Case Nos. 85756 & 86128

Supreme Court of Nevada

State of Nevada Board of Pharmacy,

Appellant,

vs.

Cannabis Equity & Inclusion Community, et al.,

Respondents.

Appeal from the Eighth Judicial District Court

Brief of Amicus Curiae Nevada Attorneys for Criminal Justice in Support of Respondents Cannabis Equity & Inclusion Committee and Antoine Poole and Affirmance of the Eighth Judicial District Court Order

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in Nev. R. App. P. 26.1(a), and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

1. Randolph M. Fiedler and Shelly Richter are appearing for amicus curiae Nevada Attorneys for Criminal Justice.

/s/ Randolph M. Fiedler
Chair of Amicus
Attorney for Nevada Attorneys for Criminal Justice

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IDENTITY OF AMICUS CURIAE

Nevada Attorneys for Criminal Justice is a state-wide nonprofit organization of criminal defense lawyers in Nevada. Nevada Attorneys for Criminal Justice has an interest in this case because our members represent individuals who have been accused of criminal offenses predicated on the Board of Pharmacy's classification of marijuana as a schedule I drug.

INTRODUCTION

The Nevada Constitution explicitly grounds the people as the power and purpose of government: first in the preamble ("We the people"), then in the source of the new government's authority ("All political power is inherent in the people"), and then again in describing the new government's purpose ("Government is instituted for the protection, security, and benefit of the people"). *See* Nev. Const. pmbl; Nev. Const. art. 1, § 2.

This is no accident. As scholars Jessica Bulman-Pozen and Miriam Seifter have explained, state constitutions, in contrast to their federal counterpart, embody "a powerful democratic commitment" to popular sovereignty, majority rule, and political equality, which they refer to as

"the democracy principle." Jessica Bulman-Pozen & Miriam Seifter, *The Democracy Principle in State Constitutions*, 119 Mich. L. Rev. 859, 862, 864 (2021). They identify features of state constitutions consistent with this democracy principle, which collectively disperse governmental power among actors while empowering voters. *Id.* at 869–79. The Nevada Constitution contains all these democratic features.[1]

One of these features is at issue here: the initiative petition. The Nevada Constitution provides that "the people reserve to themselves the power to propose, by initiative petition, statutes and amendments to statutes and amendments to this Constitution . . . ." Nev. Const. art. 19, § 2.

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[1]*Compare* Bulman-Pozen & Seifter, *supra*, at 869–79, *with* Nev. Const. art. 1, § 2 (source and ends of political power); Nev. Const. art. 2 (suffrage); Nev. Const. art. 5, §§ 5, 19 (plural elected executive); Nev. Const. art. 6, §§3, 3A, 5, 8 (elected judges); Nev. Const. art. 1, § 13, Nev. Const. art. 4, § 5 (redistricting and apportionment); Nev. Const. art. 4, § 2, art. 15, § 3 (legislative accountability); Nev. Const. art. 4, § 20 (public and general purposes); Nev. Const. art. 19, § 2 (initiative); Nev. Const. art. 19, § 1 (referendum); Nev. Const. art. 2, § 9 (recall); Nev. Const. art. 16, Nev. Const. art. 19, § 2 (amendment).

The people of Nevada have exercised this reserved power twice to propose amendments to state law regulating access to marijuana.[2] Both times, the people approved the petitions. *See Ballot Questions 2000*; *Ballot Questions 2016*. And both times, the new law increased access to marijuana: first in 2000 as a constitutional amendment now found at Section 38 of Article 4; second as a statutory amendment now found at Title 56 of the Nevada Revised Statutes. *See Ballot Questions 2000*; *Ballot Questions 2016*.

Notwithstanding the unambiguous will of the people, the Board of Pharmacy has persisted in scheduling marijuana as a schedule I substance. This is the most restrictive classification available, which comes with a host of criminal and legal consequences appropriate for substances with "no accepted medical use in treatment."

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[2]*See* Dean Heller, Sec'y of State, *Ballot Questions 1998* (Question No. 9), available at https://www.leg.state.nv.us/Division/Research/VoteNV/BallotQuestions/1998.pdf [hereinafter *Ballot Questions 1998*]; Dean Heller, Sec'y of State, *Ballot Questions 2000* (Question No. 9) available at https://www.leg.state.nv.us/Division/Research/VoteNV/BallotQuestions/2000.pdf [hereinafter *Ballot Questions 2000*]; Barbara Cegavske, Sec'y of State, *Statewide Ballot Questions 2016* (Question No. 2) available at https://www.nvsos.gov/sos/home/showpublisheddocument/4434/636492737249570000 [hereinafter *Ballot Questions 2016*].

