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MARY A. BOTTEON AND RICHARD  
W. SMITH, ESQ. AND JOHN  
QUATTROCCHI AND ROBERT  
CARUSO AND ALFONSO CIRULLI  
AND MELISSA C. TASSE AND  
CANNABIS INDUSTRY VICTIMS  
EDUCATING LITIGATORS, LLC  
(CIVEL) AND JOHN AND JANE DOES  
1-15 AND XYZ CORPORATIONS 1-15,  
JOINTLY

Plaintiffs

VS.

PHILIP D. MURPHY, GOVERNOR OF  
THE STATE OF NEW JERSEY AND  
GURBIR S. GREWAL, THE  
ATTORNEY GENERAL IN THE STATE  
OF NEW JERSEY AND SENATOR  
STEPHEN SWEENEY AND SENATOR  
NICHOLAS SCUTARI (ALL ARE  
NAMED AS DEFENDANTS IN THEIR  
OFFICIAL CAPACITIES AND JOHN  
AND JANE DOES 1-15 AND XYZ  
CORPORATIONS 1-15, JOINTLY

Defendants.

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SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
MERCER COUNTY

Docket No.: MER-L-002293-20

Civil Action

**VERIFIED COMPLAINT IN LIEU OF  
PREROGATIVE WRITS**

## PRELIMINARY STATEMENT

1. This is a Complaint in Lieu of Prerogative Writs initiated pursuant to R. 4:69-1, et. seq. brought by Plaintiffs on behalf of an important public, rather than private, interest to declare null and void the 2020 State Public Question # 1 that attempts to legalize “cannabis” and to seek other relief for violation of their substantive rights. Philip D. Murphy the Governor of the State of New Jersey is named as a Defendant. As Chief Executive Officer of New Jersey, the Governor is responsible for the protection of the fundamental and lawful rights of New Jersey voters. Oath of Governor, N.J.S.A. 52:15-2. Also named as a defendant is Gurbir S. Grewal the Attorney General of the State of New Jersey. The Attorney General is the Chief State Election Official for New Jersey. As such, he has responsibility for general supervision and administration of New Jersey election laws. Also named as Defendants are New Jersey Senate President Stephen Sweeney and New Jersey Senator Nicholas Scutari who upon information and belief drafted the misleading State Public Question # 1 that attempts to legalize “cannabis.”

2. The Complaint relies on N.J.S.A. 19:3-6 (form of public question), N.J.S.A. 2A:16.50 et seq. (Declaratory Judgments) and the New Jersey State Constitution and the New Jersey Civil Rights Act, N.J.S.A.10:6-2c and plaintiffs ask the court to take the following actions:

- a. Awarding judgment for the Plaintiffs in their favor and against the Defendants on each cause of action asserted in the Verified Complaint.
- b. Adjudging and declaring the 2020 State Public Question # 1 as being in violation of N.J.S.A. 19:3-6 and other New Jersey and federal laws and is thus null and void.
- c. Declaring that in the future that the Defendants comply with N.J.S.A. 19:3-6 and other

New Jersey laws to provide voters with materially relevant and substantive information as to the consequences of their vote.

d. Enjoining said Defendants from implementing 2020 State Public Question # 1 through executive action or legislation. This Court may grant injunctive relief in accordance with R. 4:521, et seq.

e. To grant reasonable attorney's fees and costs to Plaintiffs pursuant to N.J.S.A. 10:6-2.

f. Granting such other relief as the interests of justice may require.

### **The Public Perception of Marijuana Is Not Aligned with the Science**

3. Unlike heroin and other opioids, whose risks are widely disseminated by the media and known by the public, the hazards of today's marijuana are both insidious and minimized.

Marijuana is capable of wreaking havoc on the health, safety, economic strength and cognitive function of New Jersey's citizens. Yet, for no other drug is the gap so large between current scientific evidence of adverse consequences and the public perception. The gap has been driven by many factors, including major financial investments by the marijuana industry in promoting misinformation about marijuana safety. The gap between science and medical facts compared to the public perception of harms related to marijuana also has been fueled by celebrities who openly promote marijuana use, as well as by a marijuana industry that advertises aggressively and avails itself of social media sites and sympathetic media outlets. Politicians have been disappointing in their lack of leadership on this issue, for many have absorbed the misinformation without the counterbalancing scientific and medical facts from the bio-medical and addiction treatment community. The public as a result is uninformed and dangerously

complacent.

4. The illegal “legalization” of marijuana in other states such as California and Colorado has created "Big Marijuana" that includes lobbyists and profiteers who put their financial gain over public health and safety, including jeopardizing the lives of our children. Today’s marijuana products can be very high in THC potency (tetrahydrocannabinol), reaching even 99.% pure THC concentration of the that psychoactive, intoxicating, mind-altering component of the drug.<sup>1</sup> These products cause a host of societal problems including addiction, mental illness, birth defects, suicide, violence, DUIs and a litany of general health detriments. (Exhibit 1). This litigation will document and produce evidence of these many harms. We intend to remind, and if necessary to compel, our government officials to do their duty to safeguard and ensure our rights and those of our children in "pursuing and obtaining safety and happiness." NJ Constitution Art. I Rights and Privileges. Because NJ government officials have not put our health and safety, nor that of our children first, we seek to guide them by this litigation.

### **The State Public Question**

5. On November 3, 2020, the State of New Jersey presented a vote on State Public Question # 1 to legalize and commercialize "cannabis." The process began on December 16, 2019, when the New Jersey Legislature, with 24 Senators out of 40 voting affirmatively, passed Resolution SCR 183 placing the State Public Question #1 on the ballot for 2020. Senate President Stephen Sweeney and Senator Nicholas Scutari, who are ardent public advocates for the commercialization of marijuana, introduced the resolution for the State Public Question # 1

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<sup>1</sup> <https://herb.co/2017/03/29/thc-a-crystalline>

after several years worth of failed attempts to pass a “legalization” bill legislatively, not having had enough legislators votes to do so.

6. It certainly does not appear Senator Scutari considered the health and safety of New Jersey’s children when he advocated for marijuana commercialization thusly:

It will be an economic engine for New Jersey when it gets going. The greater impact on society is going to be the job opportunities, people getting employed and paying their employment tax, people not getting arrested. It'll be a whole new industry just like we have liquor stores, and we have breweries and we have beverage warehousing. <sup>2</sup>

7. This action of placing the legalization question on the ballot further emboldened the marijuana industry to use their vast financial resources to disseminate inaccurate and deceptive messaging to the public. Governor Murphy, Senator Sweeney and Senator Scutari followed suit in disseminating negligent and deficient public messaging as did other members of the legislature. Governor Murphy had pledged to legalize marijuana within the first 100 days of taking office. In his zeal to establish a commercial marijuana industry in New Jersey by manipulation of a State Public Question , he blatantly disregarded New Jersey and federal law as well as public health and safety. When it comes to "weed," Governor Murphy self- proclaimed his aspiration to make New Jersey "the California of the East Coast." See, “He's no Christie: Phil Murphy on weed, taxes, Trump. And making N.J. the next California.” <sup>3</sup>

Attorney General Gurbir S. Grewal could have - and should have - intervened and opposed State Public Question #1 on many grounds, but he utterly failed to do so, thereby completely failing to

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<sup>2</sup> [https://ballotpedia.org/New\\_Jersey\\_Public\\_Question\\_1,\\_Marijuana\\_Legalization\\_Amendment\\_\(2020\)](https://ballotpedia.org/New_Jersey_Public_Question_1,_Marijuana_Legalization_Amendment_(2020))

<sup>3</sup> [https://www.nj.com/politics/2018/01/phil\\_murphy\\_entrance\\_interview.html](https://www.nj.com/politics/2018/01/phil_murphy_entrance_interview.html)

ensure legal, health, and safety protections for us and our children. Discretion to determine whether an interpretive statement should be added to the ballot of a proposed constitutional amendment, as well as the content of the statement itself, is vested in the Attorney General. Redd v. Bowman, 223 N.J. 87 (NJ 2015); Gormley v. Lan, 88 N.J. 26 (NJ 1981). Attorney General Grewal's failure resulted in ongoing deprivation of residents' to receive explanation of the true purpose of the matter being voted on in State Public Question # 1.

### **JURISDICTION AND VENUE.**

8. Jurisdiction is conferred upon this Court pursuant to R. 4:69-1, by its inherent jurisdiction to consider matters brought before this Court by way of an Action in Lieu of Prerogative Writs and, pursuant to R. 4:69-3, which permits the filing of a Verified Complaint, by the Plaintiffs, by order to show cause, to secure injunctive relief pursuant to R. 4:52-1. Venue is proper in Mercer County pursuant to R. 4:3-1 and R. 4:3-2, since that is the location of the Defendants and their actions emanate therefrom. In addition, the New Jersey Legislature is located in Mercer County. This Court has jurisdiction to render declaratory judgments pursuant to the Declaratory Judgment Act, N.J.S.A. 2A:16.50 et seq., which statute grants a court the power to declare rights, status and other legal relations, whether or not further relief is or could be claimed.

### **PARTIES**

#### **Plaintiffs**

9. The following Plaintiffs are taxpayers and registered voters who derive benefits from the New Jersey Constitution and the New Jersey Statutes and from the US Constitution and the federal statutes.

Plaintiff Mary A. Botteon resides at 709 Madison Avenue, Highland Park, Middlesex County, NJ 08904.

Plaintiff Richard W. Smith, Esq., resides at 56 Federal City Road, Ewing Township, Mercer County, NJ 08638.

Plaintiff John Quattrocchi, 44 resides at Afterglow Way, Verona, Essex County NJ 07044.

Plaintiff Robert Caruso resides at 154 W Beach Way, Lavallette, Ocean County, NJ 08735.

Plaintiff Alfonso Cirulli, resides at 50 Windward Drive, Barnegat, Ocean County, N.J. 08005.

Plaintiff Melissa C. Tasse resides at 135 Bellevue Ave, Summit, Union County, NJ 07901

Plaintiffs John and Jane Does 1-15 (fictitious), are individuals who are parties to the actions complained of herein, but whose precise identity and/or involvement are presently unknown to Plaintiffs will be identified with particularity when their identities become known through the course of this litigation. Plaintiffs XYZ, Corps 1-15 (fictitious), are corporations whose precise identity and/or involvement are presently unknown to Plaintiffs and will be identified with particularity when the identities become known through the course of this litigation.

