

IN THE SUPREME COURT OF THE STATE OF NEVADA

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Elizabeth A. Brown
Clerk of Supreme Court

STATE OF NEVADA ex rel. BOARD OF PHARMACY
a public entity of the State of Nevada,

Appellant,

v.

CANNIBIS EQUITY AND INCLUSION
COMMUNITY (CEIC), a domestic nonprofit corporation;
ANTOINE POOLE, an individual,

Respondents.

JOINT APPENDIX VOLUME II OF III

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ALPHABETICAL INDEX TO JOINT APPENDIX

DOCUMENT DESCRIPTION	Filed Date	VOLUME	PAGE NOS.
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Order Denying Respondent's/Defendant's Motion to Dismiss for Lack of Standing and Failure to State a Claim	07/26/2022	I	078-081
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Petition for a Writ of Mandamus to Compel the Nevada State Board of Pharmacy to Remove Cannabis and Other Cannabis Derivatives from Nevada Administrative Code § 453.510	04/15/2022	I	001-026

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Petitioners'/Plaintiffs' Opposition to Respondent's/Defendant's Motion to Stay Judgement and Order Pending Appeal	12/07/2022	III	247-256
Petitioners'/Plaintiffs' Reply to Respondent's/Defendant's Answer to Petitioner's/Plaintiff's Petitioner for Writ of Mandamus and Complaint for Declaratory Relief	08/17/2022	I	106-116
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DOCUMENT DESCRIPTION	Filed Date	VOLUME	PAGE NOS.
Respondent/Defendant's Answer to Petitioners/Plaintiffs' Petition for Writ of Mandamus and Complaint for Declaratory and Injunctive Relief	08/10/2022	I	088-105
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Respondent/Defendant's Reply Memorandum of Points and Authorities on Motion to Stay Judgement and Order Pending Appeal	12/30/2022	III	257-268

CHRONOLOGICAL INDEX TO JOINT APPENDIX

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Respondent/Defendant's Motion to Dismiss for Lack of Jurisdiction and Failure to State a Claim	06/07/2022	I	027-039
Petitioners'/Plaintiffs' Opposition to Respondent's/Defendant's Motion to Dismiss for Lack of Jurisdiction and Failure to State a Claim	06/21/2022	I	040-067
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Respectfully submitted this 22nd day of June 2023.

By: /s/ Gregory L. Zunino
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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing in accordance with this Court's electronic filing system and consistent with NEFCR 9 on June 22, 2023.

Participants in the case who are registered with this Court's electronic filing system will receive notice that the document has been filed and is available on the court's electronic filing system.

/s/ Peter Keegan
An Employee of the Nevada Board of
Pharmacy

1 **NEOJ**

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DISTRICT COURT,

5

CLARK COUNTY, NEVADA

6

7 CANNABIS EQUITY AND INCLUSION
8 COMMUNITY, et al.,

CASE NO: A-22-851232-W
DEPT NO: XV

8

Plaintiff,

9

NOTICE OF ENTRY OF ORDER

10

v.

11

STATE OF NEVADA, et al.,

12

Defendant.

13

14

TO ALL PARTIES AND THEIR ATTORNEY OF RECORD:

15

PLEASE TAKE NOTICE that an Order has been entered on the 26th day of October, 2022,

16

in the above-captioned matter. A copy of said Order is attached hereto as Exhibit A.

17

18

Dated this 26th day of October, 2022

19



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21

338 C39 0B8A BB35
Joe Hardy
District Court Judge

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EXHIBIT "A"

1 In 1923, the Nevada Legislature banned marijuana,¹ making even simple possession,
2 regardless of purpose, a criminal offense.² When the Legislature enacted the Uniform Controlled
3 Substances Act in 1971, marijuana was classified as a Schedule I substance.³ In 1981, the Nevada
4 Legislature delegated to the Nevada Board of Pharmacy authority to designate, by regulation and
5 within limits prescribed by the Legislature, what substances would be listed on Nevada's schedules
6 of controlled substances.⁴ Since then the Board categorized, and still categorizes, marijuana,
7 cannabis, and cannabis derivatives as Schedule I substances under NAC 453.510. By classifying
8 marijuana, cannabis, and cannabis derivatives as Schedule I substances, the Board denies that
9 marijuana has "accepted medical use in treatment in the United States."

10 The Board's authority to categorize a substance as Schedule I is limited by the conjunctive
11 test set forth in NRS 453.166, which states:

12 The Board shall place a substance in schedule I if it finds that the
13 substance:

- 14 1. Has high potential for abuse; *and*
- 15 2. Has no accepted medical use in treatment in the United
16 States or lacks accepted safety for use in treatment under medical
17 supervision.

18
19 ¹ "Marijuana" and "cannabis" are used interchangeably and have the same meaning. NRS 453.096
20 defines marijuana as: "(a) All parts of any plant of the genus *Cannabis*, whether growing or not; (b)
21 The seeds thereof; (c) The resin extracted from any part of the plant; and (d) Every compound,
22 manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin." NRS 678A.085,
under Chapter 678A- Administration of Laws Related to Cannabis, states that cannabis has the
meaning ascribed to the term "marijuana" in NRS 453.096.

23 ²An Act to Regulate the Use, Supply and Possession of Narcotic Drugs in the State of Nevada, and
24 to Provide Penalties for the Violation Thereof, Nev. Compiled Laws §§ 5084-5085 (1929) (repealed
1937).

25 ³See Section 31 of Assembly Bill No. 107 (1971 Nev. Leg. Session).

26 ⁴See 1981 Nev. Stats. ch. 402 §§ 1-39 at 734-750; see also *Miller v. Jacobson*, 104 Nev. 600, 602,
27 763 P.2d 356, 357 (1988); *Sheriff, Clark Cty. v. Luqman*, 101 Nev. 149, 153-54, 697 P.2d 107, 110
28 (1985)

1 (Emphasis added). Several Nevada Revised Statutes reference the classifications designated by the
2 Board to criminalize activities related to controlled substances.⁵

3 In 1998, Nevada voted on and passed the *Nevada Medical Marijuana Act*, a ballot initiative
4 intended to amend the Nevada Constitution to legalize marijuana for medical use in Nevada.⁶
5 Successful passage of the *Nevada Medical Marijuana Act* resulted in the addition of Article 4,
6 Section 38, of the Nevada Constitution, which states:

7
8 1. The legislature shall provide by law for:

9 (a) The use by a patient, upon the advice of his physician, of a
10 plant of the genus *Cannabis* for the treatment or alleviation of
11 cancer, glaucoma, acquired immunodeficiency syndrome;
severe, persistent nausea of cachexia resulting from these or other
chronic or debilitating medical conditions; epilepsy and other

12
13 ⁵ For example, NRS 453.337 makes it unlawful to possess for sale any amount of a Schedule I
14 substance. Penalties for violating NRS 453.337 are based on whether the offender is a subsequent
15 offender, with the first offense being a Category D felony. Because marijuana is classified as a
16 Schedule I substance, it is a Class D felony to possess *any* amount of marijuana for sale. To put this
17 into perspective, if an individual sells even a tenth of a gram of marijuana without a license, they
18 would be charged with a Class D felony for their first offense and even steeper penalties for any
19 subsequent sales. This is a dramatic departure from marijuana being treated like alcohol given that
20 an individual selling any amount of alcohol without a license is simply fined for selling alcohol
21 without a license. *See* NRS 364.150.

22 As another example, NRS 453.336 criminalizes possession of a controlled substance not for purpose
23 of sale. It states, “[a] person who violates this section shall be punished for the first or second
24 offense, if the controlled substance is listed in schedule I, II, III or IV, for a category E felony as
25 provided in NRS 193.130.” Because marijuana was not legalized for individuals under 21 years of
26 age and it is classified as a Schedule I substance, NRS 453.336 is being used to charge juveniles and
27 persons under 21 years old with felony offenses for possessing concentrated cannabis. Such actions
28 are a clear circumvention to the legislature’s recent passing of AB158 which makes possession of
one ounce or less of marijuana by a juvenile a citable offense. *See* Nev. Legis. AB 158 Reg. Sess.
2021.

29 In another, when looking in the context of prohibitions against possession of firearms, NRS 202.360
30 “[prohibits any person to] have in his or her possession or under his or her custody or control any
31 firearm if the person is an unlawful user of, or addicted to, any controlled substance.” Again,
32 because marijuana is classified as a Schedule I substance, an individual who is addicted to marijuana
33 would be prohibited from possessing a firearm.

34 ⁶ Scott McKenna, *Medical Marijuana Laws in the Silver State*, 6 Nevada Lawyer, Aug. 10, 2002.

1 disorders characterized by seizure; multiple sclerosis and other
2 disorders characterized by muscular spasticity; or other
conditions approved pursuant to law for such treatment.

3 (b) Restriction of the medical use of the plant by a minor to
4 require diagnosis and written authorization by a physician,
5 parental consent, and parental control of the acquisition and use
of the plant.

6 (c) Protection of the plant and property related to its use from
7 forfeiture except upon conviction or plea of guilty or nolo
8 contendere for possession or use not authorized by or pursuant to
this section.

9 (d) A registry of patients, and their attendants, who are
10 authorized to use the plant for a medical purpose, to which law
enforcement officers may resort to verify a claim of authorization
and which is otherwise confidential.

11 (e) Authorization of appropriate methods for supply of the plant
12 to patients authorized to use it.⁷

13 The Nevada Legislature followed this constitutional mandate by passing Assembly Bill 453 (2001).

14 In 2016, Nevada voted on and passed the *Initiative to Regulate and Tax Marijuana*, which
15 legalized possession of marijuana for recreational purposes.⁸ The initiative intended to “better focus
16 state and local law enforcement resources on crimes involving violence and personal property”
17 rather than prosecuting marijuana offenses.⁹ The *Initiative* explicitly stated that it intended for
18 marijuana to be “regulated in a manner similar to alcohol.”¹⁰ In addition to legalizing the use of
19 cannabis for recreational purposes, the *Initiative* prescribed the regulatory regime that would oversee
20 the market for both recreational and medical cannabis, naming the Nevada Department of Taxation
21 as the prime regulatory agency.

22
23
24 ⁷ Nevada Const. art. IV, § 38.

25 ⁸ *Initiative to Regulate and Tax Marijuana*, Nevada Secretary of State, 1 (April 23, 2014),
26 <https://www.nvsos.gov/sos/home/showdocument?id=3294>.

27 ⁹ *Id.*

28 ¹⁰ *Id.*

1 In 2019, the Nevada Legislature passed NRS Title 56, titled "Regulation of Cannabis", to
2 codify and clarify the *Initiative*. In four chapters, NRS Chapters 678A-D, the Legislature created a
3 comprehensive regulatory regime for the new cannabis industry, tasking the Cannabis Compliance
4 Board with heading the regime while explicitly authorizing specific Nevada state agencies and
5 subdivisions to regulate all aspects of the cannabis industry. The Nevada State Board of Pharmacy
6 was not referenced in any capacity nor explicitly authorized to participate in the regulatory regimes
7 prescribed by the *Initiative* or NRS Title 56.

8 Pursuant to the Petition, Petitioners/Plaintiffs requested that this Court resolve the
9 discrepancies between Article 4, Section 38, of the Nevada Constitution, NRS 453.166, and NAC
10 453.510 by declaring that: (1) the classification of marijuana, cannabis, and cannabis derivatives as
11 Schedule I substances violates Article 4, Section 38, of the Nevada Constitution or in the alternative
12 the classification of marijuana, cannabis, and cannabis derivatives as Schedule I substances violates
13 NRS 453.166; (2) the Nevada State Board of Pharmacy acted outside of its authority when it
14 classified, or failed to remove, marijuana, cannabis, and cannabis derivatives; and (3) the Nevada
15 State Board of Pharmacy must remove marijuana, cannabis, and cannabis derivatives as Schedule I
16 substances under NAC 453.510(4), NAC 453.510(9), and NAC 453.510(10).

17 **CONCLUSIONS OF LAW REGARDING IMMEDIATE RULING**

18 As the transactions and occurrences that give rise to the Petitioners' claims against
19 Respondent, the Nevada State Board of Pharmacy, occurred in the City of Las Vegas, Clark County,
20 Nevada, and the Respondents operate and/or reside in Clark County, this Court has the authority to
21 grant the writ relief requested herein pursuant to NRS 34.160. Additionally, this Court has original
22 subject matter jurisdiction over this request for declaratory and injunctive relief under Article 6,
23 Section 6, of The Constitution of the State of Nevada.¹¹ Venue is proper in this Court pursuant to
24 NRS 13.020 and 13.040 because the cause, or some part thereof, arose in the City of Las Vegas,
25 Clark County, Nevada.

26
27 _____
28 ¹¹ See also NRS 30.030 (Uniform Declaratory Judgments Act).

1 Writ relief is an extraordinary remedy, and therefore, it is within a court's sound discretion
2 whether to grant such relief.¹² "Extraordinary writ relief may be available where there is no 'plain,
3 speedy and adequate remedy in the ordinary course of law.'"¹³ However, even when a legal remedy
4 is available, the court can "still entertain a petition for writ 'relief where the circumstances reveal
5 urgency and strong necessity.'"¹⁴ A writ of mandamus may be issued by the court "to compel the
6 performance of an act which the law especially enjoins as a duty resulting from an office, trust or
7 station; or to compel the admission of a party to the use and enjoyment of a right or office to which
8 the party is entitled and from which the party is unlawfully precluded by such inferior tribunal,
9 corporation, board or person," when there is no plain, speedy, and adequate remedy in the ordinary
10 course.¹⁵ The court must examine each request for writ relief individually.¹⁶ The court will generally
11 exercise its discretion to consider an extraordinary writ where an important legal issue that needs
12 clarification is raised or to promote judicial economy and administration.¹⁷ When a petition for
13 extraordinary relief involves a question of first impression that arises with some frequency, the
14 interests of sound judicial economy and administration favor consideration of the petition.¹⁸

15
16 ¹² *Segovia v. Eighth Judicial Dist. Court*, 133 Nev. 910, 911, 407 P.3d 783, 785 (2017).

17 ¹³ *Id.*, quoting NRS 34.170 and NRS 34.330).

18 ¹⁴ *Id.*, quoting *Barngrover v. Fourth Judicial Dist. Court*, 115 Nev. 104, 111, 979 P.2d 216, 220
19 (1999)).

20 ¹⁵ "The writ may be issued by ... a district court or a judge of the district court, to compel the
21 performance of an act which the law especially enjoins as a duty resulting from an office, trust or
22 station; or to compel the admission of a party to the use and enjoyment of a right or office to which
23 the party is entitled and from which the party is unlawfully precluded by such inferior tribunal,
corporation, board or person. When issued by a district court or a judge of the district court it shall
be made returnable before the district court." NRS 34.160; NRS 34.170.

24 ¹⁶ *Jeep Corp. v. Second Judicial Dist. Court*, 98 Nev. 440, 443, 652 P.2d 1183, 1185 (1982).

25 ¹⁷ *State Office of the Attorney General v. Justice Court of Las Vegas Township*, 133 Nev. 78, 80, 392
26 P.3d 170, 172 (2017).

27 ¹⁸ *A.J. v. Eighth Judicial District Court in and for County of Clark*, 2017, 394 P.3d 1209, 133 Nev.
28 202, quoting *Cote H. v. Eighth Jud. Dist. Ct. ex rel. Cty. of Clark*, 124 Nev. 36, 175 P.3d 906 (2008).

1 Under the Nevada Uniform Declaratory Judgments Act, NRS 30.010 to 30.160, this Court
2 has the power to declare the rights, status, and other legal relations of the parties whether or not
3 further relief is or could be claimed, and a declaration may be either affirmative or negative in form
4 and effect, and such declarations have the force and effect of a final judgment or decree.¹⁹ More
5 specifically, with respect to contracts, statutes, and other writings, NRS 30.040(1) provides:

6 Any person interested under a deed, written contract or other
7 writings constituting a contract, or whose rights, status, or other
8 legal relations are affected by statute, municipal ordinance,
9 contract or franchise, may have determined any question of
10 construction or validity arising under the instrument, statute,
11 ordinance, contract or franchise and obtain a declaration of rights,
12 status or other legal relations thereunder.

13 The provisions of the Act are to be liberally construed and administered, and are intended to be
14 remedial, in order to settle and to afford relief from uncertainty and insecurity with respect to rights,
15 status and other legal relations.²⁰ Such declarations have the force and effect of a final judgment or
16 decree.²¹ This matter satisfies the four elements that must be met for declaratory relief to be granted,
17 as described below.²² The facts stated above herein reveal a justiciable controversy in which a claim
18 of right is asserted against one who has an interest in contesting it. The controversy is between
19 persons whose interests are adverse. The issue involved in the controversy is ripe for determination
20 as individuals continue to be prosecuted for violating Nevada statutes which rely on the scheduling
21 of marijuana, cannabis, and cannabis derivatives as Schedule I substances, and CEIC must continue
22 to expend resources remedying such actions.

23 Because there is no requirement that Petitioners/Plaintiffs exhaust any administrative
24 remedies directly with the Board of Pharmacy, and in light of the holding in *State Bd. Of Parole*

25 ¹⁹ See NRS 30.030.

26 ²⁰ See NRS 30.140.

27 ²¹ NRS 30.030.

28 ²² *Kress v. Corey*, 65 Nev. 1, 25–26, 189 P.2d 352, 364 (1948).

1 *Comm'rs v. Second Judicial Dist. Court*,²³ a Writ of Mandamus and Complaint for Declaratory
2 Relief are appropriate vehicles for seeking redress in this matter.