The Board's classification of marijuana violates the two initiative petitions regarding marijuana. Nevada Attorneys for Criminal Justice urge this Court to reject the Board's attempt to undermine the power reserved for and exercised by the people, and to affirm the order of the Eighth Judicial District Court.

ARGUMENT

The Nevada Constitution commits the State to honoring majoritarian will, and the initiative process plays a special role in this. In two initiatives, Nevada voters rejected the demonization of marijuana and established that marijuana has a medical and recreational use. Here, the Board's scheduling decision undermines the will of Nevada voters and ignores clear statutory language. To make matters worse, the classification of marijuana as a schedule I controlled substance allows its criminalization in violation of the will of voters.

I. Initiative petitions play an important democratic role especially in the context of the Nevada Constitution, which values majoritarian will.

"Article 19, Section 2 of the Nevada Constitution sets forth the people's power to propose or amend a statute and to propose a constitutional amendment." *Cegavske v. Hollywood*, 138 Nev. Adv. Op.

46, 512 P.3d 284, 288 (2022). The initiative petition's place in the Nevada Constitution dates back to 1912; it was part of a wave of progressive direct democracy reforms sweeping the nation. *See* Michael W. Bowers, *The Nevada State Constitution* 181 (2d ed. 2014); Michael S. Green, *Nevada: A History of the Silver State* 185 (2015). The goal of these reforms was to "expand democracy to promote civic engagement, gut political machines, and force politicians to heed public opinion." Green, *supra*, at 185. "American populists, distrustful of financial cliques, interests, and elites, sought ways to check the power of these groups by subjecting their actions to the review of the electorate. The citizen initiative petition is a by-product of this movement." John F. Cooper, *The Citizen Initiative Petition to Amend State Constitutions: A Concept Whose Time Has Passed, or a Vigorous Component of Participatory Democracy at the State Level?*, 28 N.M. L. Rev. 227, 231 (1998); *see also* Bulman-Pozen & Seifter, *supra*, at 883.

The sentiments motivating initiative petitions are captured in this editorial comment published in *The Nevada State Journal*, which emphasizes how initiative petitions can offset concentrated and entrenched political interests:

> When the people nominate all candidates for office, instead of leaving that important duty to party bosses and machines, and when they originate laws and put them on statute books by means of direct legislation, we shall enter upon an era of genuine reform.
>
> The interests which are coining dividends from existing abuses stand as a unit against giving people the power of Initiative and Referendum. The elements which stand for human progress unanimously favor these measures. Thus, if you are satisfied with things as they are, you cannot possibly go wrong in opposing direct legislation, while if you are determined to use your influence to make things better you cannot possibly go wrong in supporting it.

Wm. E. Smythe, *Freedom Forever Is Beyond*, Nev. State J., at 12 (July 1, 1906). Proponents of the initiative process "emphasized the unrepresentative character of . . . ostensibly representative governments and advocated direct democracy as the antidote." Bulman-Pozen & Seifter, *supra*, at 889.

Initiative petitions thus play an important role in fulfilling the promise of democratic government. They contribute to the "longstanding commitment of state constitutions to popular sovereignty." Bulman-Pozen & Seifter, *supra*, at 881. Popular sovereignty, in turn, requires allowing "a majority to speak for the

people," another democratic goal embodied in initiative petitions. *Id.* at 887–88; *see also* Nev. Const. art. 19, § 3 ("If a majority of such voters . . . .").

