DISTRICT COURT, CITY AND COUNTY OF DENVER STATE OF COLORADO 1437 Bannock St. Denver, CO 80523 Phone: (720) 865-8301	DATE FILED: October 29, 2021 3:25 PM FILING ID: 4DFAC6B549765 CASE NUMBER: 2021CV32075
Plaintiffs: BENJAMIN M. WANN; DR. SHARON MONTES; DR. DAVID GRAY v. Defendants: JARED S. POLIS, in his official capacity as Governor of the State of Colorado; COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT; COLORADO DEPARTMENT OF REVENUE; MARIJUANA ENFORCEMENT DIVISION	▲ COURT USE ONLY ▲ Case No: 2021CV32075 Division: 209 Ctrm:
Attorney for the Plaintiffs: Buscher Law LLC Alexander Buscher #52729 3900 E Mexico Avenue Suite 300 Denver, CO 80210 Tel: (720) 258-6940 alex@buscherlaw.com	
SECOND AMENDED COMPLAINT	

Plaintiffs submit the following Complaint against Defendants:

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

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

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

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

5. Instead of regulating marijuana for "*safe consumption,*" HB 1317 unconstitutionally regulates patients and physicians, with medical marijuana program ending consequences.

6. Therefore, Plaintiffs Benjamin M. Wann, Dr. David Gray, and Dr. Sharon Montes, by and through attorney Alexander Buscher, of Buscher Law LLC, brings this lawsuit to challenge the Constitutionality of HB 1317.

PARTIES

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

8. Plaintiff Wann currently maintains a confidential medical marijuana registry card, is twenty (20) years of age, and will be immediately and irreparably harmed if HB 1317 is allowed to go into effect.

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

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

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

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

13. Plaintiffs Dr. Sharon Montes (CO License Number 34072) and Dr. David Gray (CO License Number 40096) *maintain, in good standing, licenses to practice medicine issued by the state of Colorado* as required by Colo. Const. art. XVIII, § 14(1)(e). ("**Plaintiff Physicians**," and together with Plaintiff Wann, the "**Plaintiffs**.")

14. Defendant Jared S. Polis, acting in his official capacity as Governor of the State of Colorado in enacting and administering HB 1317.

15. Defendant Colorado Department of Public Health and Environment ("CDPHE"), an "agency" of the State of Colorado as defined by C.R.S. § 24-4-102(3), and the Colorado regulatory department with jurisdiction and authority to implement the medical marijuana program found in Colo. Const. art. XVIII, § 14(3) and C.R.S. § 25-1.5-106.

16. Defendant Colorado Department of Revenue, an "agency" of the State of Colorado as defined by C.R.S. § 24-4-102(3), and the Colorado regulatory department with jurisdiction and authority to implement and enforce the regulated marijuana code found in C.R.S. § 44-10-101 et seq.

17. Defendant Marijuana Enforcement Division, a subdivision of the Department of Revenue, itself an "agency" of the State of Colorado as defined by C.R.S. § 24-4-102(3), and the Colorado regulatory department with jurisdiction and authority to implement and enforce the regulated marijuana code as the state licensing authority found in C.R.S. § 44-10-101 et seq.

JURISDICTION AND VENUE

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

19. This Court has jurisdiction over this matter pursuant to the Colorado Uniform Declaratory Judgments Law, which provides that any person "*whose rights, status, or other legal relations are affected by a statute . . . may have determined any question of construction or validity arising under the . . . statute . . . and obtain a declaration of rights . . . thereunder*." C.R.S. § 13-51-106; C.R.C.P. 57(b). This Court has jurisdiction to provide a declaratory judgment because this matter involves Plaintiffs' constitutional rights provided by Colo. Const. art. XVIII, § 14 directly affected by statute HB 1317, giving rise to the Claims for Relief asserted below. Id.

20. Venue is proper in the District Court of Denver County pursuant to C.R.C.P. 98(b) because the Claims for Relief asserted below arose in Denver County; Defendant Governor Jared S. Polis is a public official of the state of Colorado and acted in his official capacity when signing HB 1317 into law; CDPHE, Colorado Department of Revenue, and Marijuana Enforcement Division are agencies of the state of Colorado with the jurisdiction and authority to enforce HB 1317; and Denver County is the official seat of the state government.