**Organizational Plaintiff**

10. Cannabis Industry Victims Educating Litigators (CIVEL) located at 203 Main St. # 149, Flemington, Hunterdon County, NJ 08822. CIVEL is a New Jersey Corporation that

educates litigators and others on how to hold the marijuana industry legally accountable to their many victims.

### **Defendants**

11. Defendants are Governor Philip D. Murphy whose office is at 225 W. State St., Trenton, NJ 08625 and Attorney General Gurbir S. Grewal at Hughes Justice Complex, 25 W. Market St., Trenton, NJ 08265 and Senate President Stephen Sweeney whose office is at 935 Kings Highway, Suite 400. West Deptford, NJ 08086 and Senator Nicholas Scutari whose office is at 1514 E. Saint Georges Ave. 2nd Floor, Linden, NJ 07036. All are named in their official capacities. Defendants John and Jane Does 1-15 (fictitious), are individuals who are parties to the actions complained of herein, but whose precise identity and/or involvement are presently unknown to Plaintiffs and will be identified with particularity when their identities become known through the course of this litigation. This may include other members of the New Jersey Legislature or state government. Defendants XYZ, Corps 1-15 (fictitious), are corporations whose precise identity and/or involvement are presently unknown to Plaintiffs and will be identified with particularity when the identities become known through the course of this litigation. This may include corporations that are part of the marijuana industry.

### **STANDING**

12. As citizens of New Jersey and registered voters the Plaintiffs have standing under N.J.S.A. 19:3-6 and the New Jersey State Constitution and the New Jersey Civil Rights Act, N.J.S.A.10:6-2c. Although there will be substantial likelihood that the plaintiff will experience some harm, the plaintiff's "interest may be accorded proportionately less significance where it



coincides with a strong public interest,” even where that interest is slight or indirect. N.J. State Chamber of Commerce v. N.J. Election Law Enforcement Comm'n, 82 N.J. 57, 68, 411 A.2d 168 (1980). 4

### ALLEGATIONS AND FACTS COMMON TO ALL COUNTS

13. IF: There was a State Public Question to legalize opiates for general use to be sold in retail stores like candy and there was no mention of the addictive qualities of opiates. 5

14. IF: There was a State Public Question to lower the drinking age to 18 years without any mention of the destructive consequences of that action.

15. IF: There was a State Public Question to permit the drug Thalidomide to be given to pregnant women but did not mention that it causes birth defects.

16. IF: There was a drug that had been listed as a Controlled Dangerous Substance for decades by the State of New Jersey and the federal government that was placed on a State Public Question for contemplation of legalization with no information as to why this drug was no longer dangerous and could be sold in retail stores like candy.

17. IF: There was a State Public Question to permit a cancer causing, environmentally damaging substance, and it did not warn the public.

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<sup>4</sup> Even when standing is debatable, New Jersey courts will allow the case to proceed if resolution of the issues is in the public interest. Booth v. Twp. of Winslow, 193 N.J. Super. 637, 640 (App. Div. 1984). The Appellate Division endorsed this principle, holding that although a statewide teachers' organization only had a slight private interest in contesting charter schools in Newark, that slight interest, coupled with a substantial public interest, was sufficient to afford standing. In re Grant of Charter to Merit Preparatory Charter Sch. of Newark, 435 N.J. Super. 273, 280 (App. Div. 2014). The court stressed that, although it was not convinced that the plaintiff would be adversely affected, the case raised “a novel legal issue ... of ‘substantial public importance’ ” warranting a finding of standing. *Ibid.* (citations omitted).

<sup>5</sup> Plaintiffs will prove that marijuana/cannabis products are sold as candy, cakes, cookies and soft drinks.

18. IF: There was a State Public Question that did not provide the materially substantive consequences of the vote's actions.

19. THEN: We hope the court would agree that such a State Public Question would be completely irresponsible as the public is entitled to accurate and materially relevant information related to the consequences of their vote.

20. State Public Question #1 and Interpretive Statement were misleading and contrary to law, specifically N.J.S.A. 19:3-6. They were improper and substantively flawed, and will result in a direct and negative impact on our public health and safety and that of our children. Voters have a right to be advised of potentially negative consequences of their voting action. In addition, New Jersey citizens have a constitutional right under N.J.S.A. 10:6-2c and NJSA 19:3-6 to expect that the Legislature, in drafting a State Public Question, will provide factual accuracy and only what are legally allowable options related to the matter at hand; not to omit or manipulate wording in order to enhance a legislator's or Governor's political agenda.

21. A statement interpreting a ballot question for voters should always be substantively explanatory, not simply reiterate the majority of the question wording, otherwise it provides no significant additional insight into the matter. The Interpretive Statement fails to indicate that this proposed Constitutional Amendment was intended to create a comprehensive a new (and illegal) retail industry that could reasonably be said to alter basic health, public safety, educational and criminal justice protections; thus, the Interpretive Statement was in violation of its real intent and purpose. N.J.S.A.19:3-6.

22. Plaintiffs assert that State Public Question #1 and the Interpretive Statement were

misleading and contrary to N.J.S.A. 19:3-6 in that they did not adequately inform voters of the physical and mental health, environmental, law enforcement, and fiscal consequences of their vote, particularly related to detrimental affects on children. Plaintiffs will present evidence from experts as to the many negative effects of marijuana commercialization and its illegal status as a proposed market.

23. It would seem to be an absolute imperative to have a State Public Question and Interpretive Statement be very precisely and accurately worded, as revising a Constitution to correct issues so directed under false or illegal pretenses is a significant chapter in legislative matters, even more so than repealing other types of laws. We assert that the majority of voters had no grasp of the significant impact and illegality of enshrining an illicit drug into the Constitution.

#### **The State Public Question #1 Text**

24. The 2020 State Public Question, the Marijuana Legalization Amendment, was on the ballot in the 2020 general election. It passed as a legislatively referred constitutional amendment on November 3, 2020. It stated:

#### **CONSTITUTIONAL AMENDMENT TO LEGALIZE MARIJUANA**

Do you approve amending the Constitution to legalize a controlled form of marijuana called "cannabis?"

Only adults at least 21 years of age could use cannabis. The State commission created to oversee the State's medical cannabis program would also oversee the new, personal use cannabis market.

Cannabis products would be subject to the State sales tax. If authorized by the Legislature, a municipality may pass a local ordinance to charge a local tax on cannabis products.

## INTERPRETIVE STATEMENT

This amendment would legalize a controlled form of marijuana called "cannabis". Only persons at least 21 years of age could use cannabis products legally.

The Cannabis Regulatory Commission would oversee the new adult cannabis market. This commission was created in 2019 to oversee the State's medical cannabis program. The scope of the commission's new authority would be detailed in laws enacted by the Legislature.

All retail sales of cannabis products in the new adult cannabis market would be subject to the State's sales tax. If authorized by the Legislature, a municipality may pass a local ordinance to charge a local tax on cannabis products.

### Constitutional changes

See also: Article IV, New Jersey Constitution

The ballot measure added a Section 13 to Section VII of Article IV of the New Jersey Constitution. The following text was added:

13. The growth, cultivation, processing, manufacturing, preparing, packaging, transferring, and retail purchasing and consumption of cannabis, or products created from or which include cannabis, by persons 21 years of age or older, and not by persons under 21 years of age, shall be lawful and subject to regulation by the Cannabis Regulatory Commission created by P.L.2019, c.153 (C.24:6I5.1 et al.), or any successor to that commission.

(1) The commission's or successor's regulatory authority concerning legalized cannabis shall be authorized by law enacted by the Legislature.

(2) The receipts from retail purchases of cannabis or products created from or which include cannabis shall only be subject to the tax imposed under the "Sales and Use Tax Act" (P.L.1966, c.30 (C.54:32B1 et. seq.), as amended and supplemented, or any other subsequent law of similar effect; provided, however, that a municipality, subject to authorization by law enacted by the Legislature, may adopt an ordinance to impose an additional municipal tax on the sale, or any other form of transfer, of cannabis or products created from or which include cannabis by an authorized party located in a municipality.

The municipal tax rate shall not exceed two percent of the receipts from each sale of

cannabis or products created from or which include cannabis by an authorized party or the equivalent value from any other form of transfer by an authorized party.

As used in this paragraph:

"Cannabis" means all parts of the plant Genus Cannabis L., whether growing or not, the seeds thereof, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds. "Cannabis" does not include: cannabis dispensed and consumed for medical purposes pursuant to any law enacted by the Legislature; hemp or hemp products subject to regulation under the "New Jersey Hemp Farming Act," ( P.L.2019, c.238 (C.4:286 et al.), or any successor enactment thereto; or unregulated cannabis, referred to as marijuana, and products created from or which include marijuana.

25. The proposed Constitutional Amendment's definition of cannabis deceptively mentions nothing about THC's psychoactive and intoxicating properties. Marijuana comes from the cannabis plant. Marijuana is defined as: the psychoactive dried resinous flower buds and leaves of the female hemp or cannabis plant (Cannabis sativa or C. indica) that contain high levels of THC and are smoked, vaped, or ingested (as in baked goods) especially for their intoxicating effect <sup>6</sup>

### **The Unstated Dangers to New Jersey's Children**

26. It is sound public policy to promote the health, safety, and welfare of the residents of New Jersey through an environment in which children, families, businesses, and communities can flourish. It has been truthfully said that it is easier to build strong children than repair broken adults.

27. This case matters because it has the potential to impact Plaintiffs' core concern: the well-being of the state's children and our health and safety. There was no reference in State

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<sup>6</sup> <https://www.merriam-webster.com/dictionary/marijuana>

Public Question #1 language about exposure to documented harms. See Exhibit 1. Damage to children is not an inconsequential matter. When this occurs there is cause for collective societal concern and action.

**The State Public Question #1 Would “Normalize” Marijuana in Our State**

28. The perception of harm from marijuana in States that have “legalized” marijuana plummets for teens. They understandably adopt a dangerous mind set of “Why would adults legalize marijuana if it were harmful?”

29. Teen marijuana use goes up.

30. Many teens get quickly addicted to marijuana.

31. Many teens develop marijuana induced amotivational syndrome and will struggle to finish high school or college.

32. Teens who get addicted to marijuana will fall far short in securing their future.

33. Teens vape cannabis products in schools.

34. Many teens in New Jersey will develop psychotic symptoms at increasing rates.

35. Plaintiff will present evidence as to these consequences.

36. In states that have (illegally) legalized marijuana, the marijuana industry is following the playbook of the tobacco and opiate industries in trying to get our kids addicted to ensure a new generation of customers. They market to young people with potent THC edibles infused into cookies, candies, "gummie bears," sodas, brownies and ice cream. Marijuana advertising uses cartoon characters, Santa Claus, and images from popular kids' movies.

