 (1984) ("the county attorney shall appear in all cases in which the county is a party" See attachment.). The Attorney General held that since the county attorney was a party in the relevant proceedings (probate proceedings), the county attorney could not receive a fee (from the estate) for services rendered.

This Court cannot participate in the misdemeanor and gross misdemeanor crimes that would be committed by forfeiting the property to the Plaintiff. The statutes are clear, and are supported by the Attorney General's opinion. Statutes §§ 609.531, 609. 5311 create an ugly conflict of interest, providing the County Attorney with gross incentives to seek forfeiture not in the interest of justice, but in the interest of their purse, and the pursuit of power.

CONCLUSION

In the words of John Stuart Mill:

> [A]n opinion on a point of conduct, not supported by reasons, can only count as one person's preference; and if the reasons, when given, are a mere appeal to a similar preference felt by other people, it is still only many people's liking instead of one. . . .[C]ompulsion, either in the direct form or in that of pains and penalties for non-compliance, is no longer admissible as a means to their own good, and justifiable only for the security of others.

ON LIBERTY. 234.

The legislature has now recognized that marijuana has medical benefits. They have thus removed marijuana from Schedule I. Mr. Hansen merely asks this Court to recognize the conflicting statutes and clear up the oversight. Moreover, the placement of marijuana in Schedule I fails to meet strict scrutiny analysis, is irrational, and has foundations based upon a fraud committed in 1937. Prohibiting Mr. Hansen from growing cannabis in his garden, in the privacy of his home, violates his fundamental rights to farm, privacy, self-determination, and health care. Mr. Hansen also has established the medical necessity, a legitimate defense as the Legislature has recognized marijuana's therapeutic values. Finally, the County Attorney cannot seek forfeiture of Mr. Hansen's property, because he is prohibited from receiving payment from cases in which the County is a party.

Dated: _____

Respectfully submitted,

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