

James H. Goetz
J. Devlan Geddes
Jim Barr Coleman
GOETZ, GALLIK & BALDWIN, P. C.
35 North Grand
P.O. Box 6580
Bozeman, MT 59771-6580
Ph: (406) 587-0618
Fax: (406) 587-5144
Email: goetzlawfirm.goetzlawfirm.com
ATTORNEYS FOR PLAINTIFFS

MONTANA FIRST JUDICIAL DISTRICT COURT, LEWIS AND CLARK COUNTY

MONTANA CANNABIS INDUSTRY)	Cause No. _____
ASSOCIATION, MARK MATTEWS,)	Hon. _____
SHIRLEY HAMP, SHELLY YEAGER, JANE)	
DOE, JOHN DOE #1, JOHN DOE #2,)	
MICHAEL GECI-BLACK, M.D., CHARLIE)	<u>PLAINTIFFS' MOTION FOR</u>
HAMP,)	<u>TEMPORARY RESTRAINING</u>
)	<u>ORDER</u>
Plaintiffs,)	
)	
vs.)	
)	
STATE OF MONTANA,)	
)	
Defendant.)	

Plaintiffs, pursuant to M.C.A. §§ 27-19-314 and 27-19-201, move the Court for a Temporary Restraining Order, prohibiting and enjoining the State from enacting and enforcing Senate Bill 423, Section 20. This Motion is supported by the brief filed contemporaneously herewith.

1. In *Porter v. K & S Partnership*, 192 Mont. 175, 183, 627 P.2d 836, 840 (1981), the Montana Supreme Court made clear that the function of a temporary restraining order is to maintain the "status quo" pending a decision on the merits of the controversy. MCA § 27-19-201 sets forth the criteria for the issuance of a preliminary injunction, which are: (1) a showing of a prima facie

case; or (2) a showing of a possibility of irreparable injury; or (3) a showing of a threatened act that tends to render any judgment that might be rendered ineffectual; and a showing that the balance of hardships tipped in the plaintiff's favor.

2. As more fully set forth in Plaintiffs' Complaint and the accompanying Brief in Support of Motion for Temporary Restraining Order, Section 20 of SB 423, is an all out ban on advertising of marijuana and marijuana by persons with valid registry cards.

3. Advertising, both political and commercial, is speech, protected by the First Amendment to the United States Constitution. The categorical ban on advertisement, especially since it only applies to a small subset of Montanans, violates the fundamental right to free expression. There is no legitimate or reasonable purpose for prohibiting all advertisement of marijuana.

4. Plaintiffs have made a prima facie showing that they are entitled to the relief sought regarding Section 20 and its all out ban on advertising. The United States Supreme Court has held that any infringement on free speech is an irreparable injury. *Elrod v. Burns*, 427 U.S. 347, 373, 96 S. Ct. 2673 (1976) (citing *New York Times Co. v. United States*, 403 U.S. 713 (1971)). If a TRO does not issue, persons with valid medical marijuana cards will suffer irreparable injury because they will be prohibited from all advertising concerning marijuana and marijuana related products.

5. The balance of hardships that would result from an order restraining the Defendants from enacting and enforcing Section 20 weighs heavily in favor of Plaintiffs. Indeed, Defendants face no hardship whatsoever if Section 20 is not enacted until the completion of this litigation. On the other hand, Plaintiffs will suffer extreme hardship. Not only will Plaintiffs be denied their free speech rights, but they will also face an uncertain future, wondering whether they are actually

violating the law and whether they will be prosecuted for such a violation.

6. The status quo is defined as the last actual, peaceable, noncontested condition which preceded the pending controversy. *Porter*, 192 Mont. at 181, 627 P.2d at 839. The last actual, peaceable, noncontested condition preceding this controversy was prior to the initiation of SB 423. At that time, there was no prohibition on advertising marijuana.

7. In the interest of justice and pursuant to MCA § 29-19-306, no bond or undertaking should be required in connection with this Motion. There is virtually no chance that the State will face any damages as a result of the issuance of a TRO. The bond requirement should be waived in the interest of justice.

8. On May 13, 2011, the undersigned notified the State that Plaintiffs intended to file the present Motion for Temporary Restraining Order, Preliminary Injunction, and Order to Show Cause on May 13, 2011.