CONSTITUTIONAL BACKGROUND (the "Constitutional Section")

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

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

23. Plaintiffs allege sections of HB 1317 violate Colo. Const. art. XVIII, § 14 both facially and in effect.

24. Plaintiffs also allege sections of HB 1317 violate Colo. Const. art. V, § 17 and Colo. Const. art. V, § 21.

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

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

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

Medical Use

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

Physician

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

Useable Form of Marijuana

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

Written Documentation

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

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

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

31. The Affirmative Defense provided in Colo. Const. art. XVIII, § 14(2) is incredibly broad, and some patients will likely again turn to the unregulated medical marijuana marketplace

operating under the protection of the Affirmative Defense if HB 1317 goes into effect and effectively dismantles the Confidential Registry system.

32. If there is no functional ability for patients to use the Confidential Registry system found in Colo. Const. art. XVIII, § 14(3) to purchase medical marijuana at licensed medical marijuana stores, or to purchase the quantities and products necessary to treat patients' specific conditions, patients will be encouraged to seek out unregulated caregiver marijuana or produce their own medical marijuana-based therapeutics at home.

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

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

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

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

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

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

(a) Confidential Registry Confidentiality Provisions

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

maintained by CDPHE. This prohibition applies whether the information appears in the Confidential Registry or is "*otherwise maintained"* by CDPHE. Id.

(b) Patient Registry Application

39. Colo. Const. art. XVIII, § 14(3)(b)(I)-(IV) states that to be placed on the Confidential Registry, a patient must reside in Colorado and submit a completed application including the following information: *"(I) The original or a copy of written documentation stating that the patient has been diagnosed with a debilitating medical condition and the physician's conclusion that the patient might benefit from the medical use of marijuana; (II) The name, address, date of birth, and social security number of the patient; (III) The name, address and telephone of the patient's physician; and (IV) The name and address of the patient's primary care-giver, if one is designated at the time of application."* (emphasis added).

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

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

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

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

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

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

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

44. Colo. Const. art. XVIII, § 14(4)(a) states "*A patient's medical use of marijuana, within the following limits, is lawful: (I) No more than two ounces of a usable form of marijuana; and (II) no more than six marijuana plants, with three or fewer being mature… (b) For quantities of marijuana in excess of these amounts, a patient or his or her primary care-giver may raise as*

an affirmative defense to charges of violation of state law that such greater amounts were medically necessary to address the patient's debilitating medical condition."

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

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

46. A bill does not violate this section if the change amounts only to a change in the means of accomplishing the bill's original purpose. Parrish v. Lamm, 758 P.2d 1356, 1362 (Colo. 1988).

47. The Office of Legislative Services states that *"an amendment that alters the original purpose of the bill may cause the bill to embrace two subjects"* and the purpose of this provision is to "*avoid 'log-rolling' (the joining together of unrelated measures to gain votes for passage of a measure)*" and "*provide helpful public notice of the contents of a bill.*" Memorandum from the Office of Legislative Legal Servs. to the Colo. Gen. Assemb., (Aug. 19, 2020) (on file at http://leg.colorado.gov/sites/default/files/bill-titles-single-subject-and-original-purpose-requirements.pdf).

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

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

49. Regarding Colo. Const. art. V, § 21, "*we are bound to assume that the word 'clearly' was not incorporated into the constitutional provision under consideration by mistake. . . The matter covered by legislation is to be 'clearly,' not dubiously or obscurely, indicated by the title. Its relation to the subject must not rest upon a merely possible or doubtful inference. . .*" In re Breene, 24 P. 3, 4 (1890). The court continues, "*[A] matter is clearly indicated by the title when it is clearly germane to the subject mentioned therein*." Id.

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

51. The General Assembly here did not make the title of the bill "*Concerning the Regulation of Marijuana for Safe Consumption"* so general as to allow for the constitutional incorporation of all provisions of and amendments to HB 1317, as discussed in each Claim for Relief below.