Nor are initiative petitions important only within the schema of the Nevada Constitution: state-level policymaking also plays an important role within the U.S. Constitution's goal of federalism. "It is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory, and try novel social and economic experiments without risk to the rest of the country." *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting). "Sometimes, decisionmaking at the state level will reflect the preferences of a state majority that is not a national majority, but in many cases, states may also offer voice to national majorities. State constitutions, in turn, empower those majorities to act in ways that challenge or substitute for national decisions." Bulman-Pozen & Seifter, *supra*, at 906. Indeed, "opportunities for direct democracy in the states—in the form of state constitutional amendments as well as subconstitutional initiatives and referenda—allow popular majorities to work around political parties." *Id.*

Marijuana policy reflects this dynamic. As referenced by Respondents, Nevada's state-level experience with marijuana decriminalization led to a joint resolution urging Congress to "support legislation to remove cannabis from Schedule I of the [federal] Controlled Substances Act . . . ." Assemb. J. Res. 8 at 3 (Nev. 2023).[3]

Unsurprisingly, the federal government takes note of the states' experiences. The U.S. Department of Health and Human Services recently recommended that the U.S. Drug Enforcement Agency reclassify marijuana from schedule I—where it currently sits in federal regulations—to schedule III. *See* Jacqueline Howard et al., *HHS Official Calls for Reclassifying Marijuana as a Lower-Risk Drug in Letter Sent to DEA*, CNN (Aug. 30, 2023).[4] Initiative petitions, like Nevada's, contribute to the laboratories of democracy from which the federal government may learn and develop its own policies.

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[3]Available at https://www.leg.state.nv.us/App/NELIS/REL/82nd2023/Bill/10467/Text.

[4]Available at https://www.cnn.com/2023/08/30/health/marijuana-schedule-hhs-dea/index.html.

II. In two approved initiative petitions, Nevada voters rejected the demonization of marijuana and established that marijuana has a medical use.

Nevada's experience with marijuana decriminalization shows the role that initiative petitions play within our constitutional scheme.

A. By initiative, Nevadans twice decriminalized marijuana, first for medical use and then for recreational use.

Two initiative petitions bear on the Board of Pharmacy's scheduling decision. First, in 1998 and 2000, voters approved Art. 4, § 38 as an amendment to the Nevada Constitution, which allows possession and use of marijuana for medical purposes. *See Ballot Questions 1998* (Question No. 9); *Ballot Questions 2000* (Question No. 9). Second, in 2016, voters approved Title 56, allowing for personal recreational use and possession of marijuana, and an accompanying regulatory and tax scheme. *See Ballot Questions 2016* (Question No. 2); *see generally* Lynn Fulstone & Jesse Wadhams, *Nevada Marijuana Legalization Initiative, Question 2*, 24 Nev. Law. 13 (Oct. 2016). These initiative petitions followed a long history of political vilification of marijuana.

Until the 1930s, marijuana was not an object of heavy regulation or interest; instead it was used to create products like rope, paper, and medicine. Michael Vitiello, *Marijuana Legalization, Racial Disparity, and the Hope for Reform*, 23 Lewis & Clark L. Rev. 789, 791 (2019); *see also* John Hudak, *Marijuana: A Short History* 10–11 (2020). In 1937, in response to racialized fears[5] of Mexican immigration, Congress passed the Marihuana Tax Act, which sought "to criminalize all behavior involved in marijuana production." Hudak, *supra*, at 35.

The next 70 years followed a pattern: politicians seeing an incentive to vilify marijuana (or drug use generally) sought increased criminal sanctions. *See* Hudak, *supra*, at 41, 46–54, 67–75. Race continued to play a role in these policy considerations. *See id.* at 46; Vitiello, *supra*, at 802. Voices of moderation, noting misconceptions about marijuana and racial biases, were ignored. Hudak, *supra*, at 36, 42–43, 56–57. Increased resources, thus, were devoted to the War on Drugs, with increasing criminal penalties. *See id.* at 45–77; *see also*

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[5]A key figure in early anti-marijuana efforts was Harry J. Anslinger, who relied heavily on racism to promote criminalization of marijuana. *See* Vitiello, *supra*, at 798 (collecting particularly vitriolic examples).

Naomi Murakawa, *The First Civil Right: How Liberals Built Prison America* 24 (2014) (discussing "punitive outbidding" of both parties competing to be the more tough on crime).

The people's adoption of Art. 4, § 38 must be understood as being in dialogue with the political actors' debates about marijuana. As politicians debated marijuana and increasingly criminalized it, popular support for marijuana legalization increased. *See* Hudak, *supra*, at 83–85. In 1996, California approved medical marijuana, the first state to do so. *Id.* at 85. Nevada's 1998 initiative sought to allow marijuana use as treatment for serious illness, upon recommendation of a physician. *Ballot Questions 1998*, Question 9, at 1. The arguments for passage explicitly linked the constitutional amendment to decriminalization: "marijuana has medicinal value for some patients with illnesses enumerated in this proposal. However, current Nevada law classifies possession of marijuana as a felony. The proposal would protect patients from criminal penalties . . . ." *Id.* at 2. In approving Art. 4, § 38, voters of Nevada bypassed the legislative and executive branches, which had enabled marijuana criminalization.