WHEREFORE, Plaintiffs respectfully requests:

1. That this Court immediate issue a temporary restraining order prohibiting and enjoining the State from enacting and enforcing Section 20 of SB 423;

2. That a show cause hearing be set by this Court as soon as possible, directing the State to appear and show cause why the preliminary injunction requested herein and in the Motion for Preliminary Injunction should not be issued;

3. After a hearing, that this Court enter a preliminary injunction enjoining the State and all persons who act in concert with the State, as set forth above and in the Preliminary Injunction Motion and Brief;

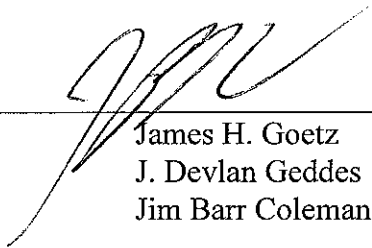
4. That no bond be required in the interest of justice and pursuant to MCA § 27-19-306;
and

5. For such other and further relief as the Court may deem just and proper.

DATED this 13th day of May, 2011.

GOETZ, GALLIK & BALDWIN, P. C.

By: _____

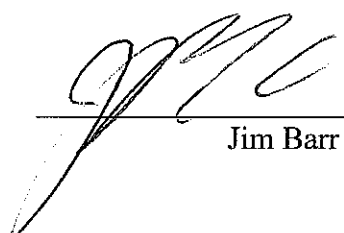

James H. Goetz
J. Devlan Geddes
Jim Barr Coleman

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was served upon the following counsel of record, by the means designated below, this 13th day of May, 2011.

<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand-Delivery <input type="checkbox"/> Via fax: (406) 444-3549 <input checked="" type="checkbox"/> E-mail: JMolloy@mt.gov	James P. Molloy, Assistant Attorney General Montana Department of Justice P.O. Box 201401 Helena, MT 59620-1401 Attorney for Defendant, State of Montana
---	---



Jim Barr Coleman

MONTANA FIRST JUDICIAL DISTRICT COURT, LEWIS AND CLARK COUNTY

MONTANA CANNABIS INDUSTRY)	Cause No. _____
ASSOCIATION, MARK MATTEWS,)	Hon. _____
SHIRLEY HAMP, SHELLY YEAGER, JANE)	
DOE, JOHN DOE #1, JOHN DOE #2,)	
MICHAEL GECI-BLACK, M.D., CHARLIE)	<u>TEMPORARY RESTRAINING</u>
HAMP,)	<u>ORDER AND ORDER</u>
)	<u>TO SHOW CAUSE</u>
Plaintiffs,)	
)	
vs.)	
)	
STATE OF MONTANA,)	
)	
Defendant.)	

Plaintiffs, filed a Motion for Temporary Restraining Order, Preliminary Injunction, and Order to Show Cause. Plaintiffs' Motion for Temporary Restraining Order was heard on _____, 2011, at _____ o'clock ____m., Defendants having been given notice of Plaintiffs' Motion for Temporary Restraining Order by emailed letter from James H. Goetz on May 13, 2011, and having been served with the above-referenced documents on May 13, 2011.

Having considering all documents and evidence before the Court, it appears to the Court, after deliberation, that Plaintiffs and the public will suffer immediate and irreparable injury unless the Temporary Restraining Order requested by Plaintiffs issues immediately. Unless the Temporary Restraining Order issues, Section 20 of SB 423 will go into effect. If that happens, persons with

valid medical marijuana cards will suffer irreparable injury because they will be prohibited from all advertising concerning marijuana and marijuana related products. Such a prohibition would violate Plaintiffs' right to free speech, as it is protected by the First Amendment of the United States Constitution. Any violation of the right to free speech is an irreparable injury.

For these reasons stated above and the reasons stated in Plaintiffs' Brief in Support of Motion for Temporary Restraining Order, Preliminary Injunction, and Order to Show Cause, IT IS HEREBY ORDERED:

1. That Section 20 of Senate Bill 423 shall not become effective pending hearing on this matter by the Court;

2. That the State of Montana shall not make any attempt to enforce Section 20 of Senate Bill 423;

3. That this Temporary Restraining Order shall be issued at _____ o'clock __.m., _____, 2011, and shall expire ten (10) days from this time and date unless otherwise renewed by the Court;

4. That a hearing on Plaintiffs' Motion for Preliminary Injunction is hereby set for _____ o'clock __.m. on _____, 2011, in the Lewis and Clark County Courthouse, Helena, Montana; and

5. That in the interest of justice and pursuant to MCA § 27-19-306, Plaintiffs shall not be required to post a bond to secure the present Temporary Restraining Order.

DATED this ____ day of _____, 2011.

District Court Judge

Copies to:

James H. Goetz, J. Devlan Geddes, and Jim Barr Coleman

James P. Molloy