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

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

STANDARD FOR A CONSTITUTIONAL CHALLENGE TO A COLORADO STATUTE

54. The standard when a Plaintiff challenges a Colorado statute for unconstitutionality is clear and settled law: "*A statute is presumed to be constitutional, and the party challenging the statute must prove unconstitutionality beyond a reasonable doubt*." People v. Schwartz, 678 P.2d 1000 (Colo.1984).

FIRST CLAIM FOR RELIEF
(The entirety of C.R.S. § 25-1.5-106(2)(a.5) amended by HB 1317 facially violates Colo. Const. art. XVIII, § 14(1)(e))

55. Plaintiffs repeat and reallege the paragraphs above as if fully set forth here.

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

57. Colo. Const. art. XVIII, § 14(3)(b) requires documentation from one physician stating that a patient has been diagnosed with a debilitating condition and said physician's "*conclusion"* that the patient "*might benefit*" from using medical marijuana.

58. Section 2 on Page 5 of HB 1317 requires an "*in-person*" physician assessment of a patient's "*medical and mental health history*" to meet the requirement of "*bona fide*" relationship.

59. A "*bona fide physician-patient relationship*" only applies to the affirmative defense in Colo. Const. art. XVIII, § 14(2) and not to the medical marijuana program created in Colo. Const. art. XVIII, § 14(3).

60. "*Bona fide physician-patient relationship*" appears in Colo. Const. art. XVIII, § 14(2) to ensure that the affirmative defense is not taken advantage of because the affirmative

defense in Colo. Const. art. XVIII, § 14(2) does not require written documentation, nor any license from the state of Colorado to apply. Colo. Const. art. XVIII, § 14(2)(c)(I)-(II).

61. A "*bona fide"* relationship is clearly irrelevant for application to the Confidential Registry as CDPHE may deny a patient a Registry Card based on their physician, only when the physician on the patient's documentation does not have a license to practice medicine issued by the state of Colorado. Colo. Const. art. XVIII, § 14(3)(c).

62. Colo. Const. art. XVIII, § 14(2) does not define a "*bona fide"* relationship nor does Colo. Const. art. XVIII, § 14(2) call for the legislature to define a "*bona fide*" relationship.

63. A "*bona fide"* relationship is a finding of fact when pleading a Colo. Const. art. XVIII, § 14(2) defense and is intended to mean a legitimate relationship analogous to any other legitimate doctor-patient relationship.

64. Thus, all of C.R.S. § 25-1.5-106(2)(a.5), including changes made by HB 1317, facially violates Colo. Const. art. XVIII, § 14(1)(e) and (3)(b).

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

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

66. Plaintiffs repeat and reallege the paragraphs above as if fully set forth here.

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

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

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

70. C.R.S. § 44-10-501(10)(a) amended by HB 1317 in Section 8 on Page 16 reduced "*forty grams*" to "*eight grams*."

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

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

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

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

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

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

76. Plaintiffs repeat and reallege the paragraphs above as if fully set forth here.

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

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

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

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

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

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

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

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

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

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

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

87. Plaintiffs repeat and reallege the paragraphs above as if fully set forth here.

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

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

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

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

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

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

93. Plaintiffs repeat and reallege the paragraphs above as if fully set forth here.

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

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

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

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

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

99. Thus, the changes to C.R.S. § 44-10-203(2)(dd)(IX) made by HB 1317 facially violate Colo. Const. art. XVIII, § 14(3)(a) by allowing access to Constitutionally protected confidential information maintained by CDPHE without satisfying either of the two enumerated exceptions to Confidential Registry confidentiality.

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

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

101. Plaintiffs repeat and reallege the paragraphs above as if fully set forth here.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

116. Plaintiffs repeat and reallege the paragraphs above as if fully set forth here.

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

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

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

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

121. The changes made by HB 1317 to C.R.S. § 44-10-501(1)(b)(I)-(III) facially violate Colo. Const. art. XVIII, § 14(3)(a) by allowing access to Constitutionally protected confidential information maintained by CDPHE without satisfying either of the two enumerated exceptions to Confidential Registry confidentiality.