This happened again in 2016, in an initiative petition that proposed a comprehensive regulatory scheme to legalize recreational use of marijuana. *Ballot Questions 2016*, Question No. 2, at 14–17. As with the 1998 initiative petition, decriminalization was the goal. The supporters referred to "marijuana prohibition" as a "failed policy" and explained that "[i]t's time to stop punishing adults who use marijuana responsibly." *Id.* at 17–18. Once again, voters of Nevada sidestepped the legislative and executive branches, which had long enabled marijuana criminalization.

Taken together, the initiative petitions reflect the view of voters that marijuana should not be treated as a "hard" drug, subject to heavy restrictions on use, notwithstanding how the legislative or executive branches view marijuana. This is precisely how initiative petitions are meant to function: giving effect to the majoritarian will of voters where governmental actors are otherwise not democratically accountable.

B. The Board's scheduling decision undermines the will of Nevada voters and disregards clear statutory language.

The seven-member Board of Pharmacy is particularly unaccountable to democratic processes. *See* NRS 639.020, 639.030. Its

members are appointed by the Governor to staggered three-year terms. NRS 639.030(1), (4). The Governor may only remove Board members "after a hearing, for neglect of duty or other just cause." NRS 639.030(5). And, although regulations promulgated by the Board are subject to Nevada's Administrative Procedure Act, *see* NRS 233B.031, its activities are not directly reviewable by voters. In this context, initiative petitions are particularly important: approval of an initiative petition is one of the few ways that voters can hold an all-appointed board politically accountable. It is thus particularly important for this Court to give effect to voters' initiative petitions.

To that end, some of the Board's arguments on appeal warrant scrutiny. The Board argues that "pursuant to Nevada statutes, the Board must schedule controlled substances using the same criteria that the [DEA] applies when it schedules controlled substances under federal law." Opening Br. at 12. But the Board fails to acknowledge that under the governing statutory framework, the Board must independently make a scheduling decision.

Specifically, here, the Legislature expressed that the Board may place a substance in schedule I "if it finds that the substance" has high

potential for abuse and has "no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision." NRS 453.166. The Board "*shall* consider" factors including "[t]he state of current scientific knowledge regarding the substance" and the "scientific evidence of its pharmacological effect." NRS 453.146(2) (emphasis added).[6] By contrast, the Board "*may* consider findings of the federal Food and Drug Administration or the Drug Enforcement Administration as *prima facie evidence* relating to one or more of the determinative factors." NRS 453.146(3) (emphasis added). After considering the factors under subsection 2, the Board "*shall* make findings with respect thereto and adopt a regulation." NRS 453.146(4) (emphasis added).

There are two notable aspects to this structure. First, the statute uses "shall" and "may" in different subsections, which indicates that its use of the permissive "may" in subsection (3), versus the mandatory

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[6]The Board states it is improper to look at events that have occurred after 2000, invoking the fixed-meaning canon of construction. Opening Br. at 19. But considering that the Board must look to the "state of current scientific knowledge" in making scheduling decisions, NRS 453.146(2)(c), the Board's position is clearly incorrect.

"shall" in subsection (2), is intentional. *See Parsons v. Colts Mfg. Co. LLC*, 137 Nev. 698, 703, 499 P.3d 602, 606-07 (2021) (explaining the "whole-text canon"); *Nevada Comm'n on Ethics v. JMA/Lucchesi*, 110 Nev. 1, 9-10, 866 P.2d 297, 302 (1994) (describing the typical treatment of "may" versus "shall"). So, the Board "may" consider the findings of the FDA or DEA as these relate to the determinative factors.

Second, the findings of the FDA or DEA may be "prima facie evidence" relating to the determinative factors. "Prima facie" means "sufficient to establish a fact or raise a presumption unless disproved or rebutted; based on what seems to be true on first examination, even though it may later be proved to be untrue." *Prima facie*, Black's Law Dictionary (11th ed. 2019). Thus, the Board should depart from FDA or DEA findings upon determining that other sources of scientific evidence or knowledge undercut those findings. In the end, it is the Board that "shall make findings." NRS 453.146(4). This is as it should be, given that the Board's scheduling decisions deeply affect the lives of Nevadans.