37. Recent marijuana products are advertised as being 94% or 95% pure THC

concentration and there is even now crystalline marijuana that is 99% pure THC. These are far greater - and more dangerous - concentrations than the "Woodstock Weed" of years past that was 2-3% THC.

### **The Recent Science**

38. Attached as Exhibit 1 are the following federal documents providing some of the abundant science on the many physical and mental health dangers of marijuana use.

a. Denial of Petition To Initiate Proceedings To Reschedule Marijuana, 81 FR 53767-01, 2016 WL 4240243(F.R.).

b. US Surgeon General's Advisory: Marijuana Use and the Developing Brain. Obtained 12/17/2020.

c. FDA updates "What You Should Know about Using Cannabis Including CBD When Pregnant or Breast-feeding." Obtained 12/17/2020.

39. Recent science shows that marijuana use exacerbates mental illness and addiction and many other problems. For example, the 2016 United States Surgeon General report on addiction states that marijuana is a serious threat to the physical and mental health of our children and that its use is a major threat to public safety. <sup>7</sup>

40. The American Psychiatric Association reports that current evidence supports, at a minimum, a strong association of marijuana use with the onset of psychiatric disorders. <sup>8</sup>

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<sup>7</sup> Facing Addiction in America: The Surgeon General's Report on Alcohol, Drugs, and Health, November, 2016, Chapters One and two and Appendix D pp.65-66 at: <https://addiction.surgeongeneral.gov/surgeon-generals-report.pdf>

<sup>8</sup> American Psychiatric Association, 2013 "Position Statement on Marijuana as Medicine," paragraph 1 found at: <https://www.psychiatry.org/home/policy-finder>

Mental illness leads to crime, homelessness and enormous societal costs.

41. The National Institute on Drug Abuse (NIDA) research shows that up to 30% of marijuana users may develop some degree of problem use that can include addiction. Among young users, the drug may reduce thinking, memory, and learning functions. Marijuana use has also been linked to mental health problems, such as depression, anxiety, and suicidal thoughts among teens. <sup>9</sup>

42. In 2017, the National Academy of Sciences (NAS) landmark report written by top scientists concluded after a review of over 10,000 peer-reviewed academic articles, that marijuana use is associated with:

a. respiratory problems; Plaintiffs note New Jersey's vaping crisis and ongoing Covid -19 challenges; both of these significant public health subjects receive tremendous media coverage by New Jersey government officials absent mention of known respiratory vulnerability concurrent with marijuana use.

b. mental health issues (such as psychosis, social anxiety, and thoughts of suicide);

c. increased risk of vehicular crashes;

d. progression to and dependence on other drugs, including studies showing connections to cocaine and heroin use;

e. learning, memory, and attention loss (possibly permanent in some cases); and

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<sup>9</sup> "Is Marijuana Addictive?" DrugFacts: Marijuana, (June 2015), at: <https://www.drugabuse.gov/publications/drugfacts/marijuana> - citing: Hasin DS, Saha TD, Kerridge BT, et al. Prevalence of Marijuana Use Disorders in the United States Between 2001-2002 and 2012-2013. JAMA Psychiatry. 2015;72(12):1235-1242. doi:10.1001/jamapsychiatry.2015.1858.



low birth weight. 10

43. A study discussed in a Scientific American article shows that people who had consumed marijuana before 18 years of age developed schizophrenia approximately 10 years earlier than others. The greater the frequency of use, the earlier the age of schizophrenia onset. Neither alcohol use nor genetics predicted an earlier time of inception, but marijuana did. Marijuana use during puberty is a major risk factor for schizophrenia. The more marijuana used and the higher the THC potency - the greater the risk. 11

44. There is recent research showing that marijuana use is associated with an increased risk of prescription and opioid misuse disorders. 12 The false narrative from marijuana industry advocates that promotes marijuana as a substitute for opioids - in particular while an opioid epidemic is underway - is proving to be a very dangerous tactic.

45. There are a host of additional problems that come with marijuana commercialization. In Colorado for example: 13

- a. Residential neighborhoods, warehouse areas and even highways "reek of marijuana."
- b. A homelessness growth rate that ranks among the highest rates in the country as homeless substance abusers migrate there for easy access to marijuana.

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<sup>10</sup> Health Effects of Cannabis and Cannabinoids: Current State of Evidence and Recommendations for Research. See: <http://nationalacademies.org/hmd/~media/Files/Report%20Files/2017/Cannabis-Health-Effects/Cannabis-chapter-highlights.pdf>

<sup>11</sup> <https://www.scientificamerican.com/article/link-between-adolescent-pot-smoking-and-psychosis-strengthens/>

<sup>12</sup> <https://www.drugabuse.gov/news-events/news-releases/2017/09/marijuana-use-associated-increased-risk-prescription-opioid-misuse-use-disorders>

<sup>13</sup> <http://gazette.com/editorial-the-sad-anniversary-of-big-commercial-pot-in-colorado/article/1614900>

c. A doubling in the number of drivers involved in fatal crashes who tested positive for marijuana.

d. More marijuana in schools than teachers and administrators ever feared. Drug violations reported by Colorado's K-12 schools have increased 45% even as the combined number of all other violations has fallen.

e. An increase in high school drug violations of 71% since illegal commercialization.

f. School suspensions for drugs increased 45%.

g. The National Survey on Drug Use and Health found Colorado ranks first in the country for marijuana use among teens, scoring well above the national average.

#### **Fraudulent and Contradictory Language**

46. N.J.S.A. 19:3-6 states:

Any public question voted upon at an election shall be presented in simple language that can be easily understood by the voter. The printed phrasing of said question on the ballots shall clearly set forth the true purpose of the matter being voted upon. Where the question concerns any amendment to the State Constitution, or any act or statute or other legal titles of any nature, the printed phrasing on the ballots shall include a brief statement interpreting same.

47. The New Jersey Constitution and NJSA 19:3-6 were violated by Defendants in that they perpetrated an outright deception upon the voting public by publishing wording on the ballot describing and identifying marijuana and cannabis, that was untruthful and contradictory. Specifically: State Public Question #1 reads: 'Do you approve amending the Constitution to legalize a controlled form of marijuana called "cannabis." However cannabis is NOT a controlled form of marijuana. Cannabis is the botanical name for the plant from which marijuana is derived. There is no scientific or botanical identification of a controlled form of marijuana

called cannabis. 14

48. It is the same concept as saying that "nicotiana tabacum" is a controlled form of tobacco when "tabacum" is just the botanical name for the unrefined generic plant that tobacco leaf comes from. 15

49. In fact - conversely - marijuana is a controlled form of cannabis. All forms of marijuana are controlled – but not all forms of cannabis are controlled. The truth is that marijuana is a product of the cannabis plant. It is not the other way around, as the ballot language falsely asserts. The framing of cannabis in the language is blatantly untrue.

50. In publishing the assertion that cannabis is a controlled form of marijuana, the authors and legislative supporters of State Public Question # 1 disseminated outright false information. State Public Question #1 asks voters to legalize cannabis, not marijuana.

51. There are further contradictory statements in Resolution SCR183 authorizing the ballot language which reads:

As set forth in the proposed amendment, the term "cannabis" would not include: **..unregulated cannabis, referred to as marijuana and unregulated marijuana would remain illegal under the State's laws."** and. "Passage of the amendment would not affect the State's regulation of medical cannabis and hemp, and **unregulated marijuana would remain illegal under the State's laws."** 16

52. This is a substantively relevant fact omitted from State Public Question #1 that many

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<sup>14</sup> <https://www.deadiversion.usdoj.gov/schedules/orangebook/orangebook>.  
<https://www.deadiversion.usdoj.gov/21cfr/21usc/802.htm>

<sup>15</sup> <https://www.britannica.com/plant/common-tobacco>.

<sup>16</sup> [https://www.njleg.state.nj.us/2018/Bills/SCR/183\\_I1.HTM](https://www.njleg.state.nj.us/2018/Bills/SCR/183_I1.HTM)

categories of marijuana (namely unregulated cannabis, marijuana, and the erroneously described unregulated marijuana) would not be decriminalized in New Jersey, as was the substantively material fact that marijuana would also remain illegal under Federal law. Clearly these are points of significant omission and lack of clarity that could have and should have been declared in State Public Question # 1 as well as in the Interpretive Statement. At stake is a criminal justice issue that would greatly impact all New Jersey residents as these critical aspects were undeclared and unbeknownst to the voting public. It is fair to say residents would be unclear about the fact that unless they purchased "cannabis" or are licensed to sell "cannabis" they would still be in violation of New Jersey law.

53. The State Public Question #1, Interpretive Statement, and Resolution SCR183 are a contradictory, deceptive, false, tangled web of their own verbiage such that the foundations on which the proposed amendment was made, cannot stand. The State Public Question #1 makes it clear that marijuana is not to be legalized outright. Instead, only "cannabis" which is a "controlled form of marijuana." "Cannabis" is merely the botanical name for the plant from which marijuana is derived. There is no such thing as "a controlled form." They are trying to make New Jersey residents believe that cannabis is something distinct from marijuana and that it is safe to vote for it. This is part of the narrative for years that has been promoted by the marijuana industry to rebrand marijuana.

### **The Framing of Cannabis in the Language Is Blatantly Untrue**

54. Cannabis is not a controlled form of marijuana. The legislators sought favorably re-characterize the word marijuana by suggesting that it was not marijuana and they were legalizing

a refined version called "cannabis." "Cannabis" sounds more scientific than marijuana. It sounds more "medical." It implies that it will be regulated in some beneficial way. "Cannabis" sounds more genteel than "marijuana" just as marijuana is more genteel than "pot" or "weed," and retail stores are more genteel than "pot dealers." It makes it easier to sell your product if it's not burdened with a name that carries baggage. This framing of the term controlled form of marijuana was intended to obfuscate the term to make it sound like something positive and safe.

55. The authors of the State Public Question wrote a political untruth that cannabis was a controlled form of marijuana. This is not simply a word interpretation issue. Cannabis is not a form of marijuana. Quite the contrary, marijuana is a form of cannabis.