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

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

123. Plaintiffs repeat and reallege the paragraphs above as if fully set forth here.

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

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

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

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

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

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

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

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

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

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

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

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

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

136. Plaintiffs repeat and reallege the paragraphs above as if fully set forth here.

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

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

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

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

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

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

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

143. Plaintiffs repeat and reallege the paragraphs above as if fully set forth here.

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

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

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

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

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

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

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

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

150. Plaintiffs repeat and reallege the paragraphs above as if fully set forth here.

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

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

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

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

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

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

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

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

158. Plaintiffs repeat and reallege the paragraphs above as if fully set forth here.

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

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

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

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

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

163. Plaintiffs repeat and reallege the paragraphs above as if fully set forth here.

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

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

166. Physicians who currently recommend medical marijuana have stated publicly that they will cease recommending medical marijuana if HB 1317 goes into effect because HB 1317 directly jeopardizes physicians by requiring them to go beyond their First Amendment protections provided by the Ninth Circuit Court of Appeals in Conant v. Walters, 309 F.3d 629, 632 (9th Cir. 2002). See COLORADO NORML PRESS CONFERENCE, https://youtu.be/8h4kNqwkZmM (last visited Oct. 29, 2021).

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

168. The issue in Conant v. Walters was what constituted a prescription for marijuana. The court held, to be beyond the scope of First Amendment speech and constitute a prescription, a physician's speech *"must have the requisite 'narrow specificity.'"* Id. The court continued, "*throughout this litigation, the government has been unable to articulate exactly what speech is proscribed, describing it only in terms of speech the patient believes to be a recommendation of marijuana. Thus, whether a doctor-patient discussion of medical marijuana constitutes a 'recommendation' depends largely on the meaning the patient attributes to the doctor's words. This is not permissible under the First Amendment*." Id at 639.

169. The DEA lost in Conant v. Walters because of the general nature of physician recommendations for marijuana not being analogous to the specificity used by physicians when

prescribing a Controlled Substance. If DEA were to make a more specific argument about what constitutes a prescription, then DEA would likely prevail. Id.

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

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

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

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

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

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

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

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

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

179. The General Assembly was aware of this issue when Amendment L042 was passed and subsequently stripped from HB21-1317. HB21-1317: Regulating Marijuana Concentrates, Colorado General Assembly Official Website, https://leg.colorado.gov/bills/hb21-1317 (last visited June 30, 2021).

180. These new requirements will directly injure Plaintiffs by making it unreasonably impracticable for physicians to be involved with medical marijuana, effectively quashing Colorado's once highly regarded medical marijuana program.

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

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

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

183. Plaintiffs repeat and reallege the paragraphs above as if fully set forth here.

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

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

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

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

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

189. There is no constitutional ability to deny a patient a Registry Card because the patient's physician did not take a medical continuing education course only required for those physicians recommending marijuana. Id. The Constitution states a patient is entitled to be on the registry unless the recommending physician is unlicensed in the state of Colorado. Colo. Const. XVIII, § 14(3)(c).

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

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

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

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

193. Plaintiffs repeat and reallege the paragraphs above as if fully set forth here.

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

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

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

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

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

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

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

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

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

202. Plaintiffs repeat and reallege the paragraphs above as if fully set forth here.

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

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

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

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

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

SEVENTEENTH CLAIM FOR RELIEF
(The entirety of C.R.S. § 25-1.5-106(5)(g) created by HB 1317 violates Colo. Const. V, § 17)

208. Plaintiffs repeat and reallege the paragraphs above as if fully set forth here.

209. Plaintiffs specifically repeat and reallege the section titled "*Colo. Const. art. V, § 17 – No Law Passed by Amendment"* in the Constitutional Section above as if fully set forth here.

210. Colo. Const. art. V, § 17 does not allow amendments to change the "*original purpose*" of the bill and a bill does not violate this provision if it only changes the means of accomplishing the original purpose. Parrish v. Lamm at 1362.