In this context, the constitutional fact that marijuana has an accepted medical use in treatment in Nevada is dispositive. And if

marijuana has an "accepted medical use in treatment" in Nevada, it follows that it has one "in the United States." NRS 453.166; *see Ceballos v. NP Palace, LLC*, 138 Nev. Adv. Op. 58, 514 P.3d 1074, 1077 (2022) (explaining the "prepositional phrase 'in this state' is not synonymous with 'under state law' . . . [i]nstead, the phrase connotes geographical boundaries").[7] The Nevada Constitution allows, "upon advice of his physician," a person's use of "a plant of the genus Cannabis for the treatment" of specified medical illnesses. Nev. Const. art. 4, § 38. Following this constitutional change, established by initiative petition, the Board cannot find that marijuana has "no accepted medical use in treatment in the United States."

III. Classifying marijuana as a schedule I controlled substance allows its criminalization in violation of the will of Nevada voters.

The Board asserts that its scheduling decisions are meaningful only to pharmacists and regulatory agencies, hoping to silo its decisions

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[7]Marijuana has an accepted medical use in treatment outside Nevada as well. *See State Medical Cannabis Laws*, National Conference of State Legislatures (June 22, 2023), available at https://www.ncsl.org/health/state-medical-cannabis-laws (reflecting that only three states have no public cannabis access program).

and insulate them from scrutiny. The Board even explains, "Nevada law does not punish marijuana-related offenses in reference to marijuana's listing as a schedule I controlled substance." Opening Br. at 30. And it provides that marijuana's status as a schedule I controlled substance has no relevance to law enforcement and prosecutorial agencies. *Id.* at 30.

On the one hand, there are numerous marijuana-specific criminal provisions, which a change in the way marijuana is scheduled would not affect. This is because these laws specifically refer to cannabis or marijuana, not drugs by their scheduling category. These laws reflect a careful balancing of the particular risks related to marijuana. For example, cultivating or manufacturing marijuana without authorization, NRS 678D.310(1), (7); providing it to minors, NRS 678D.310(9); consuming it in public, NRS 678D.310(3), NRS 678D.300(1)(d); and possessing or delivering more than an ounce of marijuana (after 2021) would remain criminal offenses regardless of the Board's scheduling decision. NRS 453.336(5), NRS 678D.200(3)(d). In this, the NDAA's suggestion that criminal law enforcement "of illicit marijuana sales" requires marijuana to be listed as a schedule I

substance is off base. *See* NDAA Br. at 7–10. Even with marijuana descheduled, there are still enforceable criminal marijuana laws.

However, the Board's scheduling decision does affect the application of other criminal statutes (at least where there is no marijuana-specific provision that controls).[8] Under NRS 453.337(1), for example, it is "unlawful for a person to possess for the purpose of sale . . . any controlled substance classified in schedule I or II." A first offense is a category D felony, carrying a one-to-four-year prison term. NRS 453.337(2)(a); NRS 193.130(2)(d). Second, third, and subsequent offenses are punished more severely. NRS 453.337(2).

Worse still, NRS 453.321(1) criminalizes many acts related to schedule I controlled substances, including their sale, transport, exchange, giving away, manufacturing, or offering or attempting to do any of these things. A first offense is a category C felony; a second offense is a category B felony; and a third or subsequent offense is a

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[8]"Under the general/specific canon, the more specific statute will take precedence . . . and is construed as an exception to the more general statute . . . ." *Williams v. State Dep't of Corr.*, 133 Nev. 594, 601, 402 P.3d 1260, 1265 (2017); *see also Patterson v. Las Vegas Mun. Ct.*, 139 Nev. Adv. Op. 35, 2023 WL 6165187, at *2 (Nev. Sept. 21, 2023).

category B felony carrying a prison term of three to fifteen years. NRS 453.321(2). The court is restricted in its ability to grant probation or suspend sentence for these crimes. NRS 453.321(3); NRS 453.337(3).