3 This Court has subject matter jurisdiction, pursuant to NRS 34.160 and Article 6, Section 6
4 of the Nevada Constitution, to determine the legal questions at hand, specifically whether (1) the
5 Constitution of the State of Nevada, Article 4, Section 38, and NRS 143.166 precludes the Board of
6 Pharmacy from scheduling cannabis, as defined by NRS 453.096 pursuant to NRS 678A.085, as a
7 Schedule I substance and (2) after the passage of the *Initiative to Regulate and Tax Marijuana* and
8 the subsequent enactment of NRS Title 56 by the Nevada State Legislature, the Nevada State Board
9 of Pharmacy retained its authority to regulate cannabis.

10 *I. Standing*

11 A petitioner has standing in a proceeding on an extraordinary writ when the petitioner has a
12 “beneficial interest” in obtaining writ relief. “[A] beneficial interest sufficient to pursue a
13 mandamus action” is a “substantial interest that falls within the zone of interests to be protected by
14 the legal duty asserted.”²⁴ In other words, the writ of mandamus must be denied if the petitioner will
15 gain no direct benefit from its issuance and suffer no direct detriment if it is denied.²⁵

16 CEIC has organizational standing in this matter because (1) its organizational mission was
17 frustrated and (2) it had to divert resources to combat the particular injurious behavior in question.²⁶
18 If the writ of mandamus is denied, CEIC will continue to suffer these detriments, and if it is granted,
19 it will gain a direct benefit. Furthermore, CEIC has associational standing in this matter because (1)

20 _____
21 ²³451 P.3d 73, at 76 (2019) (“But the Pardons Board cannot answer the legal question presented in
22 this matter, as that is a matter for the courts.”)

23 ²⁴ *Id.* at 460-61 (citing *Lindelli v. Town of San Anselmo*, 111 Cal.App.4th 1099, 4 Cal.Rptr.3d 453,
24 461 (2003)).

25 ²⁵ *Id.* (citing *Waste Management v. County of Alameda*, 79 Cal.App.4th 1223, 94 Cal.Rptr.2d 740,
26 747 (2000)).

27 ²⁶ “An organization may satisfy the Article III requirement of injury in fact if it can demonstrate: (1)
28 frustration of its organizational mission; and (2) diversion of its resources to combat the particular
housing discrimination in question.” *Smith v. Pac. Props. & Dev. Corp.*, 358 F.3d 1097, 1105 (9th
Cir. 2004).

1 its members would otherwise have standing to sue in their own right; (2) the interests it seeks to
2 protect are germane to the organization's purpose; and (3) neither the claim asserted nor the relief
3 requested requires the participation of individual members in the lawsuit.²⁷ Finally, because the
4 issues before the Court question whether an executive branch agency engaged in regulatory
5 rulemaking outside of the authority granted to the agency pursuant to the Nevada Constitution and
6 statute, the issues are fundamentally about separation-of-powers between the branches of Nevada's
7 government,²⁸ and CEIC has standing pursuant to the public-importance doctrine as described in
8 *Nev. Pol'y Rsch Inst., Inc., v. Cannizarro*, 507 P.3d 1203 (2022).

9 Antoine Poole, a Nevada resident who has been convicted under the Nevada Revised Statutes
10 of a controlled substance-related offense after the legalization of cannabis in Nevada and who
11 continues to experience collateral consequences because of his conviction, has a direct and
12 substantial interest in obtaining writ relief in this matter.

13 Plaintiffs have standing in this matter as set forth in this Court's order dated July 26, 2022,
14 which is based upon the uncontroverted declarations of the Plaintiffs.

15 *II. Article 4, Section 38 of the Constitution of the State of Nevada*

16 This Court has a duty not to create law or policy but rather to interpret the law including the
17 constitutionality of statutes, statutory schemes, and regulations. Additionally, this Court is beholden
18 to the laws of the State of Nevada, especially those set forth in the Constitution of the State of
19 Nevada. Here Petitioners/Plaintiffs have no plain, speedy and adequate remedy in the ordinary
20 course of law, and there is no other legal method to challenge the Board's misclassification of

21 _____
22 ²⁷ “[W]e have recognized that an association has standing to bring suit on behalf of its members
23 when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it
24 seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the
25 relief requested requires the participation of individual members in the lawsuit.” *Hunt v. Washington*
State Apple Advertising Comm'n, 432 U.S. 333, 343, 97 S.Ct. 2434, 53 L.Ed.2d 383 (1977). *Greater*
Birmingham Ministries v. Sec'y of State for State of Alabama, 992 F.3d 1299, 1316 (11th Cir. 2021).

26 ²⁸ See *Roberts v. State*, 104 Nev. 33, 36-40 (1988) (finding that agency regulation invalidated due to
27 falling outside the agency's authority violated the separation-of-powers doctrine); *West Virginia v.*
28 *EPA*, 142 S. Ct. 2587, 2609 (2022) (finding that invalid EPA regulation implicated separation-of-
powers doctrine).

1 marijuana, cannabis, and cannabis derivatives as Schedule I substances. Thus, relief pursuant to a
2 writ of mandamus is appropriate.

3 Article 4, Section 38 of the Nevada Constitution, “Use of Plant of genus Cannabis for
4 medical purposes,” specifically refers to the use of cannabis by a patient, upon the advice of a
5 physician, for the treatment or alleviation of various medical conditions, recognizing under Nevada
6 law that there is an accepted use of cannabis for medical treatment.

7 Regulations passed by the Board of Pharmacy, including the designation of substances as
8 Schedule I pursuant to the agency’s rulemaking authority, cannot violate the Nevada Constitution.
9 The Nevada Legislature, through NRS 453.211(1)(a), has conferred a duty upon the Board of
10 Pharmacy to follow NRS 453.166 when classifying substances as Schedule I substances. Under NRS
11 453.166, the Board of Pharmacy may only designate a substance as a Schedule I substance if it
12 determines that the substance “has high potential for abuse *and* has no accepted medical use in
13 treatment in the United States or lacks accepted safety for use in treatment under medical
14 supervision.” (Emphasis added). The Board of Pharmacy is mandated to review the schedule
15 annually and maintain a list of current schedules.²⁹ Given the mandate that the Board review the
16 schedule annually, its failure to remove marijuana, cannabis, and cannabis derivatives as Schedule I
17 substances year after year is an affirmation that they satisfy both requirements under NRS 453.166.
18 However, such a conclusion is erroneous given that in 1998, Nevada recognized marijuana as having
19 medical use in treatment under Article 4, Section 38 of the Nevada Constitution.³⁰

20 Because the Board’s misclassification of marijuana, cannabis, and cannabis derivatives in
21 NAC 453.510(4), NAC 453.510(9), and NAC 453.510(10) is in direct contradiction with Article 4,
22 Section 38 of the Nevada Constitution, the misclassification is unconstitutional and must be declared
23 invalid. The clash between Nevada’s explicit recognition of marijuana’s acceptable use in medical
24 treatment, which is enshrined in the Nevada Constitution, and the Board’s classification of

25 _____
26 ²⁹ NRS 453. 211(1)(a): “The Board shall review the schedule annually and maintain a list of current
schedules.”

27 ³⁰ Section 38 not only recognizes that marijuana has accepted medical use in treatment, but it also
28 explicitly lists disorders marijuana must be available to treat.

1 marijuana, cannabis, and cannabis derivatives as Schedule I substances due to the substances having
2 no accepted medical use in treatment presents an important constitutional question. Therefore, the
3 Board exceeded its authority when it placed, or failed to remove marijuana, cannabis, and cannabis
4 derivatives on its list as Schedule I substances and NAC 453.510 (4), NAC 453.510(9), and NAC
5 453.510(10) must be amended to reflect this change.

6 The term “in the United States” as used in NRS 453.166 refers to the geographical confines
7 of the United States, of which Nevada is part. As such, because Nevada law finds that cannabis is
8 acceptable for medical treatment, it cannot be designated a Schedule I substance. Furthermore, the
9 Court finds that it is bound to follow Nevada law, including Article 4, Section 38 of the Nevada
10 Constitution and NRS 453.166, not secondary sources published by federal agencies and medical
11 journals.

12 This Court is not persuaded by Respondents/Defendants argument that Petitioners/Plaintiffs
13 are barred from seeking relief because the regulations at issue have been in force for twenty-two
14 years since the passage of Article 4, Section 38. “Unlawful acts, performed long enough with
15 sufficient vigor, are never enough to amend the law.”³¹

16 To ensure that this Court’s order is effective immediately and that marijuana, cannabis, and
17 cannabis derivatives will no longer be considered Schedule I substances under Nevada law,
18 Petitioners/Plaintiffs urged this Court to order the Board of Pharmacy to comply with NAC 639.110
19 to ensure that Nevada agencies do not consider the regulations active while the Board follows the
20 procedures necessary to amend its list of Schedule I substances. This Court, however, declines to
21 rule on the merits of this argument because as the Board points out, the listing of marijuana,
22 cannabis, and cannabis derivatives in Schedule I no longer has any legal effect with the issuance of
23 this order. *See State v. Eastabrook*, 3 Nev. 173, 180 (1867) (finding that “if a law passed by the
24 legislature be constitutional as to part of its provisions and unconstitutional as to others, the
25 unobjectionable portion may stand, if by rejecting that which is unconstitutional, the whole object
26 and effect of the law is not destroyed.”).

27 _____
28 ³¹ *McGirt v. Oklahoma*, 140 S. Ct. 2452, 2482 (2020).

1 Petitioners/Plaintiffs are entitled to declaratory relief that the Board’s scheduling of cannabis
2 as a Schedule I substance is in direct contradiction with the Nevada Constitution and violates NRS
3 453.166 and writ relief ordering the Board to remove cannabis from its list of Schedule I substances.

4 The remainder of the Complaint, insofar as it pertains to the request for injunctive relief
5 (Petition/Compl. ¶¶ 63 – 66,), is moot as the claims in this matter have been resolved via declaratory
6 relief and the writ of mandamus and is therefore dismissed.

7 **CONCLUSIONS OF LAW REGARDING THE RESERVED RULING**

8 The scope of a Nevadan administrative agency’s authority is limited to the matters that the
9 Nevada State Legislature has expressly or implicitly delegated to the agency, and “an administrative
10 agency cannot enlarge its own jurisdiction.” *City of Reno v. Civil Serv. Comm’n of Reno*, 117 Nev.
11 855, 858 (2001). While an administrative body may make rules and regulations calculated to carry
12 into effect the expressed legislative intention, it may only do so within “prescribed limits and when
13 authorized by the law-making power.” *Cashman Photo Concessions & Labs v. Nev. Gaming*
14 *Comm’n*, 91 Nev. 424, 428, 538 P.2d 158, 160 (1975). However, regulations that are unauthorized
15 by the law-making power or go beyond the limits prescribed by the Legislature are invalid. *See Id.* If
16 authority to regulate on a particular matter is not explicitly delegated to an agency, the agency must
17 have implicit authority for the action, but “[f]or implied authority to exist, the implicitly authorized
18 act must be essential to carrying out an express duty.” *Stockmeier v. State*, 127 Nev. 243, 248, 255
19 P.3d 209, 212 (2011).

20 Before the Board may designate a substance as a “controlled substance”, the Nevada
21 Legislature must delegate the necessary authority to the Board.³² If the Board designates a substance
22 as a “controlled substance” but the designation falls outside the authority delegated by the
23 Legislature, the designation is invalid.³³

24 While the Legislature may have delegated the general authority to regulate marijuana,
25 cannabis, and cannabis derivatives pursuant to the Board in 1981, the Board no longer has the

26 _____
27 ³² *See Miller v. Jacobson*, 104 Nev. 600, 763 P.2d 356, 358-359 (1988) (holding State could not
28 prosecute a defendant for possessing a substance that was improperly scheduled by the Board as a
controlled substance).

³³ *Id.*

1 authority to regulate those substances because they are now regulated pursuant to NRS Title 56
2 “Regulation of Cannabis”.

3 As the Board of Pharmacy acknowledges, Title 56, stretching across four chapters of the
4 Nevada Revised Statutes,³⁴ provides a comprehensive regulatory regime for cannabis used
5 recreationally and medically. Every aspect of cannabis production, transportation, distribution, sale,
6 and use is governed by the provisions in Title 56.

7 Relevant to this matter, Title 56 explicitly describes what Nevada executive agencies are
8 involved in this regulatory regime and the extent of their regulatory authority. Under Title 56:

- 9
- 10 • The Cannabis Compliance Board is *explicitly* authorized to “adopt regulations
11 necessary or convenient to carry out the provisions of [Title 56].”³⁵ NRS 678A.450(1).
This authority includes the regulation of “medical cannabis dispensaries” as defined by
NRS 678A.175 and the “medical use of cannabis” as defined by NRS 678A.215.
 - 12 • The Cannabis Advisory Commission is *explicitly* authorized to make
13 “recommendations to the Cannabis Compliance Board regarding the regulation of,
14 cannabis and any activity related to the cannabis” and *explicitly* placing the Directors
of the Departments of Public Safety and Taxation on the Commission. NRS
15 678A.300(1).
 - 16 • The Nevada Division of Public and Behavioral Health is *explicitly* authorized to
17 promulgate regulations related to “the issuance of registry identification cards and
letters of approval to persons” eligible for medical cannabis under Nevada law. NRS
18 678B.640.
 - 19 • The Nevada Department of Taxation is *explicitly* authorized to conduct tax audits on
20 licensees under Title 56 and to determine the fair market value of wholesale cannabis.
NRS 678A.480; NRS 678B.640; and
 - 21 • Local governments are *explicitly* authorized to adopt and enforce local cannabis control
22 measures pertaining to zoning and land use for adult-use cannabis establishments. NRS
678D.510(1)(d).

23 In the single instance a provision outside of NRS Title 56 authorizes a State agency to regulate an
24 aspect of the cannabis market (NRS 586.550(2) authorizes the Department of Agriculture to
25 promulgate regulations regarding what pesticides may be used on cannabis or cannabis products),
26

27 _____
28 ³⁴ NRS Chapters 678A–D.

³⁵ The breadth and scope of the NRS Title 56 is in its title: “Regulation of Cannabis”.

1 the provision provides explicit authorization similar to its counterparts in NRS Title 56. In contrast,
2 the Board of Pharmacy has not received similar explicit authorization to regulate *any* aspect of the
3 cannabis market, let alone in a manner that would subject Nevadans to significant criminal penalties
4 for sale or possession of cannabis. In fact, the Board of Pharmacy is not referenced once in the four
5 chapters that comprise Title 56.

6 Considering the Board of Pharmacy's primary role is to regulate pharmacies and substances
7 distributed from those institutions, the Board's absence from Title 56 is unsurprising as the
8 substances governed by that Title may only be distributed through dispensaries licensed by the
9 Cannabis Compliance Board, not pharmacies.³⁶ This restriction applies to both medical and
10 recreational cannabis.³⁷ This means that even if the Board of Pharmacy designated cannabis as a
11 substance that a pharmacy could theoretically distribute pursuant to the Board's regulations,
12 pharmacies would still be barred from doing so pursuant to Title 56. Furthermore, presumably
13 cannabis distributed through pharmacies would be limited to medical use, but the Board itself has
14 acknowledged that it "has no jurisdiction over the medical use of marijuana."³⁸

15 The Board of Pharmacy's argument that the Nevada Legislature was required to explicitly
16 inform the Board that it was not included in cannabis's current regulatory regime is unconvincing.
17 This position inverts the relationship between the Legislative and Executive branches of
18 government. The manner in which Nevada law regulated cannabis underwent a paradigm shift with
19 the passage of the *Initiative*, the enactment of Title 56, and the creation of the Cannabis Compliance
20 Board to coordinate the cannabis market, and the explicit delegation of cannabis regulation to
21 existing agencies that were not the Board. Every aspect of the cannabis market was accounted for

22 ³⁶ NRS 678A.450(1) (authorizing the Cannabis Compliance Board to regulate the dispensation of
23 both medical and recreational cannabis); NRS 678B.210(1) (requiring any person engaging in the
24 business of a medical cannabis establishment to hold a medical cannabis establishment license
25 issued by the Cannabis Compliance Board); NRS 678B.250(1) (requiring any person engaging in the
26 business of an adult-use cannabis establishment to hold an adult-use cannabis establishment license
27 issued by the Cannabis Compliance Board)

28 ³⁷ *Id.*

³⁸ Nevada State Board of Pharmacy, *Practice Frequently Asked Questions*,
https://bop.nv.gov/resources/FAQ/Practice_FAQ/ (August 17, 2022).

1 under the new regime without the Board's inclusion. Under such circumstances, it is on the Board,
2 not the Legislature, to explain how it still has the authority to regulate the subject matter governed
3 by NRS Title 56, and it has failed to do so.

4 The Board's claim that its authority to list marijuana, cannabis, and cannabis derivatives as
5 controlled substances in Schedule II, III, IV, or V does not conflict with Title 56 is also
6 unconvincing. The Board's authority to regulate marijuana, cannabis, and cannabis derivatives under
7 NRS Chapter 453 is inconsistent with Title 56 as explained above. And as the Board itself admits,
8 Section 214 of AB 533 amended NRS 453.005 to read: "[t]he provisions of this chapter do not apply
9 to the extent that they are inconsistent with the provisions of title 56 of NRS." The fact that NRS
10 Chapter 453 governs the unlawful possession, trafficking or production of marijuana does not
11 support a finding that the Board, therefore, still has the authority to regulate marijuana. It is
12 important to reiterate that Title 56 created a comprehensive regulatory scheme that excluded the
13 Pharmacy Board entirely.

14 Furthermore, the Nevada Supreme Court, on multiple occasions, has clarified that a
15 subsequent statute may repeal a prior statute by implication when the subsequent statute expresses a
16 comprehensive plan to regulate the particular subject matter in question. *See Washington v. State*,
17 117 Nev. 735, 739, 30 P.3d 1134, 1137 (2001) (holding that "if a subsequent statute expresses a
18 comprehensive plan to regulate a particular subject matter, this may repeal prior statutes that deal
19 with smaller aspects of that plan") (citations omitted)). The regulatory framework created by Title
20 56 is not only comprehensive, but it also fails to empower the Board of Pharmacy with any explicit
21 authority to regulate any aspect of marijuana. Notably, the regulatory framework expressly
22 authorizes numerous other government boards with the power the regulate marijuana, but not the
23 Board of Pharmacy.