211. Section 2 on Page 8 of HB 1317 requires the department to report each year "*the number of physicians who made medical marijuana recommendation in the previous year*" and "*the aggregate number of homebound patients ages eighteen to twenty in the registry*." This portion of the bill was amended in.

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

213. Requiring a report on "*the number of physicians who made medical marijuana recommendation in the previous year*" and "*the aggregate number of homebound patients ages eighteen to twenty in the registry*" does not regulate marijuana for safe consumption, is irrelevant to the bill title, and will cause the bill to not adhere to its "*original purpose*." Colo. Const. art. V, § 17.

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

215. Plaintiffs hereby request this Court grant the injunctive and declaratory relief sought on this claim, as requested below.

EIGHTEENTH CLAIM FOR RELIEF
(Appropriation to CDPHE Disease Control and Public Health Response created by HB 1317 violates Colo. Const. V, § 17)

216. Plaintiffs repeat and reallege the paragraphs above as if fully set forth here.

217. Plaintiffs specifically repeat and reallege the section titled "*Colo. Const. art. V, § 17 – No Law Passed by Amendment"* in the Constitutional Section above as if fully set forth here.

218. Colo. Const. art. V, § 17 does not allow amendments to change the "*original purpose*" of the bill and a bill does not violate this provision if it only changes the means of accomplishing the original purpose. Parrish v. Lamm at 1362.

219. Section 12 on Page 20 of HB 1317 requires a $50,000 appropriation "*to the department of public health and environment for use by disease control and public health response*."

220. Section 12 on Page 20 of HB 1317 states "*[t]o implement this act, the department may use this appropriation for certification related to laboratory services*."

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

222. An expenditure "*to the department of public health and environment for use by disease control and public health response*" does not regulate marijuana for safe consumption, is irrelevant to the bill title, and will cause the bill to not adhere to its "*original purpose*." Colo. Const. art. V, § 17.

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

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

NINETEENTH CLAIM FOR RELIEF
(The entirety of C.R.S. § 39-28.8-501(9)(a) created by HB 1317 facially violates Colo. Const. V, § 17)

225. Plaintiffs repeat and reallege the paragraphs above as if fully set forth here.

226. Plaintiffs specifically repeat and reallege the section titled "*Colo. Const. art. V, § 17 – No Law Passed by Amendment"* in the Constitutional Section above as if fully set forth here.

227. Colo. Const. art. V, § 17 does not allow amendments to change the "*original purpose*" of the bill and a bill does not violate this provision if it only changes the means of accomplishing the original purpose. Parrish v. Lamm at 1362.

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

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

230. Providing an expenditure to enforce driving under the influence of all drugs does not regulate marijuana for safe consumption, is irrelevant to the bill title, and will cause the bill to not adhere to its "*original purpose*." Colo. Const. art. V, § 17.

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

232. Plaintiffs hereby request this Court grant the injunctive and declaratory relief sought on this claim, as requested below.

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

233. Plaintiffs repeat and reallege the paragraphs above as if fully set forth here.

234. Plaintiffs specifically repeat and reallege the section titled "*Colo. Const. art. V, § 21 – Single-Subject Bill Title"* in the Constitutional Section above as if fully set forth here.

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

236. Creating a database of discharged hospital patients, identified by demographics, presenting with conditions consistent with marijuana use clearly falls outside of the title "*Concerning the Regulation of Marijuana for Safe Consumption*" and is not "*clearly germane*" nor "*relevant and appropriate*" to the bill title because it does not regulate marijuana for safe consumption, but hospitals instead." In re Breene, at 406; Driverless Car Co. v. Armstrong at 1099.

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

238. Plaintiffs hereby request this Court grant the injunctive and declaratory relief sought on this claim, as requested below.

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

239. Plaintiffs repeat and reallege the paragraphs above as if fully set forth here.

240. Plaintiffs specifically repeat and reallege the section titled "*Colo. Const. art. V, § 21 – Single-Subject Bill Title"* in the Constitutional Section above as if fully set forth here.