### **The Word "Use"**

56. The word "use" is also not defined. Nowhere does it mention growing cannabis or any other element of the marijuana industry sales. Also, there is a statement that says "only adults at least 21 years of age could use cannabis," but what does that mean that an underage, minor could sell or grow cannabis but not use it? Kids could grow it in their basement as a school science project?

57. What is meant by Cannabis "use." Does it refer to the smoking of it, or any other form of ingesting it such as cookies, sodas, candy, vaping, ice cream or does it refer to the making of hemp rope, or CBD or any other use of the cannabis plant. etc?

58. Plaintiffs note the quotations on the word "cannabis" in State Public Question #1. There is no explanation in the Question or the Interpretive Statement as to why this word is in quotations. Grammatically the use of quotations is normally construed as trying to hedge the

facts or downplay meaning and it would appear that this is the case on the ballot, again in an attempt to deceive or confuse voters as to the true meaning and purpose of their vote. 17 There is also no mention of the words recreation, recreational, or recreational use in State Public Question #1, the Interpretive Statement, or in SCR183 which again would appear to be a deliberate attempt to misconstrue or leave open to interpretation the true purpose of State Public Question #1 and the accompanying proposed amendment.

**The Authors of the State Public Question # 1 Acknowledge the Dangers but Did Not Put Them into the State Public Question # 1**

59. Noteworthy is the statement of the two senators who were the primary backers of this attempt to create an illegal commercial marijuana industry. Senate President Stephen Sweeney and Senator Nicholas Scutari are quoted by Ballotpedia as issuing this joint statement on Nov. 18, 2019: "We recognize that the votes just aren't there. We respect the positions taken by legislators on what is an issue of conscience. The votes weren't there for enacting the law in the legislature." 18

60. They used the words "issue of conscience." 19 This may have been an acknowledgment that for many this was a reluctance to break the law, as well as admitting that for many there is a moral, safety, or damaging component to the use of marijuana. The State

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<sup>17</sup>APStyle AmericanPsychologicalAssociation <https://apastyle.apa.org/style-grammar-guidelines/italics-quotations/quotation-marks>

<sup>18</sup> [https://ballotpedia.org/New\\_Jersey\\_Public\\_Question\\_1,\\_Marijuana\\_Legalization\\_Amendment\\_\(2020\)](https://ballotpedia.org/New_Jersey_Public_Question_1,_Marijuana_Legalization_Amendment_(2020))

<sup>19</sup> Definition of conscience  
1a: the sense or consciousness of the moral goodness or blameworthiness of one's own conduct, intentions, or character together with a feeling of obligation to do right or be good  
<https://www.merriam-webster.com/dictionary/conscience>

Public Question #1 language says nothing about the harms of marijuana use and societal costs of those harms that will be put on the backs of the public while an illegal marijuana industry reaps profits.

### **Environmental dangers**

61. New Jersey laws are clear regarding toxic pollutants but it is also clear that the amendment is not at all transparent about the harms of marijuana grows to the environment. Plaintiff will show that such grows can cause serious environmental damage. See N.J.S.A. 58:10A-3 (defining "toxic pollutants" as any pollutant identified pursuant to the [Federal Water Pollution Control Act Amendments of 1972], or any pollutant or combination of pollutants, including disease causing agents, which after discharge and upon exposure, ingestion, inhalation or assimilation into any organism, either directly or indirectly by ingestion through food chains, will, on the basis of information available to the commissioner, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions, including malfunctions in reproduction, or physical deformation, in such organisms or their offspring). (emphasis added).

62. The state of California has officially declared inhaled marijuana smoke as causing cancer and child developmental toxicity. 20

63. The environmental damage caused by marijuana grows is well documented. Plaintiffs can provide evidence of that. 21

### **The State Commission**

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<sup>20</sup> <https://oehha.ca.gov/proposition-65/chemicals/cannabis-marijuana-smoke>.

<sup>21</sup> <https://noweedillinois.com/wp-content/uploads/2018/08/Calaveras-County-Report.pdf>

64. State Public Questions #1 states: “The State commission created to oversee the State's medical cannabis program would also oversee the new, personal use cannabis market.”“This commission was created in 2019 to oversee the State’s medical cannabis program.”

65. There are misleading notions in these sentences. First, the repeated references to the word “medical” as if to imply that this proposal is an expansion of the medical program. What is further unclear is that the actual nomenclature of the existing medical program in fact is The State of New Jersey Medicinal Marijuana Program, operating under the auspices of the Division of Medical Marijuana, with no mention of medical cannabis. The proposed Amendment technically affirms, by virtue of its own description, that the current NJ State Medicinal Marijuana Program would therefore be illegal as it administers marijuana, not cannabis, but that is not the scope of this complaint.

66. Further, the unclear references to "personal use" and “new adult cannabis market” in the context of being overseen by a medical program. These issues are widely left open to interpretation as to what type of marijuana is at issue. For example it would not be unreasonable given the repeated references to the State’s medical program, that “personal use” or the “new adult cannabis market,” which would be overseen by the same commission created to oversee the State’s medical marijuana program, refer to an expanded use of existing medical marijuana products.

**The State Public Question # 1 Permits Municipalities to Set an Unfair Sales Tax on Cannabis Products**

67. This is an incentive to municipalities to establish (illegal) marijuana stores versus other stores. That would set up an incentive for unfair competition. For example, two businesses



apply for a license to operate in a town, a marijuana store and a clothing store; the town now has an incentive to favor a permit for the marijuana store because it will reap a tax benefit over what it would reap from the clothing shop. This fosters unfair government favoritism. Two striking points are that limiting revenue to a standard state sales tax, plus a local tax of up to 2% will not come close to covering the costs of implementing the program across the state. Significantly, voters were not informed that they will be paying for implementation of the damaging consequences. Voters were also not informed that any revenue generated in this illegal commercial market proposal could be subject to forfeiture from the State and the municipality by the Internal Revenue Service.

#### **Plaintiffs' Application is Not Time Barred**

68. Under Rule 4:69-6 (a), Plaintiffs had 45 days, beginning from the accrual of the right to review, hearing, or relief claimed - presumably, in this case, November 3, 2020 to file this application. They did not have to file before the election as the issue was in doubt and the damage to our Constitution had not yet occurred.

69. Under Rule 4:69-6 (c), the court is nonetheless authorized to “enlarge the period of time provided in this rule where it is manifest that the interest of justice so requires.” The Rule provides a clear and well-established exception to the rigid time limits of the prerogative writ rules in cases involving an important public, rather than private, interest requiring adjudication or clarification. Borough of Princeton v. Mercer Cnty., 169 N.J. 135, 152-53 (2001); Brunetti v. Borough of New Milford, 68 N.J. 576 (1975). In such cases, a trial court can grant even a substantial enlargement of time to allow parties the opportunity to challenge alleged unlawful

conduct by the government. Willoughby v. Planning Bd. of Deptford, 306 N.J.Super. 266, 276, 703 A.2d 668 (App.Div.1997).

70. These claims can be brought post-election. City of Orange Township Board of Education v City of Orange Township, 451 N.J.Super. 310 (Chancery Division, Essex 2017). Even if the court should find that the State Public Question # 1 election should not be overturned, it should order that it not be enforced. Plaintiffs could not ask for such relief until the State Public Question # 1 passed on November 3, 2020.

71. Our Supreme Court has noted that New Jersey has long recognized, in a wide variety of contexts, the power of the judiciary to prevent some threatening, irreparable mischief, which should be averted until the opportunity is afforded for a full and deliberate investigation of the case. Crowe v. De Gioia, 90 N.J. 126, 132 (1982). These principles include: a preliminary injunction should not issue except when necessary to prevent irreparable harm, temporary relief should be withheld when the legal right underlying Plaintiffs' claim is unsettled, a preliminary injunction should not issue absent a showing of a reasonable probability of success on the merits, and the relative hardship to the parties in granting or denying relief. *Id.* at 132.

72. There has been an adequate showing of irreparable harm because the harm in this case is that voters were not advised, pursuant to N.J.S.A. 19:3-6, of the true purpose of the State Public Question # 1 - and in turn, could not grasp the meaningfulness of their vote in terms of consequence and scope when they went to the polls on November 3, 2020. This lack of advisement touches upon the constitutional right of the State's residents to vote, and that under Garden State Equality v. Dow, 433 N.J.Super. 347, 353 (Law Div. 2013), a deprivation of a

constitutional right may suffice to establish irreparable harm.

73. The State Public Question # 1 and Interpretive Statement failed to inform State's residents that the laws regarding marijuana would change in very substantial ways and amounts to a deprivation of State's residents' constitutional rights and substantive rights coming from the Common Law and from legislative statutes. There is tangible harm resulting from the deficient State Public Question # 1 and Interpretive Statement. Marijuana products can be very high in potency and reach 99% THC, the psychoactive, intoxicating, mind-altering component of the drug. These products cause addiction, mental illness, birth defects, suicide, violence, DUIs and many detrimental general health problems. (Exhibit 1)

74. Not only is the harm plaintiff describes immediate, it is actually already underway. Plaintiff is describing a situation in which the State's residents had their constitutional rights infringed upon. This deprivation is ongoing, and cannot be redressed by any sum of money. Thus, the harm is irreparable under Crowe, save another State Public Question with a properly worded and sufficiently detailed State Public Question and interpretive statement. It is not change in and of itself which is problematic; it is the change in this instance. The State's residents were entitled to know how the marijuana legalization process would work in light of their vote. It is clear that they did not know how the vote would impact the State's children. Nothing about the harms of marijuana/cannabis were mentioned.

75. The legal right underlying the claim is settled. Crowe, supra, 90 N.J. at 132,. In order to analyze this second prong, it is necessary to look to the relevant statute. N.J.S.A. 19:3-6. The legal right underlying its claim is well-settled.

76. State Public Question # 1 and interpretive statement were not phrased in ways that allowed the State's residents to understand its true purpose, as required by N.J.S.A. 19:3-6. The law is clear that N.J.S.A. 19:3-6 requires that the true purpose of the State Public Question # 1 be expressed. Thus, the right underlying plaintiff's claim is settled.

77. For Plaintiffs to be granted an injunction they must make a preliminary showing of a reasonable probability of ultimate success on the merits. (Id. at 133, 447 A.2d 173. The Defendants may argue that the voters knew that they were voting to legalize marijuana. The heart of the issue, however, is what the voters did not know. Again, N.J.S.A. 19:3-6 provides as follows in pertinent part:

Any public question voted upon at an election shall be presented in simple language that can be easily understood by the voter. The printed phrasing of said question on the ballots shall clearly set forth the true purpose of the matter being voted upon. Where the question concerns any amendment to the State Constitution, or any act or statute or other legal titles of any nature, the printed phrasing on the ballots shall include a statement interpreting same.