24 This order is limited to substances governed by Title 56. It does not apply to substances that
25 are not regulated pursuant to the regime prescribed by Title 56 and so may still be distributed
26 through pharmacies as the regulation of such substances still fall within the authority delegated to
27 the Board of Pharmacy by the Nevada Legislature.

28

ORDER

THEREFORE, IT IS HEREBY ORDERED:

1
2
3 1. Cannabis, as defined by NRS 678A.085, has accepted medical use in treatment as set
4 forth in the Constitution of the State of Nevada, Article 4, Section 38, titled “Use of plant of genus
5 Cannabis for medical purposes”;

6 2. The accepted medical use of cannabis enshrined in the Constitution of the State of
7 Nevada, Article 4, Section 38 precludes cannabis from regulation as a Schedule I substance pursuant
8 to the definition of a Schedule I substance set forth in NRS 453.166;

9 3. The scheduling of cannabis as a Schedule I substance is in direct conflict with Article
10 4, Section 38 of the Constitution of the State of Nevada and violates NRS 453.166;

11 4. Any and all provisions under NAC 453.510 scheduling cannabis as a Schedule I
12 substance, specifically NAC 453.510(4) where cannabis is listed as “Marijuana;” NAC 453.510(9)
13 which references “tetrahydrocannabinols;” and NAC 453.510(10) which discusses “CBD;” as well
14 as any and all other references to marijuana, cannabis, and cannabis derivatives, are invalid pursuant
15 to Article 4, Section 38 of the Constitution of the State of Nevada;

16 5. The Legislature’s directive as set forth in NRS 453.211(1)(a) that, “The Board shall
17 review the schedules annually and maintain a list of current schedules,” requires the Nevada Board
18 of Pharmacy to update the schedule of controlled substances to comply with the Nevada Constitution
19 and conform with the statutory definitions of each schedule;

20 6. The Nevada Board of Pharmacy acted outside of its authority when it failed to
21 remove cannabis from the list of Schedule I substances upon the enactment of Article 4, Section 38
22 of the Constitution of the State of Nevada, which recognizes the use of cannabis for medical
23 treatment;

24 7. The Nevada Board of Pharmacy is hereby ordered to remove cannabis from the list of
25 Schedule I substances, specifically from NAC 453.510(4) where it is listed as “Marijuana”, NAC
26
27
28

1 453.510(9) which references “tetrahydrocannabinols”, and NAC 453.510(10) which discusses
2 “CBD”, as well as any and all other references to marijuana, cannabis, and cannabis derivatives;³⁹

3 8. The listing of marijuana, cannabis, and cannabis derivatives in Schedule I under NAC
4 453.510 no longer has any legal effect;

5 9. The Nevada Board of Pharmacy is hereby ordered to cease the regulation of
6 substances subject to regulation pursuant to Title 56; and

7 10. If any substances regulated pursuant to Title 56 are currently scheduled as a
8 controlled substance, the Board must remove such substance from the agency’s schedule of
9 controlled substances.

10 Petitioners’ Petition for Writ of Mandamus and Request for Declaratory Relief is
11 **GRANTED.**

Dated this 26th day of October, 2022



FF8 A68 E46D 92DE
Joe Hardy
District Court Judge

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26 _____
27 ³⁹ NAC 639.110 “When any regulation adopted by the Board and filed with the Secretary of State
28 expires by its own terms, is repealed or is declared unconstitutional by a court of competent
jurisdiction, the Executive Secretary shall so inform the Secretary of State and request that it be
placed in an inactive file.”

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CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Cannabis Equity and Inclusion
Community, Plaintiff(s)

vs.

Nevada ex reL. Board of
Pharmacy, Defendant(s)

CASE NO: A-22-851232-W

DEPT. NO. Department 15

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Order was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 10/26/2022

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1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Cannabis Equity and Inclusion
7 Community, Plaintiff(s)

CASE NO: A-22-851232-W

8 vs.

DEPT. NO. Department 15

9 Nevada ex reL. Board of
10 Pharmacy, Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

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14 Court. The foregoing Notice of Entry of Order was served via the court's electronic eFile
15 system to all recipients registered for e-Service on the above entitled case as listed below:

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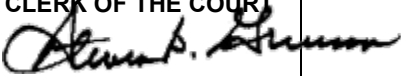
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RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

CANNABIS EQUITY AND
INCLUSION COMMUNITY, ET AL.,

Plaintiff,

vs.

NEVADA EX REL. BOARD OF
PHARMACY,

Defendant.

CASE#: A-22-851232-W

DEPT. XV

BEFORE THE HONORABLE JOE HARDY
DISTRICT COURT JUDGE
WEDNESDAY, SEPTEMBER 14, 2022

RECORDER'S TRANSCRIPT OF PETITION FOR WRIT OF
MANDAMUS

APPEARANCES

For the Plaintiffs

CHRISTOPHER PETERSON, ESQ.
SOPHIA A. ROMERO, ESQ.

For the Defendant

WILLIAM B. KANDT, ESQ.
PETER K. KEEGAN, ESQ.

RECORDED BY: VELVET WOOD, COURT RECORDER

1 Las Vegas, Nevada, Wednesday, September 14, 2022

2
3 [Case called at 10:38 a.m.]

4 THE CLERK: Cannabis Equity and Inclusion Community v.
5 Nevada ex reL. Board of Pharmacy.

6 THE COURT: Sorry, hold on.

7 [Court and Clerk confer]

8 THE COURT: We're going to call --

9 [Off the record at 10:39 a.m./On the record at 10:41 a.m.]

10 THE CLERK: Page number 13, A851232, Cannabis Equity and
11 Inclusion Community v. Nevada Board of Pharmacy.

12 MR. PETERSON: Good morning, Your Honor.

13 THE COURT: Go ahead and state your appearances.

14 MR. PETERSON: Chris Peterson from the ACLU of Nevada
15 appearing on behalf of CEIC and Mr. Poole. I'm here with Sophia
16 Romero.

17 MS. ROMERO: 12446, ACLU of Nevada on behalf of CEIC
18 and Mr. Poole.

19 THE COURT: Okay.

20 MR. KANDT: Good morning, Your Honor. Brett Kandt,
21 Nevada State bar number 5384, on behalf of the State of Nevada, Board
22 of Pharmacy.

23 THE COURT: Good morning.

24 MR. KEEGAN: Good morning, Your Honor. Peter Keegan,
25 bar number 12237, on behalf of the Nevada State Board of Pharmacy.

1 THE COURT: Good morning. Okay. Bear with me a
2 moment. You all can have a seat. So I have reviewed -- oh, let's see. Let
3 me pull it up. The petition, Respondent/Defendants answer, and the
4 Petitioner/Plaintiffs reply. And I guess, I think I know, but I want to make
5 sure we're all on the same page, hopefully, but -- because I made kind of
6 a comment at the last hearing about potential ruling on briefing or
7 potential trial. It appears to me that both sides are prepared for me to
8 roll on the merits of the arguments, the matter of law, without any trial,
9 but I wanted to make sure that was the case. If not, tell me why. But first
10 let's ask Petitioners. Are you prepared for me to rule on the merits
11 today?

12 MR. PETERSON: Yes, Your Honor. We're prepared for that.

13 THE COURT: Okay. Respondents?

14 MR. KANDT: Yes, Your Honor.

15 THE COURT: Okay. Thank you. I'm glad to hear. I thought
16 that was the case, but good to confirm.

17 So, like I said, I did review the briefs. I don't think I have any
18 comments or questions right off the bat, but I welcome arguments.
19 Begin with Petitioner/Plaintiffs.

20 MR. PETERSON: Your Honor, we're here today to resolve an
21 inconsistency in how Nevada law use marijuana. Specifically, what is
22 marijuana? As I'm sure the Court is aware, we could leave this
23 courthouse today, walk three or four blocks south of here, walk into a
24 dispensary, and if we have an identification showing we're over the age
25 21, purchase marijuana and purchase it for recreational use.

1 Since 2000, if you had certain medical diagnoses, and you
2 have proof of that, you could get a card from the State and go down and
3 again, still purchase that substance from a dispensary. Under those
4 circumstances, of course, marijuana is something that can be safely
5 given to the public and enjoyed by the public for recreational use and
6 also to treat certain medical ailments. However, under Nevada law,
7 under other circumstances, it's treated as though it's essentially a
8 poison, that it's something that is as dangerous as heroin is.

9 And thinking again, back to the example we're talking about.
10 If I walk down to that dispensary, I purchased the marijuana, that
11 substance is fair for recreational use, for having a good time. But if I
12 hand that off to somebody else, and they reimburse me for it, it suddenly
13 turns into something on par with heroin.

14 And this inconsistency, this legal inconsistency, right, is a rut
15 at the core of the legal framework governing the regulation of marijuana
16 in this State. And the source of that rut is agency overreach. The Board
17 of Pharmacy is regulating marijuana when it does not have the authority
18 to do so. And even prior to 2017, was regulating it in a fashion that
19 violated the Nevada Constitution.

20 Now, the Court asked some questions ahead of time just to
21 confirm that you could rule in the merits today. I do want to be very
22 clear about what the issues are today.

23 THE COURT: And that's -- I'm glad to hear you say that,
24 candidly, because here I'll just read my note and that may help guide
25 both sides. This is one of my notes. I am limited to the petition and

1 arguments raised in the petition and the relief sought. I'm not inclined,
2 nor have authority, I don't believe, to go outside that rule on issues that
3 are not raised appropriately in the petition.

4 MR. PETERSON: Yes. And those two issues, as we have
5 presented them, are that, one, whether -- with the passage of Article
6 Four, Section 38, whether the Board at that point had the authority to
7 regulate marijuana as a Schedule 1 substance and whether that would
8 legally violate Article Four, Section 38.

9 The second issue is after 2017, with the passage of the
10 initiative and clarified by the passage of NRS Title 56, whether or not the
11 Board has the authority to regulate marijuana at all at this point under
12 law. And again, both these issues relate back to the Board's legal
13 authority to regulate this substance rather than its factual basis to do so,
14 to be clear about that.

15 Now talking about the first issue, whether or not the Board,
16 after the announcement of Article Four, Section 38, could continue to
17 regulate marijuana as a Schedule 1 substance. Now, obviously, the
18 legislature -- actually, before I go into that, I do want to clarify also what
19 are the limits, right, under Nevada law on an executive agency's ability
20 to engage in the promulgation of regulations. And it's very important to
21 clarify, the Board's authority to promulgate regulations is limited to the
22 authority designated to it by the legislature, which, of course, means it
23 must follow the statutes that bind that authority and, of course, the
24 Nevada Constitution is higher, and it must follow that as well.

25 As you pointed out, an agency cannot expand its own

1 regulatory authority. And obviously, if it falls outside of that regulatory
2 authority, it is -- that regulation is invalid. It's essentially a violation of
3 separation of powers. So again, turning back to the idea of talking about
4 the Board's decision to continue scheduling marijuana as a Schedule 1
5 substance after the enactment of Article Four, Section 38.

6 Now the Board can only schedule a substance as a Schedule
7 1 substance under the restrictions placed upon it by the legislature. If
8 that substance, one, has a high potential for abuse; and then, two, either
9 has no medical value or cannot be safely distributed to the public.

10 THE COURT: That's an "and."

11 MR. PETERSON: And. So looking at what's going on in this
12 particular situation, the Board, in their answer, seems to have focused on
13 one specific element. It's essentially claimed that they can schedule a
14 Schedule 1 substance because it is -- has no medical value in the United
15 States. That's the position that they've gone with. They've not argued
16 that it cannot be safely distributed, and they have not argued as far as
17 that prong is concerned. So focusing specifically on that.

18 And when we talk about no medical value, it seems that they
19 have conflated the term in the United States with the federal
20 government, especially their emphasis on national organizations and
21 their emphasis on the DEA.

22 THE COURT: Yeah. I'm curious to hear, probably not your
23 argument for that --

24 MR. PETERSON: Correct.

25 THE COURT: -- but the State's in terms of it is a little

1 puzzling, so.

2 MR. PETERSON: Well, as we pointed out in our brief, basic
3 statutory construction shows that in the United States it's related to the
4 geographical boundaries of the United States. Obviously, the State of
5 Nevada is inside those geographical boundaries. And in turn, the State
6 of Nevada has recognized, in its own constitution, that marijuana has
7 medical value. Of course, we can go beyond Nevada if we so choose.

8 As we pointed out in a brief, a number of states have
9 descheduled marijuana, either lowering it down from a Schedule 1,
10 which had the same definition as our state, down to lower schedules, or
11 removed it entirely from the scheduling system.

12 Now, as far as Article Four, Section 38, and establishing that
13 it has medical value, again, it's explicitly about marijuana for medical
14 purposes. It explicitly says -- describes who would be using it is the
15 patient that would be receiving it. Article Four, Section 38 makes it clear
16 medical value is enshrined in our constitution here in the State of
17 Nevada.

18 And, of course, there's an entire chapter since 2000 and it
19 had been in existence when you talk about NRS 453A, going into now
20 been incorporated in NRS Title 56, that establishes again that there is
21 medical value for marijuana and there's an entire process under the
22 umbrella of the State Department of Health handling that situation.

23 Now, going beyond though -- and I do want to emphasize
24 we've actually had two paradigm shifts when it comes down to the
25 regulation of marijuana in the state. The first, which I've been

1 addressing, of course, is the enactment in 2000, of Article Four, Section
2 38. But of course there's a second paradigm shift that occurs in 2017,
3 when the passage of the initiative and then in turn the enactment of NRS
4 Title 56. And while the Board of Pharmacy, at one point, it's going to
5 enter a claim -- it enters claims, that Title 56, it has narrow confines. The
6 reality is Title 56 is comprehensive.

7 As they point out in another section of their answer, explicitly
8 laying out who is regulating the marijuana industry, listing by name
9 multiple executive state agencies, describing from the moment that the
10 marijuana plants are planted in the ground all the way to the distribution
11 and usage, who is regulating that.

12 At no point is the Board of Pharmacy included inside that
13 regulatory system. They are excluded from this comprehensive
14 regulatory system. And I think especially when you look at the idea of
15 what is the Board of Pharmacies -- what its actual purpose is, right? It's
16 an entity that's supposed to be regulating pharmacies. Back in the day,
17 pharmacies are excluded from this regulatory regime. They are not who
18 dispenses it, not even the medical marijuana. They don't even dispense
19 that.

20 On top of that, we look at the idea more broadly, Board of
21 Pharmacy is supposed to be regulating distribution, right, of substances,
22 but that's covered in this regulatory regime, right. It's discussed about
23 who is promulgating the regulations related to distribution. And I think
24 at the end of the day, the Board's argument inverts the obligations that
25 are going on here.

1 The legislature does not have an obligation to exclude the
2 Board. It is on the Board to explain its role and why it still has regulatory
3 authority after this passage of this extensive title explaining the entire
4 regulatory system for marijuana.

5 THE COURT: So that's your argument against their
6 argument that -- you know, part of their argument in terms of, you know,
7 it's been X number of years since, you know, either the medical or the
8 recreational Was passed and the legislature hasn't done anything, and
9 therefore, the Court -- you know, that's indicative of you court shouldn't
10 be interfering, I guess, or you should wait for the legislature. What
11 you're saying is that's shifting the burden, I guess, inappropriately.

12 MR. PETERSON: Yes. And I can be a little bit more specific
13 on that. First, Title Four, Section 38, was passed through referendum
14 rather than the legislature. So at the end of the day, it was on the Board
15 to recognize that their regulations were violating the Constitution, right?

16 THE COURT: Yeah.

17 MR. PETERSON: So it's not on the legislature to tell you that
18 you're violating the law, it's on the Board to realize that.

19 And I also have a problem -- I mean, there's an issue with
20 this idea of delay in time, right. A delay in time does not mean your
21 prior unconstitutional conduct is now invalid. I think, actually, to
22 paraphrase Gorsuch when he was in -- in the case of *McGirt*, when he's
23 looking at a practice in the state of Oklahoma that had been going on for
24 100 years against the Cherokee Nation, he didn't say, oh, because you've
25 been doing this, this has been standard practice for a while, it's fine.

1 What's unconstitutional is unconstitutional.

2 THE COURT: Yeah.

3 MR. PETERSON: And the same thing is going on here as
4 well.

5 THE COURT: Let me pause you for a second, because I think
6 I have a note on that too. Yeah, it's in the opposition on page 14, in the
7 intervening 22 years after Article Four, Section 38, you know, my notes
8 are kind of similar. You know, I welcome argument from the State, but,
9 you know, continued alleged constitutional violation over years. Is that
10 reason for me not to rule? I doubt that that's a valid reason, but that's
11 kind of your argument against -- you're saying, hey, years of a
12 constitutional violation, is no reason to allow it to continue.

13 MR. PETERSON: Correct. And then when we talk about the
14 legislative -- the enactment of NRS, Title 56, I do want to also come back
15 to another basic principle when it comes to administrative authority and
16 its limitations, and that is if the authority is not given explicitly, the
17 implicit authority is related to enacting what is explicit authority, right.

18 And I think the other thing we want to think about is the idea
19 of plain language interpretation. That when we look at the statute as it
20 currently exists, and as it currently exists, there are agencies that are
21 explicitly authorized to regulate in this space, it's not ambiguous that
22 they have the authority to -- that they can regulate. And at this point, the
23 Board's authority, they're relying on implicit authority to say they can
24 still step in and regulate marijuana when they are no longer needed, yet
25 that's not related to any explicit authority they have at this point.