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

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

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

244. A study is not regulation. A study which studies already publicly available research, using Three (3) Million United States Dollars of Colorado taxpayer money, is not "*clearly germane*" nor "*relevant and appropriate*" to the bill title "*Concerning the Regulation of Marijuana for Safe Consumption*." In re Breene, at 406; Driverless Car Co. v. Armstrong at 1099.

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

246. Plaintiffs hereby request this Court grant the injunctive and declaratory relief sought on this claim, as requested below.

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

247. Plaintiffs repeat and reallege the paragraphs above as if fully set forth here.

248. Plaintiffs specifically repeat and reallege the section titled "*Colo. Const. art. V, § 21 – Single-Subject Bill Title"* in the Constitutional Section above as if fully set forth here.

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

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

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

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

253. Requiring a toxicology screen of THC, alcohol, and drugs after a non-natural death of all persons under the age of twenty-five, regulates coroners, invades the privacy of the dead (and their living relatives), is not "*clearly* g*ermane*" nor "*relevant and appropriate*" to the bill title, and clearly falls outside of the bill title "*Concerning the Regulation of Marijuana for Safe Consumption*." In re Breene, at 406; Driverless Car Co. v. Armstrong at 1099.

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

255. Plaintiffs hereby request this Court grant the injunctive and declaratory relief sought on this claim, as requested below.

TWENTY-THIRD CLAIM FOR RELIEF
(The entirety of C.R.S. § 39-28.8-501(9)(a) created by HB 1317 violates Colo. Const. V, § 21)

256. Plaintiffs repeat and reallege the paragraphs above as if fully set forth here.

257. Plaintiffs specifically repeat and reallege the section titled "*Colo. Const. art. V, § 21 – Single-Subject Bill Title"* in the Constitutional Section above as if fully set forth here.

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

259. The purpose and title of this bill does not allow for this provision to be included because enforcing driving under the influence of all drugs is not "*clearly germane*" nor "*relevant and appropriate*" to the bill title, and clearly falls outside of the bill title "*Concerning the Regulation of Marijuana for Safe Consumption*." In re Breene, at 406; Driverless Car Co. v. Armstrong at 1099.

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

261. Plaintiffs hereby request this Court grant the injunctive and declaratory relief sought on this claim, as requested below.

TWENTY-FOURTH CLAIM FOR RELIEF
(The entirety of C.R.S. § 25-1.5-106(5)(g) created by HB 1317 violates Colo. Const. V, § 21)

262. Plaintiffs repeat and reallege the paragraphs above as if fully set forth here.

263. Plaintiffs specifically repeat and reallege the section titled "*Colo. Const. art. V, § 21 – Single-Subject Bill Title"* in the Constitutional Section above as if fully set forth here.

264. Section 2 on Page 8 of HB 1317 requires the department to report each year "*the number of physicians who made medical marijuana recommendation in the previous year*" and "*the aggregate number of homebound patients ages eighteen to twenty in the registry*."

265. The purpose and title of this bill does not allow for this provision to be included because requiring a report on "*the number of physicians who made medical marijuana recommendation in the previous year*" and "*the aggregate number of homebound patients ages eighteen to twenty in the registry*" is not "*clearly germane*" nor "*relevant and appropriate*" to the bill title, and clearly falls outside of the bill title "*Concerning the Regulation of Marijuana for Safe Consumption*." In re Breene, at 406; Driverless Car Co. v. Armstrong at 1099.

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

267. Plaintiffs hereby request this Court grant the injunctive and declaratory relief sought on this claim, as requested below.

TWENTY-FIFTH CLAIM FOR RELIEF
(The entirety of C.R.S. § 25-1.5-106(5)(g) created by HB 1317 violates Colo. Const. V, § 21)

268. Plaintiffs repeat and reallege the paragraphs above as if fully set forth here.

269. Plaintiffs specifically repeat and reallege the section titled "*Colo. Const. art. V, § 21 – Single-Subject Bill Title"* in the Constitutional Section above as if fully set forth here.

270. Section 2 on Page 8 of HB 1317 requires physicians who make medical marijuana recommendations to take a medical continuing education course regarding medical marijuana that is at least five hours every two years.