78. With respect to interpretive statements, they must be designed in such a way as to help the voter understand more about the issue than disclosed in the State Public Question # 1 for purposes of aiding the voter in his or her decision. City of N. Wildwood v. N. Wildwood Taxpayers' Ass'n, 338 N.J.Super. 155 (Law Div. 2000).

### **The Interpretive Statement Is Deficient**

79. A statement does not have to list every consequence, but in this case of proposing to legalize a drug that has been considered by the State to be a "Controlled Dangerous Substance" it should be incumbent to at least mention why it was no longer dangerous. Plaintiffs believe voters have a right to understand what the ramifications are of an illegal proposal of marijuana

commercialization beyond the scope of the mere process described in the State Public Question # 1 and to enable voters to possess a basic working knowledge of the weight their vote carries.

80. Nowhere in the interpretive statement is there any mention of the scope or consequences tied to one's vote on the State Public Question # 1. Even the most liberal reading of the Interpretive Statement would not yield an awareness, let alone an understanding, of the concerns Plaintiffs have raised.

89. If voters wanted clarity or further explanation on what legalization and commercialization actually meant, they were disappointed when they read the Interpretive Statement. The Interpretive Statement was deficient.

90. For all of these reasons, it is the Plaintiffs' determination that the true purpose of this State Public Question # 1 was not set forth in adequate detail so as to allow voters to be sufficiently informed. In addition, the Interpretive Statement failed to aid the voter in understanding the flawed State Public Question # 1.

91. If the court were to deny the injunction, the hardship to NJ residents including children, as well as to the Plaintiffs would be severe. Marijuana products can be very high in potency and reach 99.96% THC, the psychoactive, intoxicating, mind-altering component of the drug. These products cause addiction, mental illness, birth defects, suicide, violence, DUIs and many adverse general health problems. (Exhibit 1). Conversely, if the court were to grant the injunction, Defendants' hardships would be slight. They would just have to comply with New Jersey and federal law, a duty they already have.

92. The will of the state's citizens will not be undercut. Rather, the court's injunction will

ensure that the will of these citizens is expressed accurately. That is to say, the true will of the citizens can only be known if the citizens were told, as they are required to be so told under N.J.S.A. 19:3-6, of the true purpose of the State Public Question # 1 and what their vote on that question really means. To assume that just because a vote was cast that the vote reflected the will of those voters, especially in light of the limited amount of information presented to the voters in this case, would be imprudent.

93. Therefore, the injunctive relief herein does not undermine the will of the voters. Rather, in accordance with the right to vote indeed being sacred, it merely seeks to confirm the will of the voters in a way that is fair to all parties involved. Fairness is best ensured by transparency, and the State Public Question # 1 in question was not transparent as written. Moreover, the notion that voters would be burdened by a revised referendum being placed on a future potential ballot is far-fetched, at best. It is one additional consideration to be voted upon in an election. With respect to the appropriateness of judicial intervention, the lack of clear and accurate information in the referendum interfered with a knowledgeable expression of popular will so as to warrant judicial action.

94. Plaintiffs' arguments are in no way an affront to democratic norms. Plaintiff is simply seeking to make certain that any change to legalization is done properly, with strict adherence to statutory parameters, and with careful attention paid to ensure compliance with the appropriate legal process. Plaintiff is not seeking to permanently thwart the will of the state's residents. It simply seeks to rectify what was a legally deficient referendum. Once the necessary measures are implemented to bring the referendum within legal compliance, the obligation to inform the

citizens of the consequences of their vote will be satisfied.

95. The citizens should have been exposed to more information prior to voting. Nothing can be more integral to the electoral system, especially when that system directly bears upon the well-being of children, than an informed vote.

### **The Supremacy Clause of the U.S. Constitution Is Incorporated into the State Constitution**

96. Defendants are not obligated to enforce federal law but they have an obligation under the Civil Rights Act and the State Constitution to support and obey the US Constitution and federal laws. Article VI of U.S. Constitution states:

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States. (emphasis added)

97. The State Constitution reads:

#### ARTICLE IV LEGISLATIVE SECTION VIII

1. Members of the Legislature shall, before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of New Jersey, and that I will faithfully discharge the duties of Senator (or member of the General Assembly) according to the best of my ability." Members-elect of the Senate or General Assembly are empowered to administer said

oath or affirmation to each other.

#### ARTICLE VII PUBLIC OFFICERS AND EMPLOYEES SECTION I

1. Every State officer, before entering upon the duties of his office, shall take and subscribe an oath or affirmation to support the Constitution of this State and of the United States and to perform the duties of his office faithfully, impartially and justly to the best of his ability.

#### **The State Cannot Enforce a Constitutional Amendment That Is Enjoined by or in Conflict with Federal Law**

98. If State Public Question # 1 is about the legalization and commercialization of marijuana or cannabis, these are illegal actions under federal law. Therefore, State Public Question # 1 is unconstitutional under the US Constitution Supremacy Clause and cannot be enforced and thus the enabling law in its primary purpose of legalizing and commercializing marijuana drug dealing, is null and void.

99. The Defendants' promotion of widespread possession and use and the commercial cultivation, distribution, marketing, and sales of marijuana, and ignoring every objective embodied in the federal drug control and regulation system (including the federal government's prioritization of the interdiction of Schedule I drugs including marijuana), directly conflicts with and otherwise stands as an obstacle to Congress's mandate that all possession and use of Schedule I drugs, including marijuana, be prohibited. This prohibition embodies not just the considered judgment of Congress, but also the treaty obligations proposed and agreed to by the United States (and relied upon by other countries who are similarly obligated), and are embodied in the U.S. drug control laws and regulations.

100. Under federal law anyone involved in the possession, production, growing or the



sale of marijuana is subject to federal prosecution under the federal Controlled Substances Act (CSA) because the state marijuana laws are preempted by the CSA. They may also be civilly liable. In reality, the State Public Question # 1 cannot make lawful the "growth, cultivation, processing, manufacturing, preparing, packaging, transferring, and retail purchasing and consumption of cannabis, or products created from or which include cannabis" as all these actions remain illegal under federal law. 21 U.S.C. § 812 ( c). The Supremacy Clause of the United States Constitution dictates the United States Constitution and all United States' laws "shall be the supreme Law of the Land." U.S. Const. Art. VI, cl. 2. Pursuant to this clause, if there is conflict between a state law (or constitutional provision) and federal law, "state law must give way." PLIVA, Inc. v. Mensing, 564 U.S. 604, 617 (2011) (internal citations omitted). Accordingly, the State Public Question # 1 cannot permit the use of marijuana and cannot immunize New Jersey citizens from penalties under federal law. The State Public Question # 1 fails to provide voters any notice, much less fair notice, of this significant defect in permitting the use of marijuana.

101. Voters should not be misled and they should have an opportunity to know and be on notice as to the proposition on which they are casting their votes. State Public Question # 1 must give fair notice of the proposed change and such summary may not be vague or misleading. The State Public Question # 1 should not omit material facts regarding the purpose or effects of the proposed amendment.

102. In this instance, the State Public Question # 1 is outright misleading and fails to give voters fair notice of the effects of the State Public Question # 1 as it fails to inform voters it does

not and cannot “permit” the use of marijuana. The State Public Question # 1 purports to “permit” marijuana use but fails to advise voters about federal law prohibitions and its inability to actually immunize marijuana use from civil and criminal penalties under federal law.

**Federal Law Unambiguously Prohibits the Conduct the State Public Question # 1 Purports to Make Legal**

103. The federal government has legislated in the area of controlled substances for over 100 years. Without detailing each such enforcement attempt, suffice to say Congress has enacted a myriad of laws to exclusively dominate the legal and regulatory environment regarding controlled substances. The present iteration of this legislation, the Comprehensive Drug Abuse Prevention and Control Act of 1970, was designed by Congress to federalize and uniformize the various prohibitions against the use and possession of various “drugs” found in federal law. Title II of this legislation, the Controlled Substance Act (“CSA”), prohibits the use, possession, sale, importation, manufacturing, and distribution of controlled substances, outside the prescribed boundaries of the CSA.

104. The CSA created a five-tier system with each tier described as a “Schedule.” 21 U.S.C. § 812. Ranging from 1-5, each Schedule describes those controlled substances, or their chemical or ingredient makeup, that are included in that section. *Id.* Controlled substances are divided into each schedule according to various factors, including: potential for abuse; acceptable medicinal uses; risk to public health; among others. *Id.*; see also 21 U.S.C. § 811(c). Federal law presently defines marijuana as a “Schedule I” controlled substance. 21 U.S.C. § 812(c)(17).

105. The CSA explicitly prohibits any use, sale, or possession of a Schedule I substance

(which, as stated, includes marijuana). 21 U.S.C. § 841(b)(1)(D) (describing the sentence for possession of marijuana, to include: “a term of imprisonment of not more than 5 years, a fine not to exceed . . . \$250,000 if the defendant is an individual or \$1,000,000 if the defendant is other than an individual, or both.”).

106. Possession of even small amounts for so-called personal “use” may still subject the individual to civil or criminal penalties. *Id.* (describing prohibitions for *any* amount of marijuana); see also 21 U.S.C. § 844a(a) and 28 C.F.R. § 76.2(h)(6)(vi) (possession of marijuana in small amounts, even one (1) ounce, may result in a \$10,000 fine). There is no amount of marijuana that New Jersey voters may “permit” the use of without the accompanying risk of federal penalties.