1 And so in turn, again, if the legislature intended for them to
2 continue regulating marijuana, the legislature would have said as much
3 on par with all the other aspects of it. And if you think about it, they
4 even talked about who would be in charge -- explicitly, who would be in
5 charge of regulating the -- who would be regulating the pesticides used
6 in the farms, right. Something that nuanced. So in turn, why would the
7 legislature not also explicitly tell the Board if they still have that
8 authority? You have the authority to essentially criminalize marijuana
9 use, and you're the ones that have control over that, about which
10 criminal statutes apply to marijuana at this point, since that is a
11 significantly weightier responsibility than what pesticides are being used
12 on these crops.

13 And so in turn, Your Honor, just to emphasize what we are
14 asking for today, we're asking for a finding that the Board's scheduling of
15 marijuana as a Schedule 1 substance, violates Article Four, Section 38
16 and has violated Article Four, Section 38 since that provision's
17 enactment.

18 Two, we're asking for a finding that the Board no longer has
19 the authority to regulate marijuana, and it has not had the authority to
20 regulate marijuana since the passage of the initiative in 2017. Obviously,
21 that was clarified in the enactment of NRS Title 56. But again, the core of
22 that is in the initiative that was passed through referendum in 2017. And
23 then to order that marijuana be removed from the Schedule 1 list of
24 controlled substances. And again, to be clear about this, my definition of
25 marijuana and what I'm referring to is specifically the definition that's

1 offered under NRS Title 56.

2 THE COURT: Thank you very much.

3 MR. PETERSON: Thank you.

4 MR. KANDT: Your Honor, the standard for a Schedule 1
5 substance is no accepted medical use in treatment in the United States.

6 Now, I think it's important to note that throughout their
7 petition, and even more so in their reply and then in counsel's
8 arguments today, that's not the standard articulated. The standard the
9 Plaintiffs repeatedly articulate is medical value. That's not the correct
10 standard. That's an important distinction. Before we move on to
11 consideration of the correct standard to be applied, if you look at Article
12 Four, Section 38, the term medical value doesn't appear in there.

13 So when the plaintiff argued that the voters enshrined the
14 medical value of marijuana in the Constitution, they're asking this Court
15 to read something into the Constitution.

16 The Constitution says the legislature shall provide by law for
17 the use by a patient upon the advice of a physician. Certainly, the voters,
18 in passing that initiative, were making a value judgment on the right of a
19 patient to make treatment decisions in consultation with their physician.
20 But they weren't necessarily making a value judgment on medical
21 marijuana and its efficacy. But when we move on to consideration of the
22 correct standard for scheduling a Schedule 1 substance, marijuana,
23 currently meets that standard.

24 Now Plaintiffs in their reply, and again today go a great
25 length to argue that United States refers to the geographical boundaries

1 of the United States. But what's their point? The State's answer makes
2 no reference to marijuana's acceptance for medical use outside the U.S.
3 We're not relying upon a position taken by the United Nations, or the
4 World Health Organization, or the European Union, or another country.
5 No. The State cites the position taken by the relevant authorities and
6 experts in the United States.

7 The U.S. Drug Enforcement Administration is tasked with
8 scheduling at the federal level, and they do so, in large part, upon the
9 determinations made by the US. Food and Drug Administration through
10 studies that have established that marijuana continues to meet the
11 criteria for Schedule 1.

12 In addition, the National Academies of Sciences, the
13 American Medical Association, the American Psychiatric Association,
14 these are the relevant experts and authorities in the United States, and
15 they all take the position that marijuana currently has no accepted
16 medical use and treatment.

17 THE COURT: So let me pause there, because I think -- well, I
18 don't think. That's one of the key arguments in dispute in terms of, you
19 know, looking at, you know, Article Four, Section 38 and NRS 453.166, I
20 mean, how -- I'm trying -- I apologize, I'm trying to articulate my question
21 and doing a poor job. And appropriately, both sides focused on
22 Subsection 2, 453.166, because it's a conjunctive and.

23 So your argument is, hey, all these agencies, you know,
24 agencies, and medical boards, and experts within the United States say
25 hey, medical marijuana has no -- and I forget, I'm going to probably -- no

1 -- you're saying they say marijuana has, what, medical value, medical
2 use, both, or what?

3 MR. KANDT: I'm saying that under 453 -- Chapter 453, the
4 regulatory scheme that the Board is bound to follow in making a
5 determination whether a substance should be Schedule 1 --

6 THE COURT: Uh-huh.

7 MR. KANDT: -- it has to determine one of those criteria. The
8 one that's issued here is no accepted medical use and treatment.
9 Chapter 453 --

10 THE COURT: How do you -- you know, and you're saying,
11 well, all these medical experts confirm that's the case.

12 Plaintiffs/Respondents are saying, hey, pursuant to, you know, the
13 Nevada Constitution that the voters voted in, pursuant to that there's
14 clearly a medical use for marijuana in the State of Nevada.

15 MR. KANDT: Well, the Board operates in accordance with
16 the statutory scheme set forth in Chapter 453. That scheme specifies
17 that the Board is entitled to rely upon findings of the DEA and the FDA as
18 prima facie evidence as to whether a substance belongs in a specific
19 schedule.

20 And getting back to the issue of the Constitution, I don't think
21 there's a conflict. You know, it's important to know --

22 THE COURT: And so that's where I'm really struggling,
23 because I don't see how you can say there's no conflict there.

24 MR. KANDT: You know, your Honor, there's not a conflict
25 because -- and Plaintiffs haven't alleged this, that anybody has been

1 denied the ability to use marijuana in conformance with article Four,
2 Section 38. There's nobody here today on that basis. There's nobody
3 here today arguing that they've been denied the opportunity to use
4 marijuana recreationally in accordance with that initiative.

5 So nobody's being denied. The will of the voters has been
6 honored. And I go back to the arguments I made in the brief. The
7 proponents of either ballot initiative could have expressly provided in
8 there that marijuana was to be either rescheduled or descheduled
9 altogether. They could have used the express language marijuana has a
10 currently accepted medical use. The proponents didn't do that. The
11 ballot initiatives are silent on that issue and, in fact, both of them, and
12 the subsequent legislation, delineated between lawful and unlawful use.
13 Counsel in his opening argument delineated between the lawful and the
14 unlawful use.

15 And we're not here today on the issue of whether anybody's
16 denied the opportunity to use marijuana lawfully in Nevada. We are
17 here today on the issue of whether people that used it unlawfully should
18 have their convictions overturned.

19 THE COURT: So I think I'll go back on that point. I mean,
20 that's part of your -- I mean, parade of horrors might not be the most
21 app characterization, but you make a lot of arguments of, oh, we're here
22 on people who want their conviction overturned, for example, or some
23 of the other things in your brief. And I'm going to tell you kind of what I
24 told Mr. Peterson is I'm -- there's nothing that I see in front of me now
25 that says, hey, overturn this conviction or overturn blanket convictions.

1 What I see is, hey, this statutory scheme or this regulatory scheme are
2 unconstitutional. Yeah. And maybe that might lead to some other
3 actions or some other remedies. But I don't -- I mean, unless you tell me,
4 and I could be wrong, where in these briefs is anybody saying, hey,
5 Judge, overturn this or that conviction?

6 MR. KANDT: Well, that's the premise of their petition, and
7 that's the life and consequence. But let's get back to the heart of the
8 matter.

9 Once again, the medical initiative said the legislature shall
10 provide for. So they tasked the legislature with implementing the will of
11 the voters by statute. And then you had the later initiative, which was
12 codified. But throughout that entire process, over the last 22 years, the
13 legislature, in carrying out the will of the voters has never deemed it
14 necessary to expressly pass legislation descheduling marijuana.

15 And I also wanted to note for the Plaintiffs identified five
16 jurisdictions where marijuana, in some form, has been rescheduled.
17 Now, without getting into the weeds on that, which I don't think is
18 relative, if you look at those five states, in three of those states that was
19 accomplished -- marijuana's rescheduling in some form, was
20 accomplished by express legislative act.

21 So that was in Colorado, Illinois, North Carolina. And in
22 those other two states, Arkansas and Tennessee, that was accomplished
23 by administrative action, by their equivalent of our Board of Pharmacy.
24 It wasn't done by a court. it wasn't done in the initiatives itself. It was
25 accomplished by express legislative act or through the administrative

1 process that was -- as so delegated by their legislature. I think that's
2 really important to know because that's what Plaintiffs are seeking to do
3 here today.

4 So, once again, the balance initiatives themselves could have
5 expressly provided for descheduling, didn't do so. The legislature, in all
6 of the legislative activity that's taken place over the course of the last 22
7 years, has never seen it fit to reschedule or deschedule marijuana in
8 order to implement the will of the voters, which is being honored.

9 And then we get to the Board's Authority and this issue of
10 whether the Board is -- no longer has any jurisdiction to schedule
11 marijuana. You know, the legislature empowered the Board to schedule
12 controlled substances in 1981.

13 THE COURT: Was it '81 or '71.

14 MR. KANDT: Yeah, I can give you the site to the law, but it
15 was 1918.

16 THE COURT: Okay.

17 MR. KANDT: And the point is, where did that power go? It
18 didn't just drift off. It doesn't just disappear. Yes, the legislature has to
19 grant an administrative agency authority to do something, but then it has
20 to take away that authority in some express clear manner. It doesn't just
21 drift off into the atmosphere.

22 And I think it's important to note -- you know, they make this
23 argument that marijuana is sold in dispensaries, it's not dispensed at
24 pharmacies, and, therefore, that's clear indication that the Board has
25 been deprived of any authority over marijuana. Well, that logic doesn't

1 really make sense because no Controlled 1 Substance can be dispensed
2 in a pharmacy. So under that rationale, the more doesn't have any
3 authority over any Controlled 1 Substance. It doesn't have the authority
4 to schedule a Controlled 1 Substance, and we're chasing our tails.

5 I want to move on to the fact that nobody in 22 years has
6 petitioned the Board of Pharmacy to review the current scheduling of
7 marijuana. And I do think that's relevant. I think it's clear that courts
8 expect that parties exhaust their administrative remedies to the extent
9 they're available. I think it's important because, you know, the relief
10 they're asking for seeking mandamus, that doesn't lie when the duty to
11 impose requires deliberation and decision upon facts, which is exactly
12 what the Board does in the administrative process. They consider, are
13 presented with, examine evidence as to whether a particular substance
14 meets the criteria for a particular schedule. They haven't had the
15 opportunity to do that here.

16 Declaratory relief is not appropriate to resolve an issue that's
17 been committed for a decision to an administrative body. Clearly, that
18 decision is committed to the Board. And so, therefore, there's no cause
19 of action and injunction shouldn't issue.

20 Once again, not arguing that the passage of time is
21 determinative of everything here, but they've certainly had ample
22 opportunity to petition the Board, and nobody has done so.

23 And then just briefly, I know this was argued on our motion
24 to dismiss, and I don't want to take up the Court's time too much on the
25 issue of standing, but I still believe that granting the Plaintiffs their

1 requested relief won't address their alleged injuries. Because as we
2 detailed in our answer, most of the criminal laws that prohibit the
3 unlawful possession, sale, trafficking of marijuana are specific to
4 marijuana. They don't rely upon marijuana as being scheduled as a
5 controlled substance.

6 So even if marijuana wasn't scheduled, those laws would still
7 apply in individuals that use marijuana or engage in some activity of
8 marijuana, that doesn't fall within Title 56, under which they're exempt
9 from state prosecution, face potential criminal prosecution, and they
10 won't benefit from the relief requested.

11 And with regard to Plaintiff Poole, he can only benefit from a
12 determination that with passage of the medical marijuana initiative,
13 marijuana was descheduled altogether. It ceased by operation of law to
14 be a controlled substance. Otherwise, he's not going to benefit either.

15 So, I'm certainly happy to answer the Court's questions, but I
16 think in summary, we go back to there's not a conflict. The will of the
17 voters has been honored and the Plaintiffs aren't here alleging that
18 they've been denied the opportunity to use marijuana in conformance
19 with either the first ballot initiative, the medical, or the second ballot
20 initiative recreational. They're sitting here asking you to basically
21 decriminalize marijuana altogether or deschedule it and decriminalize
22 their conduct.

23 Once again, the right of a patient to use marijuana upon the
24 advice of a physician does not mean that it has accepted medical use
25 and treatment in the United States. So there's not a conflict here. And

1 once again, the recreational initiative didn't deprive the Board of
2 jurisdiction over the scheduling of marijuana. And it's still lawful and
3 even if it was --

4 THE COURT: You're starting to really repeat yourself now, so
5 anything to wrap up, I guess?

6 MR. KANDT: No, that's it. I was just going to say and then
7 just reiterate, you know, the standing issue and whether what they're
8 asking even addresses their alleged injuries. Thank you, Your Honor.

9 THE COURT: Thank you.

10 MR. PETERSON: Your Honor, there's just a few points that
11 I'd like to address. They're not going to be standing, the Court has
12 already ruled outstanding.

13 THE COURT: Well, to be fair, that's subject, you know, to
14 further ruling until a judgment, but I don't need to hear any more on it, I
15 guess.

16 MR. PETERSON: I appreciate it. And as far as the
17 exhaustion, I think that was addressed previously as well. But I do want
18 to reiterate exhaustion would be applying if we weren't talking about the
19 limits -- the legal limits of their authority. The Court, especially when we
20 talk about constitutional challenges and what have you with inside there
21 statutory authority, the Court has the expertise in that. So that's
22 appropriate for us to come to the Court for that.

23 You know, the State made a huge emphasis on the idea that
24 Article Four, Section 38, doesn't say word for word that Nevada has
25 accepted marijuana for medical treatment. But it's also worth noting that

1 when you look at the First Amendment of the United States Constitution,
2 it doesn't say word for word that free speech is essential to a functioning
3 republic, right. It doesn't say that freedom of religion is core to a
4 functioning community, right. That's not how constitutional provisions
5 work. And yet courts have regularly seen that in those provisions. And
6 the idea that it kind of defies logic, that a provision that specifically
7 articulates what diagnoses marijuana can be used to treat empowers
8 doctors to give it and gives patients the right to have access to it, doesn't
9 recognize that there's -- that it has a medical use for treatment.

10 It is also interesting -- I did not hear the Board say what
11 exactly their role is now inside the current regulatory system.

12 THE COURT: Yeah, let me interject on that because it -- one
13 of the things I was interested to hear, and your rebuttal kind of goes
14 along that in terms, of part of your request is, you know, declare or
15 however you want to put, you know, grant a right or declare are kind of
16 the same type of thing, but that the Board has no authority to regulate
17 marijuana. And I'm interested to hear more on your argument in terms
18 of that alleged lack of authority, period, even further than your request to
19 say, hey, they can't characterize the Schedule 1, but your request more
20 broadly as they have no authority at all.

21 MR. PETERSON: Yes. Yes. So when we look at NRS, Title
22 56, I think the first thing that is not supported -- that the Board does not
23 offer any legal citation for, is that for an agency to lose authority to
24 regulate, there must be an explicit provision in law that says they've lost
25 the authority to regulate.

1 pointing out that legislature has explicitly made marijuana illegal, right.
2 And in fact, in our reply, we pointed out, at least in a circumstance where
3 marijuana is listed alongside the term controlled substances, oh, they're
4 separate things. The legislature -- in some ways, the Board is confusing
5 its role with the legislature's role. That because there are still things
6 being criminalized, somehow the Board still has retained the power to
7 regulate.

8 When you look at what the legislature is doing and
9 specifically articulating where marijuana would be a -- a possession of
10 marijuana would be a violation of law, and put you in particular places,
11 or if you have too much so, and so forth, that's indicating that the
12 legislature does not believe the Board is necessary in this situation. That
13 the legislature in and of itself is perfectly capable of determining when
14 the possession of marijuana or what acts with marijuana would violate
15 the law.

16 So again, they don't have to have an explicit invitation or a
17 de-invitation from the legislature. If you look at the legislative system as
18 a whole, and you look at the statute on their face and how the legislature
19 has drafted this regulatory regime, the Board of Pharmacy is not
20 necessary, especially once NRS Title 56 is passed. And there's no
21 indication they have explicit authority from the legislature, especially
22 considering the language that's being used to designate who has
23 authority to regulate, wherein the Board does not have that explicit
24 delegation from the legislature. That indicates that after NRS Title 56, it
25 was not the intent of the legislature to permit the Board of Pharmacy to

1 be a part of that regulatory regime.

2 And of course, that's part of the problem, right? I mean, the
3 reality is we're not talking about when things are legal or illegal, really,
4 fundamentally. What the Board does when it designates something as a
5 Schedule 1, it is legally changing the nature of the substance. It is
6 changing what that substance is, and their designation is in conflict with
7 the rest of the regulatory regime.

8 At the end of the day, it's the Cannabis Control Board that's
9 really going to be determining what is cannabis, right, in the confines of
10 the definitions offered in NRS Title 56. It's not the Board to determine
11 what cannabis is anymore.

12 And I think just something else I did want to observe. I think
13 that the -- I was -- I have to admit, I may be misunderstanding what the
14 Board is saying when they emphasize national organizations at the same
15 time, and the DEA, but saying that they're not referring to the United
16 States as a nation or as a country.

17 I think, again, I'll just simply emphasize the fact that
18 obviously in the United States, geographical boundaries, Nevada's
19 inside there. The boards that made the determination to drop the
20 scheduling down to a place where it's recognizing medical value, those
21 are inside the United States, right. And so in term -- or as they pointed
22 out, use for medical treatment inside the United States, those are there
23 as well.

24 And as far as these other experts and so on so forth again,
25 we're not getting into a factual dispute here. We're asking legally,

1 especially in light of Article Four, Section 38, can they schedule it as a
2 Schedule 1 substance without violating the Constitution? Your Honor, is
3 there any other questions that you might have?

4 THE COURT: I'm probably going to tell you about one here,
5 in a moment.

6 MR. PETERSON: Okay.

7 THE COURT: None right now.

8 MR. PETERSON: Okay. Your Honor, I think I -- and again --
9 and I'll just reiterate it, I think the Court understood this when they were
10 saying this, but I'm really asking for three very straightforward legal
11 rulings. Again, a finding that the Board's decision to designate
12 marijuana as a Scheduling 1 Substance was in violation of Article Four,
13 Section 38, from the time of that enactment in 2000.