Moreover, before 2021, simple possession of more than an ounce of marijuana would be treated as possession of a schedule I controlled substance. *See* 2021 Nev. Stat., ch. 389, § 32, at 46.[9]

It follows that the Board's position that "Nevada law does not punish marijuana-related offenses in reference to marijuana's listing as a schedule I controlled substance" is unsupportable. Opening Br. at 30; *accord* NDAA Br. at 13 ("These regulations are enforced through the criminal statutes concerning possession and sale of scheduled controlled substances."). Because of the potential for criminal prosecution, it is that much more important that the Board follow its statutory mandate and assess whether marijuana has "accepted medical use in treatment in the United States." NRS 453.166. As expressed in the Nevada Constitution, it does.

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[9]Available at https://www.leg.state.nv.us/App/NELIS/REL/81st2021/Bill/8004/Text.

Not only does marijuana's listing as a schedule I controlled substance lead to criminal prosecutions, but those criminal prosecutions have had disproportionate effects. This has been known for years, and it has been a key driver of the decriminalization movement. *See, e.g.*, John Washington, *He Was Arrested for Marijuana 17 Years Ago. Now It's Legal. So Why Is He Still Guilty of a Crime?*, Vox (Dec. 10, 2020) ("Most of the people caught up in that onslaught of criminalization were Black and brown; studies have shown that Black people, on average, are nearly four times more likely to be arrested for marijuana possession than white people, even though both use marijuana at similar rates.").[10]

Racial disparities in arrests persist even in states that legalized or decriminalized marijuana. *See A Tale of Two Countries: Racially Targeted Arrests in the Era of Marijuana Reform*, ACLU Research Report 8 (2020).[11] A recent study found that in Nevada in 2018, Black people were still three times more likely than white people to be

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[10]Available at https://www.vox.com/the-highlight/21749376/marijuana-expungements-biden-harris-conviction-drug-war.

[11]Available at https://www.aclu.org/report/tale-two-countries-racially-targeted-arrests-era-marijuana-reform.

arrested for marijuana possession. *Id.* at 75. Black people in rural counties were especially likely to bear the brunt of criminalization. In Douglas County, Black people were an astounding 22 times more likely than white people to be arrested, followed by Lyon County, and Elko County. *Id.* Notably, the data only allowed for an exploration of disparities between Black and white people, not between Latinx and white people. *Id.* at 19. "Arrests of Latinx individuals coded as white in the data likely artificially inflate the number of white arrests." *Id.*

These disproportionate arrests in turn lead to disproportionate collateral consequences. In fact, a search of the collateral consequences associated with controlled substances convictions in Nevada yields 161 separate consequences. *See* National Inventory of Collateral Consequences of Conviction.[12] These include becoming ineligible to serve as a cannabis establishment agent, NRS 678B.340; being required to vacate public housing, NRS 315.031; and becoming ineligible to receive custody of a child-relative in home without a foster license, NAC

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[12]Available at https://niccc.nationalreentryresourcecenter.org/consequences (last visited Sept. 23, 2023).

432B.435. They also include severe consequences for non-citizens. *See Understanding Immigration Consequences of Drug Offenses*, NACDL (Aug. 31, 2022) (explaining a controlled substances offense "typically will always trigger a variety of terrible immigration penalties").[13] The effects of these convictions are life-altering, permitting governmental restriction of fundamental constitutional rights. And the Board's scheduling decisions are a critical piece of this process—by determining the appropriate classification of marijuana in Nevada, the Board plainly does more than promote "the integrity of interstate pharmaceutical supply chains." Opening Br. at 30.

Given that Nevadans have expressed their support for both the decriminalization of marijuana, and its medical use, the Board's classification of marijuana as a schedule I controlled substance allows its criminalization in violation of the will of Nevada voters.

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[13]Available at https://www.nacdl.org/Content/Understanding-Immigration-Consequences-of-Drug-Off.

CONCLUSION

Based on the foregoing, Nevada Attorneys for Criminal Justice respectfully request that this Court affirm the order of the Eighth Judicial District Court.

Dated this 13th day of October, 2023.

Respectfully submitted,

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Randolph M. Fiedler
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/s/ Shelly Richter
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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14 point Century Schoolbook.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more and contains 4,074 words.

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is

not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 13th day of October, 2023.

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CERTIFICATE OF SERVICE

I hereby certify that on 13th day of October, 2023, I electronically filed the foregoing document with the Nevada Supreme Court by using the appellate electronic filing system. The following participants in the case will be served by the electronic filing system:

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