107. The Supreme Court of the United States has discussed the inherent tension between state and federal drug laws, particularly as states attempt to “legalize” this substance which remains illegal under federal law. As noted above, the CSA prohibits the use, possession, etc. of marijuana with “but one express exception . . . for Government-approved research projects.” U.S. v. Oakland Cannabis Buyers’ Co-op., 532 U.S. 483, 489–90 (2001) (citing 21 U.S.C. § 841(a)(1), § 823(f)). Even in instances where a state purports to authorize “the local cultivation and use of marijuana in compliance” with state law, such state laws do not immunize individuals from federal law civil and criminal penalties. Gonzales v. Raich, 545 U.S. 1, 5 (2005). In Raich, Angel Raich and Diane Monson brought suit against the Attorney General of the United States seeking to prevent enforcement of the CSA to their use and possession of marijuana pursuant to California law(s) permitting such marijuana use. *Id.* at 7. Raich and Monson brought a challenge

to the CSA's prohibition of the use and possession of *intrastate* marijuana, since such is legal under state law in the state it was manufactured, used, and possessed (California). *Id.* The Court held:

The Supremacy Clause unambiguously provides that if there is any conflict between federal and state law, federal law shall prevail. It is beyond peradventure that federal power over commerce is superior to that of the States to provide for the welfare or necessities of their inhabitants, however legitimate or dire those necessities may be. Just as state acquiescence to federal regulation cannot expand the bounds of the Commerce Clause, so too state action cannot circumscribe Congress' plenary commerce power. *Id.* at 29 (internal quotes and citations omitted).

108. The Supreme Court rejected the petitioner's numerous arguments, and unequivocally held that state laws have no power to legalize or permit something federal law prohibits. *Id.* at 29. Indeed, even as more states "legalize" marijuana, numerous defendants across the country have been prosecuted for use and possession of marijuana and have argued, to no avail, the invalidity of their convictions based on compliance with state laws. See United States v. Kelly, 18-CR-00217-RJA-JJM, 2019 WL 6693528, at \*2 (W.D.N.Y. Dec. 9, 2019) ("Congress may one day decide to legalize the possession of marijuana for medical (or other) purposes. However, it has yet to do so, and 'where, as here, the statute's language is plain, the sole function of the courts is to enforce it according to its terms.'").

109. Congress enacted the Controlled Substances Act (CSA) for the purposes of consolidating various drug laws into a comprehensive statute, providing meaningful regulation over legitimate sources of drugs to prevent diversion into illegal channels, and strengthening law enforcement tools against international and interstate drug trafficking. 21 U.S.C. 801; 21 U.S.C. § 811(c); 21 U.S.C. § 812(c); 21 U.S.C. § 841(b)(1)(D); 21 U.S.C. § 844a(a), et seq.

110. The Congressional findings in the CSA provide the Commerce Clause and international treaty legal justification for the CSA.

21 U.S.C.A. 801 Congressional findings and declarations: controlled substances  
The Congress makes the following findings and declarations:

- (1) Many of the drugs included within this subchapter have a useful and legitimate medical purpose and are necessary to maintain the health and general welfare of the American people.
- (2) The illegal importation, manufacture, distribution, and possession and improper use of controlled substances have a substantial and detrimental effect on the health and general welfare of the American people.
- (3) A major portion of the traffic in controlled substances flows through interstate and foreign commerce. Incidents of the traffic which are not an integral part of the interstate or foreign flow, such as manufacture, local distribution, and possession, nonetheless have a substantial and direct effect upon interstate commerce because—
  - (A) after manufacture, many controlled substances are transported in interstate commerce,
  - (B) controlled substances distributed locally usually have been transported in interstate commerce immediately before their distribution, and
  - (c) controlled substances possessed commonly flow through interstate commerce immediately prior to such possession.
- (4) Local distribution and possession of controlled substances contribute to swelling the interstate traffic in such substances.
- (5) Controlled substances manufactured and distributed intrastate cannot be differentiated from controlled substances manufactured and distributed interstate. Thus, it is not feasible to distinguish, in terms of controls, between controlled substances manufactured and distributed interstate and controlled substances manufactured and distributed intrastate.
- (6) Federal control of the intrastate incidents of the traffic in controlled substances is essential to the effective control of the interstate incidents of such traffic.
- (7) The United States is a party to the Single Convention on Narcotic Drugs, 1961, and other international conventions designed to establish effective control over international and domestic traffic in controlled substances.

111. In Gonzales v. Raich, 545 U.S. 1 (2005), the U.S. Supreme Court concluded that local cultivation, possession and distribution of marijuana was prohibited by the CSA under the Commerce Clause of the U.S. Constitution. The Supreme Court acknowledged Congress's

Commerce Clause authority to ban marijuana production, consumption, and distribution. 22  
Classification of marijuana as a Schedule I controlled substance is not arbitrary or capricious or a  
violation of due process. U.S. v. Greene, 892 F.2d 453 (CA6 1989), certiorari denied 110 S.Ct.  
2179. As a Schedule I drug, the manufacture, distribution or possession of marijuana is a  
criminal offense under the CSA. For example:

a. It is unlawful for any person knowingly or intentionally to manufacture, distribute, or  
dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance  
unless it is in accordance with the CSA. 21 U.S.C. 841(a)

b. It is unlawful for any person knowingly or intentionally to possess a controlled  
substance unless such substance was obtained directly, or pursuant to a valid prescription or  
order, from a practitioner. This exception does not apply to Schedule I drugs such as marijuana,  
which has no accepted medical use. 21 U.S.C. 844(a)

c. It is unlawful to use any communication facility such as the Internet to commit felony  
violations of the CSA. 21 U.S.C. 843

d. It is illegal to conspire to commit any of the crimes set forth in the CSA. 21 U.S.C. 846

e. It is unlawful to knowingly open, lease, rent, maintain, or use property for the

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<sup>22</sup> See also, 21 U.S.C.A. 801 et seq.; 21 U.S.C. 841(a)(1), 844; See, United States v. Hicks, 722 F.Supp.2d 829 (E.D. Mich. 2010) (It is indisputable that state marijuana laws do not, and cannot, supercede federal laws that criminalize the possession of marijuana); United States v. \$186,416.00 in U.S. Currency, 590 F.3d 942, 945 (9th Cir. 2010) (there is no exception for marijuana distribution or possession under the federal Controlled Substances Act[.]); United States v. Scarmazzo, 554 F.Supp.2d 1102, 1109 (E.D.Cal. 2008) (Federal law prohibiting the sale of marijuana is valid); United States v. Landa, 281 F.Supp.2d 1139, 1145 (N.D.Cal.2003) (“[O]ur Congress has flatly outlawed marijuana in this country”); Assenberg v. Anacortes Housing Authority, 268 Fed. Appx. 643 (9th Cir. 2008) (holding that a plaintiff’s use of marijuana rendered him ineligible to reside in federally subsidized housing pursuant to 42 U.S.C. 13661, and that there was no duty to accommodate his drug use), aff’d, cert. denied.

manufacturing, storing, or distribution of controlled substances. 21 U.S.C. 856. This applies to landlords.

f. It is unlawful to distribute or manufacture controlled substances within 1,000 feet of schools, colleges, playgrounds, and public housing facilities, and within 100 feet of any youth centers, public swimming pools, and video arcade facilities. 21 U.S.C. 860

112. Federal law also states that “[w]hoever, knowing that an offense against the United States has been committed, receives, relieves, comforts or assists the offender in order to hinder or prevent his apprehension, trial or punishment, is an accessory after the fact.” (18 U.S.C. 3). Under 18 U.S.C. 4, “[w]hoever, having knowledge of the actual commission of a felony cognizable by a court of the United States, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States, shall be fined under this title or imprisoned not more than three years, or both.”

113. Even if Congress legalizes marijuana under the CSA, under the federal Food, Drug and Cosmetic Act (FDCA) it’s illegal to introduce THC into products for human consumption unless approved by the FDA. 21 U.S.C. 321 (g)(1) and (p); 21 U.S.C. 331 and 331and 355 (b)(1).

114. The State Public Question # 1 if implemented will violate the above laws. Defendants are not obligated to enforce federal law but they have an obligation under the Civil Rights Act and the State Constitution to support the US Constitution and federal law. New Jersey Constitution Article IV Legislative Section VIII; Article VII Public Officers and Employees Section I

## **State and Local Government Employees Are Not Immune**

115. If government employees are involved in affirmative actions to protect, facilitate or oversee the manufacture, distribution, and use of marijuana, they are in direct violation of federal law. 18 U.S.C. 4. In United States v. Rosenthal, 454 F.3d 943, 948 (CA 9 2006), it was held that implementation and facilitation of state marijuana laws contrary to the federal Controlled Substance Act (CSA) constitute federal crimes. The CSA provides limited immunity from prosecution for certain actions by State officials, but such immunity is not applicable when public officials in states that have legalized marijuana aid or abet such laws in any way inconsistent with the CSA. Section 885(d) of the CSA provides:

Except as provided in sections 2234 and 2235 of Title 18 [relating to illegal procurement and execution of search warrants], no civil or criminal liability shall be imposed by virtue of this subchapter upon any duly authorized Federal officer lawfully engaged in the enforcement of this subchapter, or upon any duly authorized officer of any State, territory, political subdivision thereof, the District of Columbia, or any possession of the United States, who shall be lawfully engaged in the enforcement of any law or municipal ordinance relating to controlled substances.

116. However, for an official to be “lawfully engaged” in the enforcement of a law relating to controlled substances, and therefore entitled to protection under statute creating immunity from federal drug laws, the law that the official is “enforcing” must itself be consistent with federal law and the state marijuana legalization laws are not. United States v. Rosenthal, 266 F.Supp.2d 1068, 1078 (ND CA 2003). 21 U.S.C.A. 885(d)

117. In a Colorado Supreme Court case the court considered whether article XVIII, section 14(2)(e) of the Colorado Constitution is preempted by the CSA. Section 14(2)(e) requires law enforcement officers to return medical marijuana seized from an individual later acquitted of



a state drug charge. The court held that the CSA prohibits the distribution of marijuana, with limited exceptions. The court found that compliance with section 14(2)(e) requires law enforcement officers to distribute marijuana in violation of the CSA. Because section 14(2)(e) positively conflicts with the CSA, the court found that section 14(2)(e) is preempted. People v. Crouse, 388 P.3d 39 (CO 2017); People v. Crouse, 2015 WL 3745183 (Ct. App. 2015)

### **Property owners and landlords**

118. Property owners and landlords who rent or provide a location for marijuana stores are subject to prosecution. It is unlawful to knowingly open, lease, rent, maintain, or use property for the manufacturing, storing, or distribution of controlled substances. 21 U.S.C. 856

### **Financiers and banks**

119. Those who provide financing for marijuana operations may be subject to prosecution. For example, federal anti-money laundering statutes make it illegal to engage in financial transactions designed to promote illegal activities, including drug trafficking, or to conceal or disguise the source of the proceeds of that illegal activity. 18 U.S.C.1956 and 1957

### **Racketeer Influenced and Corrupt Organizations Act (RICO)**

120. The federal Department of Justice (DOJ) may initiate criminal proceedings under the Racketeer Influenced and Corrupt Organizations Act (RICO). 18 U.S.C. 1962. All property constituting or derived from, directly or indirectly, the proceeds of racketeering activities is subject to forfeiture regardless of any provision of state law. 18 U.S.C. 1963(a). The RICO statute also gives rise to a civil cause of action which may be brought by a private citizen injured

by the racketeering activity when the activity proximately caused the injury. 18 U.S.C. 1964. 23

### **The Tax Consequences of Trafficking in Marijuana for Commercial Businesses**

121. Trafficking in marijuana has negative tax consequences even if the sale of marijuana is claimed to be “legal” under a state marijuana law. The Internal Revenue Code states:

No deduction or credit shall be allowed for any amount paid or incurred during the taxable year in carrying on any trade or business if such trade or business (or the activities which comprise such trade or business) consists of trafficking in controlled substances (within the meaning of schedule I and II of the Controlled Substances Act) which is prohibited by Federal law or the law of any State in which such trade or business is conducted. 6 U.S.C. 280E (expenditures in connection with the illegal sale of drugs).