14 Two, that the Board does not have the authority to regulate
15 marijuana. Specifically put it on its list of scheduling because, obviously,
16 and that would be the form of regulation we're talking about here since
17 the passage of the initiative in 2017, as reaffirmed by the passage of NRS
18 Title 56 in 2019.

19 And, finally, ordering the Board to remove marijuana from
20 this list of scheduled substances. And in this particular circumstance,
21 that would be as a scheduling substance. And again, we're using the
22 definition of marijuana as used under the Cannabis Control Board or,
23 sorry, NRS Title 56. And so that would include, again, cannabis and
24 cannabis products.

25 THE COURT: Thank you very much.

1 MR. PETERSON: Thank you, Your Honor.

2 THE COURT: So I'm at the very least going to grant in part
3 the relief sought. I'm going to grant the relief in terms of marijuana
4 cannot be identified, or scheduled, or categorized as a Schedule 1
5 substance. That's very much in conflict with Nevada Constitution, Article
6 Four, Section 38. I heard arguments that it's not in conflict, but it
7 certainly is. It's set forth in detail in the Petitioners/Plaintiffs papers and
8 along those same lines, remove marijuana from the Schedule 1.

9 What I'm going to ask -- and I'll go into some more details
10 here as well in terms of the reasoning on those, but in terms of whether
11 the Board has authority to regulate marijuana at all and whether it can
12 be designated by -- and this is related to that, obviously, whether the
13 Board has authority to categorize it as, you know, any other type of
14 schedule controlled substance. I'm going to ask both sides to prepare
15 proposed orders on that issue, because I want to -- I'm not prepared to
16 rule on that right now.

17 And I think the proposed orders, rather than another round of
18 briefing. You can put your arguments in order form, and I'll be able to
19 use those to make that determination. Submit those in Word format.
20 But, Mr. Peterson, you know, go ahead and also prepare the sections that
21 I'm ruling on today. Submit them, of course, to the State for review and
22 approval. So I'm reserving ruling on that, you know, authority to
23 regulate overall. I'm not prepared to rule on that right now, today.

24 So, yeah, I grant the petition in part. I grant the declaratory
25 relief in part and declare that marijuana/cannabis is not a Schedule 1

1 substance. The statute is an and, it's conjunctive in the United States
2 geographical. Certainly in Nevada, the voters of the State of Nevada of
3 the Constitution, Article Four, Section 38 have, you know, declared their
4 will, if you will, that there is -- whether you call it medical use or medical
5 value to marijuana, and they did that back in 2000. Right, that was 2000?

6 MR. PETERSON: Correct, Your Honor.

7 THE COURT: I want to make sure I said the right year on
8 that. And so that's part of the reasoning.

9 Standing, I previously found Plaintiffs/Petitioners have
10 standing. I confirm that they do today for all the reasons I already
11 indicated. So put those reasons in there again. If it doesn't -- and I, you
12 know, don't have that order in front of me, but the courts in general,
13 including the Nevada Supreme Court and including the United States --
14 well, let's stick with Nevada, a trend toward a broader finding of standing
15 than perhaps previously. The declarations, the Court considers those.
16 There's no dispute in terms of the facts set forth in the declaration by the
17 entity through its representative in the declaration of Mr. Poole.

18 Include this in there. My duty as a District Judge, our duties
19 do not include creating law or policy. That's not my job. My job is to
20 interpreter the law, interpret the constitutionality of statutes, of statutory
21 schemes, administrative rules and regulations, and part of my duty is to
22 rule in appropriate circumstances as there are here. That the statutes,
23 and schemes, and regulatory schemes comply with and comport with
24 the Nevada Constitution. So that's why I'm doing it at least in part right
25 now, like I commented earlier. So include this in there.

1 My ruling is limited to the petition/complaint and the
2 arguments raised therein and the relief sought therein. I am not inclined
3 and there's no reason to go outside that and comment or rule on issues
4 not raised. They're in -- so several of the issues raised by the State, such
5 as, you know, overturning convictions, things of that nature, are not in
6 front of me. To the extent they are, I'm declining to rule on them, but
7 that's an alternative. They're really not in front of me. I appreciate it.
8 And so include this in the order, you know, the way it was phrased by
9 Petitioners' counsel medical use or value of marijuana is enshrined in
10 our Nevada Constitution. I mean that's part of my ruling. It's clear to me
11 anyway, that that's correct. And that's under Article Four, Section 38.

12 Let's see. Let's see one of the jurisdiction and venue -- well,
13 sorry, not with the parties. The party's jurisdiction or venue standing --
14 standard of review mandamus. So 1 through 16 of the petition , the
15 Court finds all that as a matter of law. So include those in there.

16 Facts and legislative history, that's 17 through 31, include all
17 of those in there. To be clear on the record, to extent any of that still
18 subject to my not ruling from the bench right now on part of it, we can
19 address that in the written order. It looks to me like all of that would be
20 in there regardless of what way I rule on the remaining issues.

21 Writ of mandamus, So that's 32 through 49 would be in
22 there, except 45 you overstate a little. The quote is an initiative
23 expressly stated marijuana should be treated the same as alcohol. I
24 believe the word is actually similar to or something to that effect. So in
25 the order narrow it back down. Footnote 29, you know, quotes from NRS

1 453.211A, quote, "the Board shall review the schedule annually and
2 maintain the list of current schedules."

3 I find, as a matter of law, implicit in that is a directive from
4 the legislature to the Board, for the Board to follow the law whether set
5 forth in the Constitution and or statute and declassify and/or revise the
6 schedule to conform with the law without a request necessarily from a
7 member of the public that the Board do that.

8 As noted, the Court's expertise is in the law and to address
9 kind of the argument that I should not or lack the authority to rule, I side
10 with the Petitioners' argument on that. You know, the constitutionality
11 of statutes and regulations certainly is for this Court, and it does -- it's
12 not required for someone to go in front of the Board and ask the Board
13 to do that before coming to the judiciary for that determination.

14 44, I guess -- paragraph 44, that is subject to what I said
15 earlier in terms of not ruling on the Board's authority overall right now.
16 So that's all the way through 49, so far.

17 50, declaratory judgment. So 50 through 62. Put in there
18 that the injunctive relief is kind of pleaded in the alternative. I don't
19 believe I need to reach that issue. So I'm declining to include that in the
20 order.

21 So going to the request for relief. A1, yes the classification of
22 marijuana and cannabis, cannabis derivatives, Schedule 1 Substances
23 violates article Four, Section 38 of the Constitution. Alternatively, it
24 violates NRS 453.16. And I think you read those in conjunction actually.
25 So it may be -- additionally, it may be alternatively, and so put those

1 both in.

2 Two, the Board acted outside its authority when classified or
3 failed to remove marijuana cannabis as Schedule 1. Again the
4 remainder is subject to a final ruling by me pending the proposed orders.

5 Three, yeah, mandating that the Nevada Board of Pharmacy
6 remove language designated marijuana cannabis, cannabis derivatives
7 as Schedule 1 substances under NAC 453.50, for all the reasons I've
8 already articulated.

9 B, yeah, Petitioners claims are entitled to writ relief,
10 declaratory relief, again not going to the injunction. Must remove it
11 from Schedule 1.

12 Fees and costs, that's subject to, you know, briefing post a
13 final judgment. So put that in there too.

14 Let's see. There's probably a few other things I wanted to
15 highlight. In the United States, I think I said, but I agree with the
16 argument Petitioners raised on that. The alleged -- and assuming, as I
17 think it's appropriate, taking judicial note, for example, of the arguments
18 the State presents in terms of all these different entities, or federal
19 agencies, or -- not Boards of Health, but medical associations or the like
20 all say what the State characterizes.

21 They do say, I'm bound by the Nevada Constitution and the
22 Nevada statutory scheme so long as it comports with the Nevada
23 Constitution and not these, you know, associations, or federal agencies,
24 or the like. And so there is a conflict -- well, kind of stream of
25 consciousness, I apologize.

1 I'm bound by the Nevada Constitution and State statutory
2 scheme and not these other things, and I do read in the United States, as
3 Petitioners do and, therefore, I follow that.

4 You know, in terms of the outstanding issues, I await
5 thorough briefing. I'm not going to give you any preview I guess, some
6 points in answer/opposition. Yeah, there's no real dispute about the
7 facts, the legal standards, you know, the *Tam v. Colton* case here in
8 Nevada, 1978, that block quote, "Well here the remedy is -- the remedy of
9 mandamus is here both self-evident and exclusive." I mean it's for the
10 court to decide that.

11 And so the fact that Plaintiffs/Petitioners haven't brought
12 before the Board is of no consequence here. I understand very much
13 why the State's arguing that, but I disagree.

14 Page 5 of the State's brief, you know, the -- to do so in a bid
15 to have criminal convictions overturned, again that's --their reasons such
16 as that aren't before me. That's not in front of me. Yeah, I disagree. The
17 constitutional right to use marijuana upon the advice of the physician,
18 does establish that marijuana has an accepted medical use and
19 treatment in the United States.

20 I do find, as a matter of law, pursuant to the Constitution I am
21 bound by, marijuana does have an accepted medical use and treatment
22 in the United States. You know, many of the State's arguments, along
23 those lines, I would characterize, so put in the order is irrelevant in terms
24 of -- well, I'm repeating myself now, so I apologize. Nevada law governs
25 not medical journals or secondary sources is a further way to describe it.

1 Yeah, the -- you know, the fact that somebody now may not
2 be, an emphasis on may, not be prosecuted in the State of Nevada for
3 marijuana related things and so forth, on pages 8 and 9 of the State, that
4 doesn't remove the Court's duty. Declare, when appropriate, whether
5 statute or regulatory scheme is constitutional, that's for me as a court to
6 be clarifying whether statutory or scheme is constitutional, whether an
7 agency through its regulatory scheme complies with the Constitution, as
8 well as statutes authorized by the legislature, that's all within the
9 purview of the Court.

10 The length of time argument raised by the State on page 14, I
11 understand the argument. I disagree with that. The continued
12 constitutional violations are no reason for the Court not to rule. The
13 granting claims or request relief will not redress their alleged injuries.
14 Well, I'm dealing with things in front of me and that's essentially the
15 Constitution and statutory regulatory scheme, and Petitioners do have
16 standing, as I've already indicated. So these -- not hypothetical, but
17 potentially alleged, because they're not really alleged wrongs outside of
18 the petition, it's not for me to rule on. And the fact that the ruling that
19 I'm giving may not address every single issue that Petitioners may have
20 outside the petition, there's no reason for me not to rule.

21 This ruling may be a quote/unquote "first step" in a process
22 by either Petitioner or other citizens of the State of Nevada. That again,
23 is not reason to deny the petition.

24 So, Mr. Peterson, you'll prepare a blanket order on
25 everything, both that I ruled on and that I'm not really on yet today. The

1 State, you'll prepare -- well, you can submit a competing order. So if you
2 want, you know, and you get Mr. Peterson's proposed order, and you
3 can't work it out, you could do a competing order, but really what your
4 focus would be on is the part I'm reserving ruling. Does that make
5 sense?

6 MR. KANDT: Yes, Your Honor.

7 THE COURT: Thank you. Then what I'll do is take those, and
8 I'll give it time right now with your input in terms of how much time you
9 want to prepare those and submit them, and then an in chambers for me
10 to make sure it doesn't fall through the cracks.

11 Since most of the work will be yours, how much time do you
12 if you want?

13 MR. PETERSON: Your Honor, if we could get two weeks for
14 the order.

15 THE COURT: Oh, that's -- if you want more, that's fine. But
16 two weeks is fine by me too.

17 MR. PETERSON: I just feel like two weeks that would --
18 obviously, we're going to have to provide that to opposing counsel. And
19 we'll try to make as clear as possible, the sections that are still -- the
20 Court's reserving ruling on. That way it might be easiest for opposing
21 counsel, with sections to --

22 THE COURT: So why don't you get them the draft within two
23 weeks, and then I'll give you all a week to -- you know, you all to review
24 what he gives you and provide any input. If you can agree on the ruled
25 upon portions, great. If not, submit a competing portion. And then in

1 three weeks from today, submit those to me. And I apologize, I just did
2 all that without any input from the State. Any issue with any of that?

3 MR. KANDT: Yes, Your Honor.

4 THE COURT: Say that again?

5 MR. KANDT: Yes, Your Honor.

6 THE COURT: Do you have any issue with that time frame?

7 MR. KANDT: No.

8 THE COURT: Oh, okay.

9 MR. KANDT: No, Your Honor.

10 THE COURT: Okay. And I apologize, I didn't ask you before.

11 So three weeks to get those to me and then let's -- when would that be?

12 THE CLERK: Three weeks from today would be October 5th.

13 THE COURT: Okay.

14 MR. PETERSON: And, Your Honor, if there's any issue with
15 the time, we'll talk to opposing counsel. We've been pretty good about
16 establishing for any additional time.

17 THE COURT: Yeah, just let us know. You could just send us
18 a joint email if -- I don't need a stip. And let's do in chambers for me.
19 Once I get those, then I'll review it a week after that to hopefully issue the
20 -- sign the order.

21 THE CLERK: October 12, 2022, in chambers.

22 THE COURT: Okay. Anything else? Anything else?

23 MR. KANDT: No, Your Honor.

24 MR. PETERSON: And just to clarify, Your Honor, the
25 competing orders on the section that's still in dispute that would be three

1 weeks; is that correct.?

2 THE COURT: No. Yeah, that's a good question. Yeah, so
3 what I want on my end is your drafts within three weeks. So you'll
4 prepare the whole thing of what you want. Okay, I see what you're
5 saying. Like agreed upon within two, the opposed within three, is that
6 what you're saying?

7 MR. PETERSON: Just -- because obviously there's parts that
8 would not be -- are not reserved for ruling and there's, obviously, a
9 section that is reserve for ruling.

10 THE COURT: Okay. Yeah. So within two weeks, give the
11 State what you deem, you know, what I've ruled on. Within three weeks,
12 you both give me on your side the whole thing. Your side hopefully just
13 apart. Word format. Email JEA and my law clerk,
14 rivera@clarkcountycourts.us. R-I-V-E-R-A-A is the JEA, and yours is
15 what?

16 THE LAW CLERK: Department15lc@clarkcountycourts.us.

17 THE COURT: Is department spelled out or is it jus --

18 THE LAW CLERK: No, it's just dept15lc.

19 THE COURT: So dept15lc@clarkcountycourts.us. And if you
20 can't remember, just call us. Anything else?

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MR. PETERSON: No, Your Honor.

MR. KANDT: No, Your Honor.

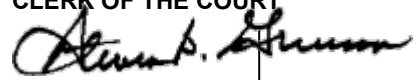
THE COURT: Thank you all.

[Proceedings concluded at 11:58 a.m.]

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-visual recording of the proceeding in the above entitled case to the best of my ability.



Maukele Transcribers, LLC
Jessica B. Cahill, Transcriber, CER/CET-708



MATF

SADMIRA RAMIC, ESQ.
Nevada Bar No.: 15984
CHRISTOPHER M. PETERSON, ESQ.
Nevada Bar No.: 13932
SOPHIA A. ROMERO, ESQ.
Nevada Bar No.: 12446

**AMERICAN CIVIL LIBERTIES
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Email: ramic@aclunv.org
Attorneys for Petitioners/Plaintiffs

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

CANNABIS EQUITY AND INCLUSION
COMMUNITY (CEIC), a domestic nonprofit
corporation; ANTOINE POOLE, an individual,

Petitioners/Plaintiffs,

vs.

STATE OF NEVADA ex rel. BOARD OF
PHARMACY, a public entity of the State of
Nevada,

Respondent/Defendant.

Case No.: A-22-851232-W

Department: 15

Hearing Requested

Petitioner's Motion for Attorney Fees and Costs

The Petitioners, by and through counsel, pursuant to NRS 34.270 and in compliance with NRCP 54(d), hereby submit this motion for attorney fees in the amount of \$47,463.18 and costs in the amount of \$684.20.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Petitioners offer the following points and authorities in support of their Motion for Attorney
3 Fees and Costs.

4 **STATEMENT OF RELEVANT FACTS AND PROCEDURAL HISTORY**

5 On April 15, 2022, Petitioners filed their petition for writ of mandamus, in which
6 Petitioners requested that the Court prevent the Nevada Board of Pharmacy from (1) scheduling
7 cannabis as a Schedule I substance in violation of the Nevada Constitution and (2) cease regulating
8 cannabis as, following the passage of NRS Title 56, cannabis now falls outside the Board's
9 authority. Petitioners also requested an award of reasonable attorney fees and costs incurred in this
10 action. As required under Nevada law, Petitioners served the petition on the Board of Pharmacy
11 and the Attorney General for the State of Nevada.

12 On October 26, 2022, this Court found that the Board's regulation of cannabis as a
13 Schedule I substance violated the Nevada Constitution and that the Board did not have the
14 authority to regulate substances regulated pursuant the NRS Title 56, which necessarily included
15 cannabis, effectively granting Petitioner's petition.

16 In regard to attorney fees, during the course of this litigation, counsel for Petitioner has,
17 among other services:

- 18 • Researched, drafted, and filed Petitioner's petition for writ of mandamus and replied to the
19 Respondent's answer;
- 20 • Researched, drafted, and filed Petitioner's Opposition to Respondent's Motion to Dismiss;
- 21 • Researched, drafted, and submitted proposed orders based on the Court's rulings on the
22 Respondent's Motion to Dismiss and Petitioner's petition while engaging in necessary
23 correspondence with opposing counsel; and
- 24 • Attended three separate court hearings related to the petition.