271. The purpose and title of this bill does not allow for this provision to be included because requiring a medical continuing education course for recommending physicians is not "*clearly* g*ermane*" nor "*relevant and appropriate*" to the bill title, and clearly falls outside of the bill title "*Concerning the Regulation of Marijuana for Safe Consumption*." In re Breene, at 406; Driverless Car Co. v. Armstrong at 1099.

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

273. Plaintiffs hereby request this Court grant the injunctive and declaratory relief sought on this claim, as requested below.

TWENTY-SIXTH CLAIM FOR RELIEF
(Appropriation to CDPHE Disease Control and Public Health Response created by HB 1317 violates Colo. Const. V, § 21)

274. Plaintiffs repeat and reallege the paragraphs above as if fully set forth here.

275. Plaintiffs specifically repeat and reallege the section titled "*Colo. Const. art. V, § 21 – Single-Subject Bill Title"* in the Constitutional Section above as if fully set forth here.

276. Section 12 on Page 20 of HB 1317 requires a $50,000 appropriation "*to the department of public health and environment for use by disease control and public health response*."

277. Section 12 on Page 20 of HB 1317 states "*[t]o implement this act, the department may use this appropriation for certification related to laboratory services*."

278. The purpose and title of this bill does not allow for this provision to be included because the appropriation required by this provision is not "*clearly* g*ermane*" nor "*relevant and appropriate*" to the bill title, and clearly falls outside of the bill title "*Concerning the Regulation of Marijuana for Safe Consumption*." In re Breene, at 406; Driverless Car Co. v. Armstrong at 1099.

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

280. Plaintiffs hereby request this Court grant the injunctive and declaratory relief sought on this claim, as requested below.

REQUEST FOR PRELIMINARY INJUNCTION AS SOUGHT IN MOTION

281. Plaintiffs repeat and reallege the paragraphs above as if fully set forth here.

282. Plaintiffs request the Court grant a preliminary injunction as requested in Plaintiff's Motion for Preliminary Injunction submitted August 31, 2021.

REQUEST FOR PERMANENT INJUNCTION ON ALL CLAIMS SET FORTH ABOVE

283. Plaintiffs repeat and reallege the paragraphs above as if fully set forth here.

284. Plaintiffs request the Court grant a permanent injunction on all Claims for Relief herein as injunctive relief is the only relief available to stop unconstitutional provisions of HB 1317 from being implemented and enforced by Defendants.

REQUEST FOR DECLARATORY RELIEF ON ALL CLAIMS SET FORTH ABOVE

285. Plaintiffs repeat and reallege the paragraphs above as if fully set forth here.

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

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

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

289. Plaintiff Physicians are persons whose Constitutional right to recommend marijuana to a qualifying patient under Colo. Const. art. XVIII, § 14 is directly and imminently affected by HB 1317.

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

291. Therefore, Plaintiffs seek a declaration that the specific sections of HB 1317 challenged in each Claim for Relief above are unconstitutional under Colo. Const. art. XVIII, § 14; Colo. Const. art. V, § 17; or Colo. Const. art. V, § 21.

PRAYER FOR RELIEF

292. Plaintiffs pray that this Court:

a. Grant Plaintiff's Motion for Preliminary Injunction submitted August 31, 2021.

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

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

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

e. Issue permanent injunctions enjoining Defendant Jared S. Polis, Colorado Department of Public Health and Environment, Colorado Department of Revenue, Marijuana Enforcement Division, and any officers, agents, and employees of the state of Colorado from administering or enforcing the sections and subsections of *current law* which violate Colo. Const. art. XVIII, § 14; Colo. Const. art. V, § 17; or Colo. Const. art. V, § 21.

f. Grant other relief as the Court deems proper.

Respectfully submitted this 29th day of October, 2021.

/s/Alexander S Buscher

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ATTORNEY FOR PLAINTIFFS

CERTIFICATE OF SERVICE

This is to certify that I have served this **SECOND AMENDED COMPLAINT** upon all parties herein by e-filing and service through Colorado Courts E-filing this 29th day of October 2021 addressed as follows:

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