122. Marijuana is a schedule I controlled substance for tax purposes. Provision of marijuana constitutes “trafficking” within the meaning of the Internal Revenue Code section disallowing business expense deductions for expenditures “in connection with the illegal sale of drugs,” even though the activity was pursuant to a state statute. Californians Helping to Alleviate Medical Problems, Inc., v. Commissioner of Internal Revenue, 128 T.C. 173, 93 TCM 3973 (2007).

123. No matter what New Jersey voters add to the New Jersey constitution, it cannot immunize individuals from prosecution for violations of federal law.

### **The State Public Question # 1 Misled Voters by Failing to Inform Voters of the Federal Law Prohibitions that Prevent the Essential Purpose of the State Public Question # 1**

124. A State Public Question should not fly under false colors or “hide the ball” as to the

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<sup>23</sup> Recreational marijuana facility adjacent to plaintiffs’s land has *both* interfered with their present use and enjoyment of the land and caused a diminution in its market value. Safe Streets Alliance v. Alternative Holistic Healing, LLC, No. 16-1048 (CA 10, June 7, 2017).

amendment's true effect. A State Public Question may be misleading not because of what it says, but what it fails to say. This Court should reject any State Public Question that misleads voters about the current state of the law in an attempt to lure voters into voting favorably for that proposal.

125. This Court should note the glaring discrepancies between what the State Public Question # 1 promised voters and what it actually delivered. It is hard to conceive of more misleading discrepancies.

126. The State Public Question # 1 proposes to permit adults to legally use marijuana for any reason. As discussed above, this is patently untrue. This is precisely the type of language that is so misleading as to clearly and conclusively violates N.J.S.A. 19:3-6 and even if passed by the voters state officials cannot implement it or enforce it.

127. Despite full knowledge of these prohibitions, which the authors of the State Public Question # 1 could not be unaware, the summary falsely tells voters the use of marijuana “shall be lawful.” Of course, there can be no confusion regarding the words shall be lawful. The choice of these words tells voters the use of marijuana will be legally allowed by authorities.

128. The State Public Question # 1 contains no exception or warning of the civil and criminal penalties under federal law. Foisting this seriously deceptive State Public Question # 1 on the voters does a severe disservice to the people and to their constitution. The Court should not permit this misleading State Public Question # 1, with its patently false statements to be enforced.

**The Amendment That Marijuana “Shall Be Lawful” by Legislators and the Governor and the Attorney General Will Damage Voters**

129. While several states have made changes to their State drug laws during this year's election, there have been no changes to the drug testing panel under the federal Drug-Free Workplace Program (DFWP) that includes testing for marijuana/cannabis. This affects many workers in New Jersey such as transportation workers, truck drivers, oil pipeline workers, mass transit workers and law enforcement. If New Jersey residents use marijuana now thinking it is legal, they will lose their jobs. 24

130. In another example, the Federal Substance Abuse and Mental Health Services Agency (SAMHSA), which oversees the distribution of federal funds to treat substance abuse and mental health disorders, is requiring that all grant recipients certify that all programs receiving SAMHSA funds comply with the following statement:

SAMHSA grant funds may not be used to directly or indirectly, purchase, prescribe, or provide marijuana or treatment using marijuana. Treatment in this context includes the treatment of opioid use disorder. Grant funds also cannot be provided to any individual who or organization that provides or permits marijuana use for the purposes of treating substance use or mental disorders. 25

131. As a result, SAMHSA funded treatment programs will at some point be forced to decide whether to risk violating either the state law that permits the use of marijuana or the SAMHSA certification requirement.

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<sup>24</sup> <https://www.samhsa.gov/sites/default/files/programs-practitioners/dfw-state-drug-law-changes-11192020.pdf>

<sup>25</sup> <https://www.marijuanadoctors.com/blog/government-withdraw-grants-mmj/>

## **N.J.S.A. 10:62 Civil Actions for Rights Violations**

132. The relevant section of this law states:

c. Any person who has been deprived of any substantive due process or equal protection rights, privileges or immunities secured by the Constitution or laws of the United States, or any substantive rights, privileges or immunities secured by the Constitution or laws of this State, or whose exercise or enjoyment of those substantive rights, privileges or immunities has been interfered with or attempted to be interfered with, by threats, intimidation or coercion by a person acting under color of law, may bring a civil action for damages and for injunctive or other appropriate relief. The penalty provided in subsection e. of this section shall be applicable to a violation of this subsection.

133. See, Felicioni v. Administrative Office of Courts, 404 N.J. Super. 382, 400 (App. Div. 2008). Trafton v. City of Woodbury, 799 F.Supp.2d 417, 443,444 (D.N.J. 2011).

Citizens have a constitutional right under Articles IV and VII of the state Constitution and the New Jersey Civil Rights Act, N.J.S.A.- 10:6-2c. to expect that the State Legislature, in its drafting of a State Public Question # 1 to be voted on by the public in a referendum, would not only provide factual and accurate information but also would support the US Constitution and federal laws.

134. The power of citizens to approve or reject at the polls any ordinance through the public question process constitutes a “substantive right” protected by the Civil Rights Act, such that a deprivation of the right entitled the citizens to an award of attorney fees under the Act. The application of Civil Rights Act was not expressly limited to cases involving discrimination, declaration that the voters had the power of referendum conferred a benefit on entire class of voters, city clerk's failure to file a referendum petition to allow a vote on an ordinance gave rise to a cause of action, and nothing in the broad-based language of the Civil Rights Act remotely suggested that the drafters did not intend its remedies to apply to enforcement of the right of

referendum. Tumpson v. Farina, 218 N.J. 450, 95 A.3d 210 (2014). Civil Rights Key Number 1774

135. The New Jersey Civil Rights Act (NJCRA) provides a means of vindicating substantive rights guaranteed by federal law and New Jersey's Constitution and laws and is not a source of rights itself. Lapolla v. County of Union, 449 N.J.Super. 288, 157 A.3d 458 (A.D.2017).

**Violation of the New Jersey Civil Rights Act, N.J.S.A. 10:62c.**

136. The New Jersey Civil Rights Act of 2005 guarantees a private right to sue when the State, such as the state Legislature and the Governor and Attorney General violate the civil rights of citizens. Defendants should have issued warnings. They cannot now argue that such a duty to warn is the purpose of regulations pursuant to passage as a defense, because the public deserves this clear and simple language antecedent to their vote so they are voting with an informed consent and conscience. As an analogy, this failure is tantamount to a bank offering loan without disclosing the interest rate, penalties and/or repayment years. Who would accept such conditions?

137. Today we constantly hear the term "transparent" when it comes to government and clearly here the State of New Jersey has not been transparent in the wording and subsequent explanation of this far reaching recreational use involving multiple and serious risk. This was a monumental risk to place it illegally, and in front of a misinformed public, to achieve what the science does not support. The further tragedy is that the public is misinformed as strategically placed legislators refused to publically share the science presented to them. In so doing an

artificial obstacle prevented the petitioners from receiving the relief they now seek. Therefore, to seek relief at his time is not only appropriate but essential to restore the constitutional right for citizens to seek redress from their government.

**FIRST CAUSE OF ACTION**  
**THE STATE PUBLIC QUESTION # 1 MUST BE ENJOINED AND CANNOT BE ENFORCED BECAUSE IT VIOLATES N.J.S.A. 19:3-6 (FORM OF PUBLIC QUESTION)**

138. Plaintiffs repeat and reallege all paragraphs set forth above including under the Parties, Allegations and Facts Common to All Counts, and all other Counts herein, as if set forth at length as part of this Count.

139. The State Public Question # 1 violated N.J.S.A. 19:3-6 in that it was not transparent and was misleading and contrary to law and intended to deceive the voters. The voters were not told the negative consequences of their vote and they had a right to know. New Jersey citizens have a constitutional right under N.J.S.A. 10:62c and N.J.S.A. 19:3-6 to expect that the Legislature, in its drafting of a State Public Question # 1 to be honest with them and set forth the true purpose of the matter being voted upon. The State Public Question # 1 was not informative, objective or legitimate. The State Public Question # 1 did not adequately inform the voters of the health, environmental, law enforcement, mental health and fiscal consequences of their vote especially regarding impact on children.

140. There have been tomes of medical and psychological evidence from most reputable sources documenting the myriad of dangers in the recreational use of cannabis. (Exhibit 1). Therefore the State has a duty to warn its residents by full disclosure of these dangers. Since this is scientific matter the nomenclature and terms of art are generally unknown by a significant

percentage of the voting public and consequently rely on taxpayer employed appropriate officials to inform them by disclosure of risk. This failure in the duty to warn not only invites enormous liabilities but violates the statutory/constitutional amendment language requirement of the proposed ballot initiative.

141. Such violations expose the people of the State to immediate, imminent and irreparable harm, and cannot be rectified with money damages.

142. PRAYER FOR RELIEF

WHEREFORE, based upon the facts and the law, Plaintiffs respectfully request that the Court enter judgment:

- a. Awarding judgment for the Plaintiffs in their favor and against the Defendants on each cause of action asserted in the Verified Complaint.
- b. Adjudging and declaring the 2020 State Public Question # 1 is in violation of N.J.S.A. 19:3-6 and N.J.S.A. 10:6-2 and other New Jersey and federal laws and is thus null and void.
- c. Declaring that in the future that the Defendants comply with N.J.S.A. 19:3-6 and other New Jersey laws when it comes to such State Public Questions and to give voters accurate and legitimate information as to the consequences of their vote.
- d. Enjoining said Defendants from implementing 2020 State Public Question # 1 through executive action or legislation.
- e. To grant reasonable attorney's fees and costs to Plaintiffs pursuant to N.J.S.A. 10:6-2
- f. Granting such other relief as the interests of justice may require.