25 The declarations of counsel, completed pursuant to NRS 53.045 in lieu of affidavits, in support of
26 this motion are attached hereto as **EXHIBIT 1**, **EXHIBIT 2**, and **EXHIBIT 3**. Invoice
27 documenting services rendered is attached hereto as **EXHIBIT 4**.

1
2 **ARGUMENT**

3 Under Nevada law, “[a]ttorney fees may awarded as either (1) fees as a cost of litigation
4 or (2) fees as an element of damages.” *Mitchell v. Nype*, No. 80693, 2022 Nev. Unpub. LEXIS 694
5 *7 (Sept. 23, 2022)(unpublished)(citing *Sandy Valley Assocs. v. Sky Ranch Estates Owners Ass’n*,
6 117 Nev. 948, 955, 35 P.3d 964, 968–69 (2001)).

7 **I. Petitioners are entitled to attorney fees as “cost of litigation” pursuant to NRS**
8 **34.270.**

9 Attorney fees are only recoverable as “cost of litigation” when “authorized by agreement,
10 statute or rule.” *Sandy Valley Assocs.*, 117 Nev. at 969. However, when a Nevada law explicitly
11 permits the recovery of costs and damages, attorney fees are recoverable. *See* NRC 65(c)
12 (authorizing “costs and damages” in the context of wrongfully issued injunctions without referring
13 to “attorney fees”); *Artistic Hairdressers v. Levy*, 87 Nev. 313, 316 (1971) (finding that language
14 “costs and damages” as used in NRC 65(c) included the recovery of attorney fees). Under such
15 circumstances, recovery of attorney fees is considered “as a cost of litigation”, not as “an element
16 of damages”. *See Sandy Valley Assocs.*, 117 Nev. at 968 n. 6 (stating “[t]he following cases
17 involved the award of attorney fees as cost of litigation pursuant to a rule, statute or agreement”
18 and that “[a]ny language suggesting the fees were awarded as damages is hereby disapproved”
19 while referring specifically to *Artistic Hairdressers v. Levy*, 87 Nev. 313 (1971)).

20 Under NRS 34.270, when a judgement is issued in favor of a petitioner that applied for a
21 petition for writ of mandamus, that party is entitled to “*recover the damages which the applicant*
22 *shall have sustained* as found by the jury, or as determined by the court or master, upon a reference
23 to be ordered, *together with costs.*” (emphasis added). NRS 34.270 authorizes a party to recover
24 damages and costs like NRC 65(c), and by extension, such a party would be eligible for attorney
25 fees as a “cost of litigation”. *See Gulbranson v. Sparks*, 89 Nev. 93 (1973) (reversing lower court
26 for failing to provide petitioner a hearing for damages pursuant NRS 34.270 while leaving court’s
27 award of costs and attorney fees under the provision untouched).

1 In this matter, Petitioners applied for a petition for writ of mandamus. The Court granted a
2 judgment in Petitioners' favor on October 26, 2022. Because Petitioners are an applicant who
3 received a favorable judgment, Petitioners are entitled to damages and costs pursuant to the explicit
4 language of NRS 34.270, and by extension, attorney fees. As the fees are authorized pursuant to a
5 statute, the fees are recoverable as "cost of litigation" and Petitioner is entitled to the fees without
6 further showing.

7 **II. Even if they are not entitled to attorney fees as "cost of litigation", Petitioners are**
8 **entitled to attorney fees as special damages.**

9 Even if in circumstances where attorney fees are not recoverable as "cost of litigation" due
10 to a lack of authorization by an agreement, statute, or rule, a party may still recover attorney fees
11 as damages. *Sandy Valley Assocs.*, 117 Nev. at 956. While attorney fees are not recoverable in
12 every case, fees are recoverable when "due to the defendant's intentional conduct, litigation is
13 absolutely necessary to vindicate the party's rights." *Mitchell*, 2022 Nev. Unpub. LEXIS 694 at
14 *7.

15 Respondent intentionally implemented a regulation that (1) violated Nevada's constitution
16 and (2) engaged in regulation beyond their statutory authority. As established by the litigation
17 surrounding standing, these unconstitutional actions violated Petitioners' rights, and as seen by
18 Respondents position on the matter, litigation was necessary to vindicate these rights. That the
19 Court granted relief through a petition for writ of mandamus, which is only available where there
20 is no plain, speedy and adequate remedy in the ordinary course of law, further establishes that
21 litigation was necessary to vindicate Petitioner's rights.

22 In sum, even if NRS 34.270 did not establish that Petitioner's had a right to attorney fees
23 as a "cost of litigation", Petitioners are entitled to their attorney fees and costs as special damages.

24 **III. The requested fees are reasonable under the *Bruznell* factors.**

25 In granting attorney fees, a court must consider "(1) *the qualities of the advocate*: his
26 ability, his training, education, experience, professional standing and skill; (2) *the character of the*
27 *work to be done*: its difficulty, its intricacy, its importance, time and skill required, the

1 responsibility imposed and the prominence and character of the parties where they affect the
2 importance of the litigation; (3) *the work actually performed by the lawyer*: the skill, time and
3 attention given to the work; (4) *the result*: whether the attorney was successful and what benefits
4 were derived.” *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969).

5 Petitioners are requesting the following fee rates for the attorneys that worked on this
6 matter:

- 7 • \$388 per hour prior to October 1, 2022, and \$400 per hour after October 1, 2022, for
8 Christopher Peterson;
- 9 • \$388 per hour for Sophia Romero;
- 10 • \$369 per hour for Sadmira Ramic.

11 Applying the *Brunzell* factors, these rates first reflect the qualities of the advocates involved in this
12 case. As attorneys for the ACLU of Nevada, all three attorneys specialize in constitutional law
13 issues. The difference in fee rates reflects each attorney experience as an attorney in general and
14 their specific talents, as reflected in their affidavits. *See* Ex. 1, Ex. 2, and Ex. 3. Second, the work
15 here was particularly challenging in that it required an understanding of constitutional law related
16 to cannabis, the limits of agency delegation, and the interplay between criminal law and executive
17 agency rule-making authority. The issues in this matter were also important in that they had a state-
18 wide impact, the regulation of an emerging market here in Nevada, and long-standing legal
19 inconsistencies. Third, the attorneys have billed for services actually performed and necessary to
20 this matter, primarily for researching, drafting, and arguing filings that ultimately determined the
21 outcome of this matter. Finally, the attorneys were successful in achieving all objectives stated in
22 the original petition for writ of mandamus.

1 **CONCLUSION**

2 Based upon the above, ACLU of Nevada is entitled to attorney fees in the amount of
3 \$47,463.18 and costs in the amount of \$684.20.

4
5 Dated this 16th day of November 2022.

6 **ACLU OF NEVADA**

7 /s/ Christopher M. Peterson
8 CHRISTOPHER M. PETERSON, ESQ.
9 Nevada Bar No. 13932
10 SADMIRA RAMIC, ESQ.
11 Nevada Bar No.: 15984
12 SOPHIA A. ROMERO, ESQ.
13 Nevada Bar No. 12446
14 601 South Rancho Drive, Suite B-11
15 Las Vegas, NV 89106
16 Telephone: (702) 366-1902
17 Facsimile: (702) 366-1331
18 Email: peterson@aclunv.org
19 *Counsel for ACLU of Nevada*
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the 16th day of November 2022, I caused a true and correct copy
3 of the foregoing **ACLU of NEVADA’S MOTION FOR ATTORNEY FEES AND COSTS** to
4 be electronically filed and served to all parties of record via the Court’s electronic filing system
5 to all parties listed on the e-service master list.
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10 /s/Christopher Peterson
11 An employee of ACLU of Nevada
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EXHIBIT 1

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2. I was first admitted to the bar of the State of Nevada in 2021.
3. My resume is attached.
4. I have expertise in litigating in both civil and criminal courts.
5. I have litigated in both Nevada and Kentucky state courts. I have filed petitions for writs of mandamus and motions before the Nevada Supreme Court.
6. I am a current member of the Las Vegas Nevada Bar Association (LVNBA).
7. I am a staff attorney at the American Civil Liberties Union (ACLU) of Nevada, the Nevada state affiliate of the National ACLU.
8. In my role as an attorney for the Louisville Metro Public Defender’s Office and the ACLU of Nevada I have significant experience litigating issues related to constitutional law and have unique familiarity with the criminal legal system, both relevant to this litigation.
9. In the case at hand, I spent 81.5 hours of reasonable attorney’s services at a rate of \$369.00 for a total of \$30,073.50. These include, but are not limited to, the following services:
 - A. Researching, drafting, and filing the petition for writ of mandamus;
 - B. Communicating with both clients regarding the case;
 - C. Appearing in court to set briefing schedule;
 - D. Reviewing opposing party’s pleadings;
 - E. Communicating with opposing counsel regarding the briefing schedule;
 - F. Researching, drafting, and filing the Opposition to Respondent’s/Defendant’s Motion to Dismiss;
 - G. Preparing for oral argument related to the motion to dismiss;
 - H. Appearing in court to argue against the motion to dismiss; and

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I. Researching, drafting, and communicating with opposing counsel regarding the proposed order following the Court’s ruling on the motion to dismiss.

Dated this 16th day of November, 2022

FURTHER YOUR DECLARANT SAYETH NAUGHT.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

SADMIRA RAMIC, ESQ.

/s/ Sadmira Ramic

SADMIRA RAMIC

EDUCATION

University of Louisville Brandeis School of Law, Louisville, Kentucky

Juris Doctorate, May 2018

GPA: *Cum Laude*

Honors: CALI Award for Highest Grade- Legal Writing, Entrepreneurship Law, and National Security Law

Activities: American Inns of Court, Pupil

International Law Society, Member

Teaching Assistant, Lawyering Skills/Legal Writing

University of Louisville, Louisville, Kentucky

Bachelor of Science in Justice Administration, May 2015

GPA: *Summa Cum Laude*

Honors: Alice Scott Dawson Scholarship

Recognition of Outstanding Achievement in Paralegal Studies

Dean's List: All Semesters

Thesis: *The Effects of International Laws on Modern Day Slavery*

BAR ADMISSION

State of Kentucky (2018); State of Nevada (2021); U.S. District Court for the District of Nevada (2022)

LEGAL EXPERIENCE

American Civil Liberties Union of Nevada, Las Vegas, Nevada

December 2021- Present

Staff Attorney

Litigated cases involving numerous civil rights issues including voting rights, unlawful searches and seizures, and 42 U.S. §1983 claims. Analyzed issues and worked collaboratively with other attorneys on litigation strategy. Presented and argued cases in Nevada state courts resulting in favorable outcomes. Conferred with potential clients and evaluated the strength of their cases. Managed volunteer and policy advocacy projects.

Louisville Metro Public Defender's Office, Louisville, Kentucky

August 2018-April 2021

Assistant Public Defender

Represented indigent clients at all phases in misdemeanor and felony cases, including arraignments, probable cause hearings, pre-trials, bond hearings, and sentencing hearings. Analyzed discovery, statutes, medical records, and other legal documents. Researched, wrote, and argued numerous motions, including motions to suppress, motions for shock probation, motions to sever counts, and motions to reduce bond. Worked closely with prosecutors, police officers, and probation officers to negotiate favorable outcomes for my clients. Consulted and advised clients in jail and in office regarding their cases. Managed a large caseload involving various levels of offenses from minor misdemeanor cases to cases with a potential life sentence. Established good relationships with clients, judges, colleagues, and other attorneys.

Louisville Metro Public Defender's Office, Louisville, Kentucky

May 2017-May 2018

Law Clerk

Conducted research on multiple topics. Drafted memos, briefs, motions, and ethics opinion. Attended courtroom proceedings such as murder trials, probation revocation hearings, and motion hour. Created informational tools for new and incoming public defenders.

SKILLS

Fluent in written and spoken Bosnian (native), excellent legal research and writing skills, strong attention to detail, organized, time management abilities, an ability to communicate across different cultures, and collaborative team work skills.

EXHIBIT 2

1 **DECL**
2 SADMIRA RAMIC, ESQ.
3 Nevada Bar No.: 15984
4 CHRISTOPHER M. PETERSON, ESQ.
5 Nevada Bar No.: 13932
6 SOPHIA A. ROMERO, ESQ.
7 Nevada Bar No.: 12446
8 **AMERICAN CIVIL LIBERTIES**
9 **UNION OF NEVADA**
10 601 South Rancho Drive, Suite B-11
11 Las Vegas, NV 89106
12 Telephone: (702) 366-1226
13 Facsimile: (702) 830-9205
14 Email: ramic@aclunv.org
15 *Attorneys for Petitioners/Plaintiffs*

10 **EIGHTH JUDICIAL DISTRICT COURT**
11 **CLARK COUNTY, NEVADA**

13 CANNABIS EQUITY AND INCLUSION
14 COMMUNITY (CEIC), a domestic nonprofit
15 corporation; ANTOINE POOLE, an individual,
16
17 **Petitioners/Plaintiffs,**

17 vs.

18 STATE OF NEVADA ex rel. BOARD OF
19 PHARMACY, a public entity of the State of
20 Nevada,

20 **Respondent/Defendant.**

Case No.: A-22-851232-W

Department: 15

22 **DECLARATION OF SOPHIA A. ROMERO, ESQ**
23 **IN SUPPORT OF ATTORNEY'S FEES**

24 STATE OF NEVADA)
25) ss:
26 COUNTY OF CLARK)

27 I, Sophia A. Romero, Esq., under penalty of perjury declare:
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1. I am an attorney admitted to practice before the courts of the states of Nevada and New Mexico (inactive). I am also admitted to practice in the United States District Court for the District of Nevada and the United States Supreme Court.
2. I was first admitted to the bar of the State of Nevada in 2011.
3. My resume is attached.
4. I have worked on many litigation cases which were successfully resolved.
5. I have litigated through the appellate court in Washington State.
6. I have become trained in litigating consumer rights cases over the last 8 years, both as a student admitted to practice in the Washington State, specifically litigating illegal repossession and foreclosure issues, and as an attorney admitted in Nevada.
7. I am a member of the National Association of Consumer Advocates (NACA). I have attended numerous consumer rights litigation conferences and trainings sponsored by NACA and the National Consumer Law Center. The conferences and trainings have involved many consumer rights matters including the Truth in Lending Act, the Consumer Leasing Act, Fair Debt Collection Practices Act, Fair Credit Reporting Act, state deceptive trade practices acts, identification of issues and potential claims for relief involving automobile sales practices and repossessions, and many other consumer rights issues.
8. I have participated in the legislative process in the State of Nevada and have testified on various bills involving consumer rights, as well as testifying in successful opposition to bills weakening consumer rights.
9. Additionally, in 2021 I began practicing civil rights litigation.

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10. The time records attached as Exhibit 2 accurately reflect the time spent in this case and which was reasonable and necessary to litigate this case.

11. In the case at hand, I spent 15.00 hours of reasonable attorney's services at a rate of \$388.00 per hour which equals \$5,835.52. These include, but are not limited to, the following services: Reviewing the file in order to come up to speed on the case, drafting and editing documents, attended hearings.

I declare under penalty of perjury that the foregoing is true and correct.

DATED this 16th day of November 2022.



SOPHIA A. ROMERO, ESQ.

Sophia A. Romero

BAR ADMISSIONS

State Bar of Nevada, admitted: October 2011

U.S. District Court for the District of Nevada, admitted: November 2011

State Bar of New Mexico, admitted: April 2012

United States Supreme Court, admitted: May 2016

EDUCATION

Gonzaga School of Law, Spokane, WA

Juris Doctor, May 2011

- Activities:
- Hispanic Law Caucus**, Gonzaga School of Law, 2008-2011 (President, 2010-2011)
 - Represented the board at Latina/Latino Bar Association of Washington's annual award ceremony
 - Organized & planned the Alcanzar Justice program (high school mock trial for minority students); Spanish language lunches to provide an opportunity to both students and professors to practice speaking Spanish on a regular basis; and regular fundraising events to benefit the Hispanic Law Caucus
 - Women's Law Caucus**, Gonzaga School of Law, 2008-2011
 - Organized and coordinated school-wide powder puff football tournament/fundraiser

New Mexico State University, Las Cruces, NM

Bachelor of Arts, December 2007

Major: Criminal Justice, with a supplemental degree in Law and Society

EXPERIENCE

ACLU of Nevada, Inc. Las Vegas, Nevada

Senior Staff Attorney, November 2021 – Present

- Litigation regarding constitutional issues, specifically the First, Fourth, Eighth, and Fourteenth Amendments
- Litigation regarding government compliance with applicable state and local laws including the Nevada Constitution and city charters
- Working with intake and evaluating cases for potential representation.

Intake Department, Legal Aid Center of Southern Nevada, Inc. Las Vegas, Nevada

Intake Supervising Attorney, July 2021 – November 2021

- Supervise 11 intake advocates and front desk staff
- Preliminary review of cases for both the Consumer Rights Project and Family Justice Project
- Law Clerk and Fellowship Program Supervisor, including interviewing and hiring potential clerks and overseeing the selection of fellows (2018 - 2021)

Consumer Rights Project, Legal Aid Center of Southern Nevada, Inc. Las Vegas, Nevada

Staff Attorney, October 2012 – July 2021

- Law Clerk Program Supervisor, including interviewing and hiring potential clerks (2018 - present)
- Law Clerk Supervisor for the Consumer Unit (2016 - 2018)
- Completed Staff to Supervisor Training (July 9, 2018)
- Assisted thousands of low-income clients either through direct representation, providing counsel & advice, outreach events, community education classes, or legislative advocacy
- Practice areas include: Illegal Repossession, FDCPA, FCRA, TILA, landlord Tenant, Payday/Title Lending, Record Sealing and other general consumer issues
- Consumer litigation attorney for the Consumer Rights Project, including large class action litigation

- Part of the team drafting the Opposition to Petition for Certiorari to the U.S. Supreme Court in the Rapid Cash case
- Built relationships with other consumer attorneys across the country which have resulted in Legal Aid Center receiving *cy pres* funds
- Legislative work, including bill drafting, testifying on behalf of our clients, testifying at the request of legislators, and organizing client testimony since 2013 (4 legislative sessions)
- Taught Community Education Class, specifically the Collection Proof Clinic, including creating and updating the power point presentation and manual since 2013
- Trained new hires, including preparing training schedules, for both attorneys and support staff
- Supervised Civil Law Self-Help Center as needed since 2012
- Deeply involved with consumer intake, including supervising intake staff as needed
- Amicus Trainer (case management system) since implementation in 2013
- Updated and maintained manuals such as the Consumer Practice Manual and the s:drive brief bank
- Attended and participated in numerous outreach events and speaking engagements
- Involved with national organizations to keep up to date with case and legislative developments in consumer law

Consumer Rights Project, Legal Aid Center of Southern Nevada, Inc., Las Vegas, Nevada

Law Clerk, November 2011 – October 2012

- Research projects and memos
- Drafting for litigation

University Legal Assistance, Gonzaga School of Law, Spokane, WA

Legal Intern, January 2010 – May 2011

- Consumer Law Clinic
- Practice areas included: Illegal Repossession, FDCPA, Mortgage Foreclosure, Landlord/Tenant
- Argued in Washington State Court, under the Washington student practice rule
- Argued in U.S. District Court for the Eastern District of WA before the Honorable Judge L. Quackenbush
- Drafted Appellant Briefs submitted to the WA Division III Court of Appeals

Unemployment Law Project, Las Vegas, Nevada

Legal Intern, May 2010 – August 2010

- Direct representation in administrative hearings for employees who were denied unemployment benefits

Gonzaga School of Law, Spokane, WA

Law Ambassador, August 2009 – May 2011

- Welcome prospective students, give tours, and answer questions

MEMBERSHIPS AND AFFILIATIONS

National Association of Consumer Advocates, Washington, D.C.

Nevada State Chair, September 2014 – Present

Member, November 2010 - Present

Las Vegas Latino Bar Association, Las Vegas, Nevada

Member, 2013 - Present

Phi Alpha Delta Law Fraternity, Edward M. Connelly Chapter

Member, 2008 – Present

MEDIA AND SPEAKING ENGAGEMENTS

April 2020	Nevada Lawyer Article	https://www.nvbar.org/nvlawyermagazine/april-2020/
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4/7/20	Boyd School of Law	Guest speaker for the Consumer Law class covering FDCPA
3/5/20	Boyd School of Law	Guest speaker for the Consumer Law class covering Illegal Repossessions
3/3/20	Boyd School of Law	Guest speaker for the Consumer Law class covering Auto Fraud
2/26/20	Nevada Current – Medical Debt	https://www.nevadacurrent.com/2020/02/26/nevadans-with-medical-debt-hit-with-murky-collection-practices/
3/21/19	Public News Service – Payday and Title Lending	https://www.publicnewsservice.org/2019-03-21/consumer-issues/nevada-ag-calls-on-feds-to-protect-consumers-from-abusive-lenders/a65898-1
11/27/18	PEW Trusts	https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2018/11/27/late-payment-a-kill-switch-can-strand-you-and-your-car
4/26/18	NCLC	Speaker - Intake Panel at the NCLC Auto Fraud Conference
3/5/18	Boyd School of Law	Guest speaker for the Consumer Law class covering FDCPA
2/12/18	Boyd School of Law	Guest speaker for the Consumer Law class covering Illegal Repossessions
2/5/18	Boyd School of Law	Guest speaker for the Consumer Law class covering Auto Fraud
5/4/17	Las Vegas Review Journal	https://www.reviewjournal.com/news/2017-legislature/nevada-bill-would-protect-victims-of-aggressive-repossession/
3/27/17	Boyd School of Law	Guest speaker for the Consumer Law class covering FDCPA
2/6/17 & 2/8/17	Boyd School of Law	Guest speaker for the Consumer Law class covering Auto Fraud and Illegal Repossessions
12/4/16	San Antonio Express News	http://www.expressnews.com/business/national/article/As-auto-lending-rises-so-do-delinquencies-10690107.php
12/1/16	CNBC	http://www.cnb.com/2016/12/01/as-auto-lending-rises-so-do-delinquencies.html
12/1/16	The New York Times	http://www.nytimes.com/2016/11/30/business/dealbook/as-auto-lending-rises-so-do-delinquencies.html?_r=1
10/27/16	Las Vegas RJ	Subprime Vehicles
10/20/16	NCLC	Requested by NCLC to speak at the Electronic Repo Session regarding policy
10/15/16	Channel 13 – Contracts	http://www.ktnv.com/news/contact-13/local-bride-and-groom-left-asking-wheres-my-wedding
March/ April 2016	Mother Jones	http://www.motherjones.com/politics/2016/04/subprime-car-loans-starter-interrupt
4/15/15	Nevada Public Radio	https://knpr.org/knpr/2015-04/no-car-payment-cut-engine?fbclid=IwAR2vS0YrshN4KRchS4ef8N8DHfyWJMuL1VYOsgfdv18iMR0_145_lkZi1o
4/14/15	Public News Service	https://www.publicnewsservice.org/2015-04-14/social-justice/bill-would-let-lenders-use-tracking-devices-on-nevada-cars/a45724-1?fbclid=IwAR1jzVJ2gMxnmjDmj2lHdLXNFFfMPO1kOm8NOg088GqEA vX5C5x6eR-O6z8
10/05/14	NBC Nightly News – Repo Class Action	http://www.nbcnews.com/nightly-news/lenders-remotely-disable-car-when-payments-are-late-n218971
10/04/14	MSNBC – Repo Class Action	http://www.msnbc.com/melissa-harris-perry/watch/the-high-cost-of-being-poor-337865283678
9/29/14	Good Morning America – Repo Class Action	http://abcnews.go.com/GMA/photos/video-car-loans-kill-switch-condition-25832247

9/27/14	Inside Edition – Repo Class Action	No link available
9/24/14	NYT – Repo Class Action	http://mobile.nytimes.com/blogs/dealbook/2014/09/24/miss-a-payment-good-luck-moving-that-car/?hp&action=click&pgtype=Homepage&version=HpSum&module=first-column-region%C2%AEion%3Dtop-news&WT.nav=top-news
9/24/14	NYT Video – Repo Class Action	http://mobile.nytimes.com/video/business/10000003095109/the-remote-repo-man.html?_r=0
9/24/14	Consumer Law & Policy Blog – Repo Class Action	http://pubcit.typepad.com/clpblog/2014/09/collecting-debts-on-cars-in-the-computerized-world.html?utm_source=feedburner&utm_medium=email&utm_campaign=Feed%3A+ConsumerLawPolicyBlog+%28Consumer+Law+%26+Policy+Blog%29
9/17/14	NJA EClips	http://www.reviewjournal.com/news/finance-company-shuts-down-vehicles-too-soon-lawsuit-alleges
9/17/14	Las Vegas Review Journal – Repo Class Action	http://www.reviewjournal.com/news/finance-company-shuts-down-vehicles-too-soon-lawsuit-alleges
9/16/14	Channel 8 news – Repo Class Action	http://www.8newsnow.com/story/26550560/las-vegas-mom-sues-over-device-that-electronically-disables-car
7/30/14	NPR – Debt Collection	http://knprnews.org/post/debt-collector-calling-nevadans-struggle-unpaid-bills
7/21/14	Public News Service – Pre-paid Electricity	http://www.publicnewsservice.org/2014-07-21/energy-policy/consumer-rights-attorney-questions-nv-energys-prepayment-plan-proposal/a40609-1
3/24/14	Channel 8 News – Auto Repair	http://www.8newsnow.com/category/28259/8-news-now-video?clipId=9977539&autostart=true
3/03/14	Common Ground Conference	http://www.consumer.gov/sites/default/files/agenda.pdf

EXHIBIT 3

1 United States Court of Appeals for the Ninth Circuit, and the Supreme Court of the United
2 States.

3 2. I was first admitted to the bar of the State of Nevada in 2015.

4 3. My resume is attached.

5 4. I have expertise in litigating in both civil and criminal courts.

6 5. I have litigated in both federal and state court. I have been the principal attorney on multiple
7 cases that have been tried to verdict in both jury and bench trials. I have filed appeals,
8 petitions for writs of mandamus, and amicus briefs before the Nevada Supreme Court, the
9 United States Court of Appeals for the Ninth Circuit, and the Supreme Court of the United
10 States.

11 6. I am a current member of Nevada Attorneys for Criminal Justice (NACJ) and the Nevada
12 Justice Association (NJA).

13 7. I am an adjunct professor at the University of Nevada, Las Vegas, where I teach a course
14 on the criminal legal processes.

15 8. I am the Legal Director at the American Civil Liberties Union (ACLU) of Nevada, the
16 Nevada state affiliate of the National ACLU.

17 9. In my role as an attorney for the Clark County Public Defender's Office and the ACLU of
18 Nevada I have significant experience litigating issues related to constitutional law and have
19 unique familiarity with the criminal legal system, both relevant to this litigation.

20 10. In the case at hand, I spent 18.97 hours of reasonable attorney's services at a rate of \$388.00
21 per hour, and 3.72 hours of reasonable attorney's services at a rate of \$400.00 per hour,
22 for a total of \$8,852.36. These include, but are not limited to, the following services:

23 A. Researching a drafting the Reply to the Board's Answer to the petition for writ of
24 mandamus;

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- B. Preparing for oral argument related to the writ of mandamus;
- C. Appearing in court to argue the petition for writ of mandamus;
- D. Researching, drafting, and communicating with opposing counsel regarding the proposed order following the Court’s ruling on the petition;
- E. Researching and drafting the motion for attorney’s fees.

Dated this 16th day of November, 2022

FURTHER YOUR DECLARANT SAYETH NAUGHT.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

CHRISTOPHER M. PETERSON, ESQ.

/s/ Christopher M. Peterson

Christopher Peterson

EDUCATION

Georgetown University Law Center, J.D., May 2015

Honors: *magna cum laude*; Order of the Coif; Dean's List (2012-15); Pro Bono Pledge Honorary (completed 50 hours or more of pro bono service)

Activities: *American Criminal Law Review*, Articles and Notes Editor; Public Interest Fellow; Georgetown Youth Advocacy Executive Board

Publication: *Irrevocable Implied Consent: The "Roach Motel" in Consent Search Jurisprudence*, 51 Am. Crim. L. Rev. 773 (2014), cited by 4 Wayne R. LaFare, *Search and Search: A Treatise on the Fourth Amendment* § 8.1(c)&8.2(l) (5th ed.)(2018).

Pro Bono: Ivy City Project, Research Assistant; National Legal Aid and Defender Association (NLADA), Intern

University of Virginia, B.A., May 2010 (Major: History; Minor: English)

EXPERIENCE

American Civil Liberties Union of Nevada, Las Vegas, NV

Apr. 2021 – present

Legal Director

Managing the ACLU of Nevada's Legal Department, including personnel and case selection. Supervising litigation related to violations of the First, Fourth, and Fourteenth Amendments of the United States Constitution and Article 4, Section 38 of the Nevada Constitution. Filed petitions for writ of mandamus and amicus briefs before the Nevada Supreme Court, the United States Court of Appeals for the Ninth Circuit, and the Supreme Court of the United States.

University of Nevada Las Vegas, Las Vegas, NV

Sept. 2021 – present

Adjunct Professor

Teaching 15-week course "CRJ 432 1003: Criminal Legal Procedure" on statutes, court rules, and constitutional rights governing the criminal legal process in Nevada and federal courts. Instructed participants on application of legal concepts to case studies.

Office of the Clark County Public Defender, Las Vegas, NV

Aug. 2015 – Mar. 2021
& Summer 2013

Deputy Public Defender

Managed case load of over 150 cases, including any felony up to Attempted Murder. Drafted and argued petitions for writs of habeas corpus, prohibition, and mandamus as well as motions to related to violations of the Nevada and United States Constitutions, including violations of the Fourth, Fifth, Sixth, and Fourteenth Amendments and Article 1, Section 11 of the Nevada Constitution. Tried multiple felony trials to verdict.

Georgetown Law Criminal Defense and Prisoner Advocacy Clinic, Washington, D.C.

Sept. 2014– May 15

Trial Advocate and Instructor

Represented clients and investigated cases in criminal matters before the D.C. Superior Court and the U.S. Parole Commission. Developed and taught sixteen-week legal writing curriculum for the inmates at Jessup Correctional Institute in Jessup, Maryland.

Orleans Public Defenders, New Orleans, LA

Summer 2014

Law Clerk

Drafted a successful writ to the Louisiana Supreme Court, two writ applications to the Louisiana Fourth Circuit, and a response to writ application filed by the government. Wrote motions to quash and to prevent the introduction of character evidence. Wrote memoranda in support of litigation in criminal cases, including memoranda analyzing the Louisiana sex offender registration statute, the Louisiana multiple bill, and the Orleans Parish Criminal Court's practice of issuing arrest warrants through bureaucratic offices rather than judges. Interviewed and supported imprisoned clients. Conducted investigations.

MEMBERSHIPS

- Bar membership
 - State of Nevada (Bar No. 13932)
 - United States District Court for Nevada
 - United States Court of Appeals for the Ninth Circuit
 - Supreme Court for the United States
- Nevada Attorneys for Criminal Justice (NACJ)
- Nevada Justice Association (NJA)
- National Lawyers Guild (NLG)

EXHIBIT 4



INVOICE

Invoice # 2
Date: 2022-11-16
Due On: 2022-12-16

Law Office of ACLU NV Legal Department

601 S. Rancho Dr., Suite B-11
Las Vegas, Nevada 89106
United States

Cannabis Equity and Inclusion Community (CEIC)

00021-Cannabis Equity and Inclusion Community (CEIC)

NV State Board of Pharmacy's misclassification of cannabis as a schedule I substance

Type	Date	Notes	Quantity	Rate	Total
Service	2022-02-11	Research: Reviewed NRS, NAC, and Chris' previous documents relating to the scheduling of cannabis as a Schedule I substance.	3.00	\$369.00	\$1,107.00
Service	2022-02-14	Research on writs. Started writing Petition for Writ of Mandamus- Parties, Jurisdiction/Venue, Standing, Standard of Review.	3.60	\$369.00	\$1,328.40
Service	2022-02-15	Continued to work on writing the Writ- Facts/Legislative History, Claims for relief, edited other sections.	4.70	\$369.00	\$1,734.30
Service	2022-02-16	Continued to work on the writ- edits, writ of mandamus argument.	2.00	\$369.00	\$738.00
Service	2022-02-22	Continued to work on the writ- declaratory judgment, injunctive relief, research on counterarguments, edits to other sections.	4.40	\$369.00	\$1,623.60
Service	2022-02-24	Edits to Writ. Reviewed all sections.	2.50	\$369.00	\$922.50
Service	2022-03-10	Research on venue, the Cannabis Compliance Board, the Nevada Board of Pharmacy, and definitions for marijuana under NRS.	2.50	\$369.00	\$922.50
Service	2022-03-10	Edits to writ. Writing intro.	1.20	\$369.00	\$442.80
Service	2022-03-11	Finished writing introduction for writ. Edits to remainder sections.	2.20	\$369.00	\$811.80
Service	2022-03-21	Research on service of process and standing. Edited the Writ.	1.20	\$369.00	\$442.80

Expense	2022-04-15	Filing Fee: CEIC filing fee	1.00	\$270.00	\$270.00
Expense	2022-04-15	Filing Fee: Antoine Poole filing fee	1.00	\$30.00	\$30.00
Expense	2022-04-26	Process Server: Service on Board of Pharmacy at 985 Damonte Ranch Pkwy	1.00	\$85.00	\$85.00
Expense	2022-04-28	Process Server: Attempted service on Board of Pharmacy re: Attorney General at 555 E Washington Ave., Ste. 3900, Las Vegas, NV.	1.00	\$89.20	\$89.20
Expense	2022-04-28	Process Server: Attempted service on Board of Pharmacy at 1050 E. Flamingo Rd., #E-217, Las Vegas, NV	1.00	\$85.00	\$85.00
Service	2022-05-23	Court Appearance: Court appearance for briefing schedule- Chris, Athar, and I.	2.20	\$369.00	\$811.80
Expense	2022-05-23	Process Server: Serviced on Board of Pharmacy re: Attorney General at 100 N Carson St., Carson City, NV	1.00	\$125.00	\$125.00
Service	2022-05-27	Opposing Counsel Communication: Good faith meet and confer w/ opposing counsel and Chris.	0.80	\$369.00	\$295.20
Service	2022-06-10	Draft/Edit Documents: Read MTD filed by opposing counsel. Made general notes and responses to the MTD.	1.20	\$369.00	\$442.80
Service	2022-06-14	Draft/Edit Documents: Outlined arguments to MTD.	2.20	\$369.00	\$811.80
Service	2022-06-15	Draft/Edit Documents: Began outline for Opposition to MTD.	1.60	\$369.00	\$590.40
Service	2022-06-16	Draft/Edit Documents: Continued outlining arguments for Opp. to MTD. Research on standing.	4.70	\$369.00	\$1,734.30
Service	2022-06-17	Draft/Edit Documents: Research on standing for writ of mandamus and general complaint. Research on legal standards for MTD and proper responsive pleading to petition for writ of mandamus. Researched case examples to use for argument section in our Opp. to MTD. Drafted Opp. to MTD.	11.00	\$369.00	\$4,059.00
Service	2022-06-18	Draft/Edit Documents: Finished Opp. to MTD draft.	10.50	\$369.00	\$3,874.50
Service	2022-06-20	Draft/Edit Documents: Read edits made by Sophia and Chris. Conferred with them about arguments/structure/legal standards of the Opp. to MTD. Conducted further research on standing. Edited the draft.	8.10	\$369.00	\$2,988.90
Service	2022-06-21	Draft/Edit Documents: Conferred w/ Chris and Sophia about the Opp. to MTD. Read their edits. Made edits of my own. Proofread and corrected mistakes. Filed.	8.60	\$369.00	\$3,173.40
Service	2022-06-28	Correspondence: Spoke w/ Antoine Poole over the phone. [REDACTED]	0.10	\$369.00	\$36.90