**SECOND CAUSE OF ACTION**

**THE STATE PUBLIC QUESTION # 1 MUST BE ENJOINED AND CANNOT BE ENFORCED BECAUSE IT VIOLATES THE NEW JERSEY CIVIL RIGHTS ACT N.J.S.A. 10:6-29( c)**

143. Plaintiffs repeat and reallege all paragraphs set forth above including under the Parties, Allegations and Facts Common to All Counts, and all other Counts herein, as if set forth at length as part of this Count.

144. The New Jersey Civil Rights Act provides that citizens's substantive rights are guaranteed by the US Constitution and federal laws and New Jersey's Constitution and New



Jersey laws such as N.J.S.A. 19:3-6. Defendants violated those rights.

145. Such violations expose the people of the State to immediate, imminent and irreparable harm, and cannot be rectified with money damages.

146. PRAYER FOR RELIEF

WHEREFORE, based upon the facts and the law, Plaintiffs respectfully request that the Court enter judgment:

- a. Awarding judgment for the Plaintiffs in their favor and against the Defendants on each cause of action asserted in the Verified Complaint.
- b. Adjudging and declaring the 2020 State Public Question # 1 is in violation of N.J.S.A. 19:3-6 and N.J.S.A. 10:6-2 and other New Jersey and federal laws and is thus null and void.
- c. Declaring that in the future that the Defendants comply with N.J.S.A. 19:3-6 and other New Jersey laws when it comes to such State Public Questions and to give voters accurate and legitimate information as to the consequences of their vote.
- d. Enjoining said Defendants from implementing 2020 State Public Question # 1 through executive action or legislation.
- e. To grant reasonable attorney's fees and costs to Plaintiffs pursuant to N.J.S.A. 10:6-2
- f. Granting such other relief as the interests of justice may require.

**THIRD CAUSE OF ACTION  
PREEMPTION UNDER FEDERAL LAW IS INCORPORATED INTO THE STATE  
CONSTITUTION AND THEREFORE STATE PUBLIC QUESTION # 1 MUST BE  
ENJOINED AND CANNOT BE ENFORCED BECAUSE IT VIOLATES OR SUPPORTS  
THE VIOLATION OF FEDERAL LAWS**

147. Plaintiffs repeat and reallege all paragraphs set forth above including under the Parties, Allegations and Facts Common to All Counts, and all other Counts herein, as if set forth at length as part of this Count.

148. This may at first appear to be a federal question for the federal courts but it is not. The Supremacy Clause of the U.S. Constitution is incorporated into the State Constitution. The State simply cannot use a constitutional amendment that is enjoined by or in conflict with federal law and thus in conflict with the New Jersey Constitution. State Public Question # 1 is a proposal for legalization and commercialization of marijuana. This is illegal under federal law.

149. Such violations expose the people of the State to immediate, imminent and irreparable harm, and cannot be rectified with money damages.

150. PRAYER FOR RELIEF

WHEREFORE, based upon the facts and the law, Plaintiffs respectfully request that the Court enter judgment:

a. Awarding judgment for the Plaintiffs in their favor and against the Defendants on each cause of action asserted in the Verified Complaint.

b. Adjudging and declaring the 2020 State Public Question # 1 is in violation of N.J.S.A. 19:3-6 and N.J.S.A. 10:6-2 and other New Jersey and federal laws and is thus null and void.

c. Declaring that in the future that the Defendants comply with N.J.S.A. 19:3-6 and other New Jersey laws when it comes to such State Public Questions and to give voters accurate and legitimate information as to the consequences of their vote.

d. Enjoining said Defendants from implementing 2020 State Public Question # 1 through executive action or legislation.

e. To grant reasonable attorney's fees and costs to Plaintiffs pursuant to N.J.S.A. 10:6-2

f. Granting such other relief as the interests of justice may require.

**FOURTH CAUSE OF ACTION**

**THE STATE PUBLIC QUESTION # 1 MUST BE ENJOINED AND CANNOT BE ENFORCED BECAUSE IT CANNOT AND DOES NOT TRULY PERMIT ADULT (OVER THE AGE OF 21) USE OF MARIJUANA AND VIOLATES FEDERAL LAW AND/OR THE NEW JERSEY CONSTITUTION AND/OR N.J.S.A. 19:3-6 AND/OR THE NEW JERSEY CIVIL RIGHTS ACT, N.J.S.A.10:6-2C**

151. Plaintiffs repeat and reallege all paragraphs set forth above including under the Parties, Allegations and Facts Common to All Counts, and all other Counts herein, as if set forth at length as part of this Count.

152. The Defendants should not permitted to be implement State Public Question # 1 because it outright misleads voters regarding its intended purpose, and it fails to accurately inform voters of the effects of the proposed amendment. State Public Question # 1 claims that the growth, cultivation, processing, manufacturing, preparing, packaging, transferring, and retail purchasing and consumption of cannabis, or products created from or which include cannabis, by

persons 21 years of age or older, and not by persons under 21 years of age, shall be lawful.

153. This cannot be lawful under federal law. Such violations expose the residents of New Jersey to immediate, imminent and irreparable harm, and cannot be rectified with money damages.

#### 154. PRAYER FOR RELIEF

WHEREFORE, based upon the facts and the law, Plaintiffs respectfully request that the Court enter judgment:

a. Awarding judgment for the Plaintiffs in their favor and against the Defendants on each cause of action asserted in the Verified Complaint.

b. Adjudging and declaring the 2020 State Public Question # 1 is in violation of N.J.S.A. 19:3-6 and N.J.S.A. 10:6-2 and other New Jersey and federal laws and is thus null and void.

c. Declaring that in the future that the Defendants comply with N.J.S.A. 19:3-6 and other New Jersey laws when it comes to such State Public Questions and to give voters accurate and legitimate information as to the consequences of their vote.

d. Enjoining said Defendants from implementing 2020 State Public Question # 1 through executive action or legislation.

e. To grant reasonable attorney's fees and costs to Plaintiffs pursuant to N.J.S.A. 10:6-2

f. Granting such other relief as the interests of justice may require.

#### **VERIFICATION OF THE COMPLAINT**

155. Attached is the certification of Mary A. Botteon who has followed the history and language of the State Public Question # 1 for some time. She has read the Complaint and verifies it as to the history and language of State Public Question # 1.

#### **CERTIFICATION OF DAVID G. EVANS**

156. I have studied and written extensively about the nature of marijuana and the "legalization" of marijuana and upon information and belief all the facts stated about the nature of marijuana and the consequences of commercialization are true. The facts about the nature of marijuana will be proven by expert witnesses when it is appropriate and relevant. Attached is Exhibit 1 that has federal government documents documenting the harms of marijuana/cannabis

and a request for judicial notice of them. I hereby certify that the foregoing statements made by me are true and correct. I am aware if any of the foregoing statements made by me are willfully false, I am subject to punishment.

#### **DESIGNATION OF TRIAL COUNSEL**

David G. Evans, Esq. is designated as trial counsel in this matter.

#### **CERTIFICATION PURSUANT TO R. 1:38-7**

I certify that all confidential personal identifiers have been removed or redacted from this complaint, and that the same information will be removed or redacted from all documents submitted to the Court in connection with this matter in the future consistent with Rule 1:38-7(b).

#### **CERTIFICATION OF NO OTHER ACTIONS**

I certify that this dispute is not the subject of any other action by me pending in any other court or a pending arbitration proceeding to the best of my knowledge and belief other than a case in the federal District Court by a pro-se plaintiff. That case is Forchion v. Murphy, No. 3:20-cv-16582-PGS.TJB (filed November 19, 2020) and a case that may have been filed in Middlesex County Law Division by Dr. Christopher Binetti, PhD. a pro-se plaintiff. (Binetti v. State). I do not have a docket number. Neither are Plaintiffs in this action and they are not parties in this lawsuit. Also, to the best of my knowledge and belief no other action or arbitration proceeding is contemplated. Further, other than the parties set forth in this complaint, I know of no other parties that should be made a part of this lawsuit. In addition, I recognize my continuing obligation to file and serve on all parties and the court an amended certification if there is a

change in the facts stated in this original certification.



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David G. Evans, Esq.  
Attorney for Plaintiffs  
Date: December 17, 2020

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MARY A. BOTTEON AND RICHARD :  
W. SMITH, ESQ. AND JOHN :  
QUATTROCCHI AND ROBERT :  
CARUSO AND ALFONSO CIRULLI :  
AND MELISSA C. TASSE AND :  
CANNABIS INDUSTRY VICTIMS :  
EDUCATING LITIGATORS :  
JOHN AND JANE DOES 1-15 AND :  
XYZ CORPORATIONS 1-15, JOINTLY :

Plaintiffs

VS.

PHILIP D. MURPHY, GOVERNOR OF :  
THE STATE OF NEW JERSEY AND :  
GURBIR S. GREWAL, THE :  
ATTORNEY GENERAL IN THE STATE :  
OF NEW JERSEY AND SENATOR :  
STEPHEN SWEENEY AND SENATOR :  
NICHOLAS SCUTARI (ALL ARE :  
NAMED AS DEFENDANTS IN THEIR :  
OFFICIAL CAPACITIES AND JOHN :  
AND JANE DOES 1-15 AND XYZ :  
CORPORATIONS 1-15, JOINTLY :

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
MERCER COUNTY

Docket No.: MER-L-

Civil Action

**CERTIFICATION IN SUPPORT OF A  
VERIFIED COMPLAINT IN LIEU OF  
PREROGATIVE WRITS**

1. I, MARY A. BOTTEON, am a Plaintiff in the above captioned matter. I have personal knowledge of the history and language of State Public Question # 1 as set forth in the Verified Complaint. These facts are also a matter of public record.

2. I have reviewed the contents of the Verified Complaint, and verify the facts set forth therein about State Public Question # 1 are true and correct to the best of my knowledge.

3. I hereby certify that the foregoing statements made by me are true and correct. I am aware if any of the foregoing statements made by me are willfully false, I am subject to punishment.

  
MARY A. BOTTEON

DATE: 12/17/20