Service	2022-07-08	Case Administration: First moot of oral argument for MTD Hearing	1.50	\$388.00	\$582.00
Service	2022-07-11	Case Administration: Second moot for MTD hearing	0.80	\$388.00	\$310.40
Service	2022-07-12	Case Administration: Two rounds, approximately 30+ minutes each, of mooting the MTD argument.	1.20	\$388.00	\$465.60
Service	2022-07-13	Court Appearance: Court appearance on Respondent's Motion to Dismiss- Sophia, Athar, and I.	2.00	\$369.00	\$738.00
Service	2022-07-13	Court Appearance: MTD hearing - we survived on standing and failure to state a claim.	2.00	\$388.00	\$776.00
Service	2022-07-14	Draft/Edit Documents: Drafted order Denying Respondent's Motion to Dismiss. Sent to Board.	0.50	\$369.00	\$184.50
Service	2022-07-21	Opposing Counsel Communication: Reviewed Brett's suggested changes to the order Denying MTD. Reviewed the clip of the Judge's ruling. Sent Brett an email outlining which changes we agree with and which we disagree with.	0.70	\$369.00	\$258.30
Service	2022-08-15	Draft/Edit Documents: Drafting Reply to the Board's Answer to Petition for Writ of Mandamus	3.37	\$388.00	\$1,307.56
Service	2022-09-14	Research: Preparing for oral argument re: petition for writ of mandamus	1.52	\$388.00	\$589.76
Service	2022-09-14	Court Appearance: In court from 8:55 AM to 12:12 PM for argument on petition for writ of mandamus	3.29	\$388.00	\$1,276.52
Service	2022-09-14	Court Appearance: Hearing on Writ of Man and Compl. We won flat out, 2/3 claims, last claim will be decided on the orders.	4.00	\$388.00	\$1,552.00
Service	2022-09-15	Draft/Edit Documents: First draft of order.	1.63	\$388.00	\$632.44
Service	2022-09-20	Draft/Edit Documents: Continued drafting order, starting with Conclusions of Law.	1.50	\$388.00	\$582.00
Service	2022-09-21	Draft/Edit Documents: Continued drafting Conclusions of Law.	2.41	\$388.00	\$935.08
Service	2022-09-22	Draft/Edit Documents: Continuing with Conclusions of Law	4.47	\$388.00	\$1,734.36
Service	2022-09-26	Draft/Edit Documents: Reviewing and editing order drafted by Sophia.	0.29	\$388.00	\$112.52
Service	2022-09-27	Draft/Edit Documents: Editing & revising order from CEIC	1.27	\$388.00	\$492.76
Service	2022-09-28	Draft/Edit Documents: Drafting/editing proposed order for petition of writ of mandamus.	2.39	\$388.00	\$927.32
Service	2022-09-28	Draft/Edit Documents: Drafted/revised order regarding "ruled on" portion of CEIC case. Sent copy of "ruled on"	1.39	\$388.00	\$539.32

		language to Board of Pharmacy.			
Service	2022-09-29	Draft/Edit Documents: Drafting language of reserved ruling; responding to Brett Kandt regarding NAC 639.110.	5.45	\$388.00	\$2,114.60
Service	2022-09-29	<p>Draft/Edit Documents: Reviewing Chris' version of the portion of the order on the reserved ruling.</p> <p>Also looked into NRS 233B, which Bret cited as the process for removing the regulation as opposed to NAC 639.110</p> <p>The only entry in Chapter 233B that is even remotely applicable to this matter is:</p> <p>NRS 233B.110 Declaratory judgment to determine validity or applicability of regulation.</p> <p>1. The validity or applicability of any regulation may be determined in a proceeding for a declaratory judgment in the district court in and for Carson City, or in and for the county where the plaintiff resides, when it is alleged that the regulation, or its proposed application, interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the plaintiff. A declaratory judgment may be rendered after the plaintiff has first requested the agency to pass upon the validity of the regulation in question. The court shall declare the regulation invalid if it finds that it violates constitutional or statutory provisions or exceeds the statutory authority of the agency. The agency whose regulation is made the subject of the declaratory action shall be made a party to the action.</p> <p>2. An agency may institute an action for declaratory judgment to establish the validity of any one or more of its own regulations.</p> <p>3. Actions for declaratory judgment provided for in subsections 1 and 2 shall be in accordance with the Uniform Declaratory Judgments Act (chapter 30 of NRS), and the Nevada Rules of Civil Procedure. In all actions under subsections 1 and 2, the plaintiff shall serve a copy of the complaint upon the Attorney General, who is also entitled to be heard.</p> <p>(Added to NRS by 1965, 965; A 1969, 317; 1977, 1388)</p> <p>There is nothing in that chapter regarding removal of regulations.</p>	0.73	\$388.00	\$283.24
Service	2022-10-04	Draft/Edit Documents: Incorporated requested amendments from Board and Sophia's edits into draft order.	0.52	\$400.00	\$208.00
		Emailed Brett re: accepting amendments and following			

up re: paragraph 5.

Service	2022-10-05	Draft/Edit Documents: Amending order to include issues raised during discussion with Board of Pharmacy.	0.19	\$400.00	\$76.00
Service	2022-10-05	Draft/Edit Documents: Completed editing both "marked" and "clean" drafts of proposed order. Sent both copies to court.	0.72	\$400.00	\$288.00
Service	2022-11-16	Draft/Edit Documents: Motion for Attorney's Fees, research and drafting.	2.30	\$400.00	\$920.00
				Total	\$47,463.18

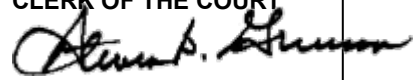
Detailed Statement of Account

Current Invoice

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
2	2022-12-16	\$47,463.18	\$0.00	\$47,463.18
			Outstanding Balance	\$47,463.18
			Total Amount Outstanding	\$47,463.18

Please make all amounts payable to: Law Office of ACLU NV Legal Department

Please pay within 30 days.



1 **NOAS**
2 BRETT KANDT (Bar No. 5384)
3 General Counsel
4 bkandt@pharmacy.nv.gov
5 PETER K. KEEGAN (Bar No. 12237)
6 Assistant General Counsel
7 p.keegan@pharmacy.nv.gov
8 State of Nevada, Board of Pharmacy
9 985 Damonte Ranch Parkway – Suite 206
10 Reno, NV 89521
11 TEL: (775) 850-1440
12 *Attorneys for Respondent/Defendant*

9 **EIGHTH JUDICIAL DISTRICT COURT**
10 **CLARK COUNTY, NEVADA**

11 CANNABIS EQUITY AND INCLUSION
12 COMMUNITY (CEIC), a domestic
13 nonprofit corporation; ANTOINE POOLE,
14 an individual,

14 Petitioners/Plaintiffs,

15 vs.

16 STATE OF NEVADA ex rel. BOARD OF
17 PHARMACY, a public entity of the State
18 of Nevada

18 Respondent/Defendant.

Case No. A-22-851232-W

Dept. No. 15

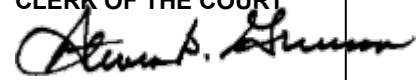
19 **NOTICE OF APPEAL**

20 NOTICE IS HEREBY GIVEN that THE STATE OF NEVADA ex rel. its BOARD
21 OF PHARMACY, hereby appeals pursuant to NRAP 3 to the Nevada Supreme Court from
22 the Judgment and Order Granting Petition for Writ of Mandamus and Request for
23 Declaratory Relief entered on October 26, 2022. The Notice of Entry of Order in this
24 matter was filed on October 26, 2022.

1 Respectfully submitted this 23rd day of November 2022.

2 Pursuant to NRS 239B.030 I affirm that this document does not contain personal
3 information.

4 By: /s/ Brett Kandt
5 Brett Kandt (Bar No. 5384)
6 General Counsel
7 Peter K. Keegan (Bar. No. 12237)
8 Assistant General Counsel
9 *Attorneys for Respondent/Defendant*
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12 *Attorneys for Respondent/Defendant*

9 **EIGHTH JUDICIAL DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 CANNABIS EQUITY AND INCLUSION
12 COMMUNITY (CEIC), a domestic
13 nonprofit corporation; ANTOINE POOLE,
14 an individual,

Case No. A-22-851232-W

Dept. No. 15

14 Petitioners/Plaintiffs,

15 vs.

16 STATE OF NEVADA ex rel. BOARD OF
17 PHARMACY, a public entity of the State
18 of Nevada

Respondent/Defendant.

19 **CASE APPEAL STATEMENT**

20 Pursuant to NRAP 3(f), the State of Nevada ex rel. Board of Pharmacy (“Board”), hereby
21 submits the following case appeal statement:

22 A. District court case number and caption, showing names of all parties to the
23 proceedings (without using *et al.*): The full case numbers and captions, showing names of
24 all parties, are as follows: Case Number A-22-851232-W; Cannabis Equity and Inclusion
25 Community (CEIC); a domestic nonprofit corporation; Antoine Poole, an individual v. State
26 of Nevada ex rel. Board of Pharmacy, a public entity of the State of Nevada.

27 B. Name of judge who entered the order or judgment being appealed:
28 The Honorable Joe Hardy, District Court Judge, Eighth Judicial District Court.

1 C. Name of each appellant, and name and address of counsel for each appellant:

2 State of Nevada ex rel. Board of Pharmacy through its counsel:

3 Brett Kandt
4 General Counsel
5 Peter Keegan
6 Assistant General Counsel
7 985 Damonte Ranch Pkwy #206
8 Reno, NV 89521

9 D. Name of each respondent, and name and address of each respondent's
10 appellate counsel, if known: Cannabis Equity and Inclusion Community (CEIC); Antoine
11 Poole, through their counsel:

12 Sadmira Ramic, Esq.
13 Christopher M. Peterson, Esq.
14 Sophia Romero, Esq.
15 American Civil Liberties Union of Nevada
16 601 South Rancho Drive, Suite B-11
17 Las Vegas, NV 89106

18 E. Whether attorneys identified in subparagraph D are not licensed to practice
19 law in Nevada; and, if so, whether the district court granted permission to appear under
20 SCR 42 (include copy of district court order granting permission): The attorneys in
21 subparagraph D are licensed in Nevada.

22 F. Whether appellant was represented by appointed counsel in the district court
23 or on appeal: Appellant was represented by retained counsel in the district court and will
24 be represented by retained counsel on appeal.

25 G. Whether any appellant was granted leave to proceed *in forma pauperis*: No.

26 H. Date proceedings were commenced in district court: April 15, 2022.

27 I. Brief description of nature of the action and result in district court, including
28 type of judgment or order being appealed and relief granted by district court: Petition for
Writ of Mandamus and Complaint for Declaratory and Injunctive Relief. The Court
granted declaratory and writ relief, ruling that the listing of marijuana, cannabis, and
cannabis derivatives as Schedule I controlled substances in NAC 453.510 (4), (9) and (10)
is in direct conflict with Nev. Const. art. 4, § 38 and violates NRS 453.166, and ordering

1 that marijuana be removed from NAC 453.510 and that the Board cease the regulation of
2 substances subject to regulation pursuant to Title 56 of NRS.

3 J. Whether the case was previously the subject of appeal or writ proceeding in
4 Nevada Supreme Court and, if so, caption and docket number of prior proceeding: No.

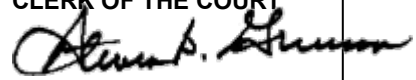
5 K. Whether the appeal involves child custody or visitation: No.

6 L. Whether the appeal involves the possibility of settlement: Settlement may be
7 possible.

8 Respectfully submitted this 23rd day of November 2022.

9 Pursuant to NRS 239B.030 I affirm that this document does not contain personal
10 information.

11 By: /s/ Brett Kandt
12 Brett Kandt (Bar No. 5384)
13 General Counsel
14 Peter K. Keegan (Bar. No. 12237)
15 Assistant General Counsel
16 *Attorneys for Respondent/Defendant*
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1 **OPPS**

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12 *Attorneys for Respondent/Defendant*

13 **DISTRICT COURT OF**
14 **CLARK COUNTY, NEVADA**

15 CANNABIS EQUITY AND INCLUSION
16 COMMUNITY (CEIC), a domestic
17 nonprofit corporation; ANTOINE POOLE,
18 an individual,

19 Petitioners/Plaintiffs,

20 vs.

21 STATE OF NEVADA ex rel. BOARD OF
22 PHARMACY, a public entity of the State
23 of Nevada

24 Respondent/Defendant.

Case No. A-22-851232-W

Dept. No. 15

25 **RESPONDENT/DEFENDANT'S OPPOSITION TO PETITIONERS' MOTION FOR**
26 **ATTORNEY FEES AND COSTS**

27 Respondent/Defendant State of Nevada ex rel. Board of Pharmacy ("Board"), by and
28 through its attorneys, Brett Kandt, General Counsel, and Peter K. Keegan, Assistant
General Counsel, hereby submits this opposition to Petitioners/Plaintiffs' Motion for
Attorney Fees and Costs ("Motion"). This opposition is based upon the following points and
authorities and the papers and pleadings on file herein.

1 Petitioners’ statement that “Respondent *intentionally implemented* a regulation that
2 . . . violated Nevada’s constitution” (Motion at 4:15; emphasis supplied) is not accurate nor
3 supported by the record. Marijuana was listed in Schedule I by the Legislature when
4 enacting the Nevada Uniform Controlled Substances Act in 1971.¹ Marijuana has
5 remained in NAC 453.510 based upon its continued designation as a Schedule I controlled
6 substance under federal law² and the ongoing consensus among the medical and scientific
7 communities that marijuana has no currently accepted medical use in treatment in the
8 United States.³ The Board noted that the *Nevada Medical Marijuana Initiative* did not
9 expressly reference the scheduling of marijuana in NAC 453.510, nor did any of the
10 implementing legislation, and no party had ever objected to the listing of marijuana in
11 Schedule I or otherwise petitioned the Board pursuant to NAC 639.140 for reconsideration
12 of the scheduling of marijuana in light of the amendment to the Nevada Constitution.⁴

13 The Board proceeded on a good faith belief that the continued listing of marijuana
14 in Schedule I was lawful, and consistent with legislative intent and the will of the voters.
15 This case revolves around important issues of first impression. The merits of this case
16 largely center upon interpretation of a constitutional amendment which is arguably
17 susceptible to two or more reasonable but inconsistent interpretations. *Educ. Freedom Pac*
18 *v. Reid*, 138 Nev. Adv. Op. 47, 512 P.3d 296, 302 (2022). The merits also involve complex
19 determinations of whether the Board’s long-standing authority to schedule marijuana has
20 been repealed by implication. *See Washington v. State*, 117 Nev. 735, 739, 30 P.3d 1134,
21 1137 (2001). It is crucial to note that Petitioners did not allege, and no evidence was
22 presented, that the continued listing of marijuana in Schedule I has ever prevented any
23 person from using marijuana on the advice of a physician in conformance with Nev. Const.
24 art. 4, § 38. The Board’s defense of this action was reasonable.

25 ¹ See Section 31 of Assembly Bill No. 107 (1971 Nev. Leg. Session).

26 ² 21 CFR § 1308.11.

27 ³ See Respondent/Defendant’s Answer at 6:1-8:8.

28 ⁴ See Respondent/Defendant’s Answer at 8:16-9:8, 10:3-17 and 14:7-12.

1 **B. Petitioners cannot recover attorney fees as “cost of litigation”**
2 **pursuant to NRS 34.270.**

3 Petitioners’ assertion that attorney fees are recoverable as a cost of litigation in this
4 action is erroneous and unsupported by case law. An award of attorney fees as a cost of
5 litigation is prohibited absent authorization by agreement, statute, or rule. *Pardee Homes*
6 *v. Wolfram*, 135 Nev. 173, 176, 444 P.3d 423, 426 (2019). Although the Petitioner included
7 a request for attorney fees pursuant to NRS 18.010, there is no statutory grounds for the
8 recovery of attorney fees in this instance. *Gulbranson v. Sparks*, 89 Nev. 93, 506 P.2d 1264
9 (1973) does not establish that attorney fees are recoverable pursuant to NRS 34.270, and
10 the statute itself makes no reference to attorney fees.

11 **C. Petitioners cannot recover attorney fees as special damages.**

12 The mere fact that a party must file a lawsuit is insufficient by itself to support an
13 award of attorney fees as damages. *Sandy Valley Assocs. v. Sky Ranch Estates Owners*
14 *Ass’n*, 117 Nev. 948, 957-58, 35 P.3d 964, 969-70 (2001), receded from on other grounds
15 by *Horgan v. Felton*, 123 Nev. 577, 586, 170 P.3d 982, 988 (2007). As the Nevada Supreme
16 Court recently stated:

17 Since *Sandy Valley*, we have narrowly construed a party's ability to recover
18 attorney fees as special damages to instances where attorney fees were
19 incurred because, as a result of the defendant's intentional efforts, the
20 plaintiff had no other choice but to litigate. . . . In conclusion, a common thread
21 runs throughout *Sandy Valley* and its progeny—attorney fees are special
damages only when, due to a defendant's intentional wrongful conduct,
litigation is absolutely necessary to vindicate the party's rights.

22 *Mitchell v. Nype*, No. 80693, 2022 Nev. Unpub. LEXIS 694 *8 (Sep. 23, 2022).

23 Attorney fees may be recoverable as damages when a party's “bad faith conduct”
24 necessitates bringing an action for declaratory relief. *Sandy Valley Assocs.*, 117 Nev. at
25 958, 35 P.3d at 970. However, if attorney fees are sought as damages arising from bad
26 faith conduct, they must be pleaded as special damages under NRCP 9(g), shown to be
27 reasonably foreseeable, “proved by competent evidence just as any other element of
28

