

James H. Goetz  
 J. Devlan Geddes  
 Jim Barr Coleman  
 GOETZ, GALLIK & BALDWIN, P. C.  
 35 North Grand Avenue  
 P.O. Box 6580  
 Bozeman, Montana 59771-6580  
 Ph: (406) 587-0618  
 Fax: (406) 587-5144  
 E-mail: [goetzlawfirm@goetzlawfirm.com](mailto:goetzlawfirm@goetzlawfirm.com)  
**Attorneys for Plaintiffs**

**MONTANA FIRST JUDICIAL DISTRICT COURT  
 LEWIS AND CLARK COUNTY**

MONTANA CANNABIS INDUSTRY	)	
ASSOCIATION, MARC MATTHEWS,	)	
SHIRLEY HAMP, SHELLY YEAGER,	)	
JANE DOE, JOHN DOE #1, JOHN DOE #2,	)	
MICHAEL GECI-BLACK, M.D., JOHN	)	
STOWERS, M.D., POINT HATFIELD, and	)	
CHARLIE HAMP,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
STATE OF MONTANA,	)	
	)	
Defendant.	)	

Cause No DDV-2011-518  
 Hon. James P. Reynolds

**AMENDED COMPLAINT**  
**FOR DECLARATORY AND**  
**INJUNCTIVE RELIEF**

Plaintiffs Marc Matthews, Shirley Hamp, Shelly Yeager, and Point Hatfield (the “Patient Plaintiffs”), Jane Doe, John Doe #1, and John Doe #2 (the “Caregiver Plaintiffs”), Michael Geci-Black, M.D. and John Stowers, M.D. (the “Physician Plaintiffs”), Charlie Hamp (the “Putative Provider Plaintiff”), and the Montana Cannabis Industry Association (“MTCIA”) (collectively the “Plaintiffs”) bring this action on their own behalves and on behalf of other similarly situated citizens against the State of Montana and allege as follows:

## INTRODUCTION

### A. The Legalization of Medicinal Marijuana in Montana.

1. On November 2, 2004, the citizens of Montana voted to pass Ballot Initiative No. 148 (the “Initiative”), legalizing the production and consumption of marijuana for medicinal purposes in Montana. The Initiative passed with a vote of 276,042 to 170,579; in other words, almost 62% of those Montanans casting a ballot voted in favor of the Initiative.

2. Upon passage of the Initiative by the electorate, the Medical Marijuana Act (Mont. Code Ann. § 50-46-101, *et seq.*) (the “MMA”) became law in Montana. The MMA permitted medical production of marijuana for consumption by individuals who suffer from debilitating medical conditions.

3. The MMA set forth a detailed statutory scheme for allowing the controlled medicinal production and use of marijuana in Montana. The MMA, among other things: 1) established parameters for determining whether a patient suffers from a debilitating medical condition; 2) required a written certification by a licensed medical doctor before a patient may qualify for use of medical marijuana; 3) authorized non-patients to serve as caregivers and established criteria for the provision of caregiver services; 4) maintained the confidentiality and dignity of qualifying patients; 5) limited medical use of marijuana to ensure public safety; and 6) criminalized fraudulent conduct in connection with the obtainment or provision of medical marijuana identification.

4. Under the administration of the Montana Department of Health and Human Services (“the “DPHHS”), the MMA allows a “qualifying patient” to grow six (6) marijuana plants and have in her possession one (1) usable ounce of marijuana. A qualifying patient may

also select a “caregiver.” A caregiver may also possess six (6) marijuana plants and have one (1) usable ounce of marijuana in her possession for each qualifying patient that she serves. A qualifying patient must be diagnosed with a “debilitating medical condition” by a licensed medical doctor.

**B. The Legislative Attack on the Medical Marijuana Act and the Passage of Senate Bill 423.**

5. The MMA survived three legislative sessions with virtually no changes. However, during the 2011 legislative session, the Legislature launched an attack on the MMA seeking to undo the will of Montana’s citizens.

6. The Legislature initially passed House Bill 161, which outright repealed the MMA. Governor Brian Schweitzer vetoed House Bill 161, stating:

I issue this veto of HB 161 because I do not believe it is right that 91 legislators overturn the will of the people of Montana, who passed this citizen initiative in 2004 by this significant margin.

7. After the Governor vetoed House Bill 161, the Legislature changed tactics, engaging in drastic legislative tampering<sup>1</sup> of the MMA.

8. On April 28, 2011, the Legislature approved and transmitted Senate Bill 423 to Governor Schweitzer. That version of Senate Bill 423 virtually abolished the MMA as passed by the citizens of Montana.

9. Expressing disappointment with Senate Bill 423, Governor Schweitzer issued an amendatory veto of Senate Bill 423.

10. Although some of Governor Schweitzer’s proposed amendments were heeded by the Legislature, the final version of Senate Bill 423 created a hodgepodge of disconnected

---

<sup>1</sup> “Legislative tampering” is the amendment of a ballot initiative approved by the citizens of the state in an election.

provisions calculated to stand collectively as a virtually insurmountable obstacle to use of medical marijuana in Montana.

11. Despite Governor Schweitzer's previous dissatisfaction with Senate Bill 423, he has indicated that he will neither veto the law nor sign it into law. Because of the Governor's non-action, Senate Bill 423 will become Montana law on May 13, 2011. Some of the provisions of Senate Bill 423 will become effective immediately. The remaining provisions' effective date is July 1, 2011.

12. The final version of Senate Bill 423 is attached hereto as Exhibit 1.

### **PARTIES**

13. Plaintiffs, on their own behalves and on behalf of other similarly situated individuals, seek a determination that Senate Bill 423's amendments to the MMA are unconstitutional. As set forth in more detail below, Plaintiffs have standing under Mont. Code Ann. § 27-8-202 to assert these claims because they are persons whose rights, statuses, and other legal relations will be adversely affected by Senate Bill 423's amendments to the MMA. Moreover, all Plaintiffs will suffer injury in fact due to the enactment of Senate Bill 423's amendments to the MMA.

#### **A. Patient Plaintiffs.**

14. The Patient Plaintiffs are residents of the State of Montana who suffer from life-threatening and debilitating medical conditions for whom the medicinal use of cannabis provides life-sustaining and/or life-altering benefits. The Patient Plaintiffs are "qualifying patients" as defined by the MMA. The Patient Plaintiffs assert the claims herein on their own behalves and on behalf of other similarly situated individuals in the State of Montana.

Marc Matthews

15. Marc Matthews, age 28, residing at 2307 Alderson Avenue in Billings, has suffered from Type I diabetes since he was two years old. Mr. Matthews' diabetes causes him debilitating seizures. Before using medicinal marijuana, Mr. Matthews suffered 10 to 12 severe, sometimes life-threatening, seizures a year.

16. Mr. Matthews also suffers from gastroparesis, which is a neuropathy complication caused by diabetes. Gastroparesis is an extraordinarily painful stomach condition that reduces the ability of the stomach to empty its contents and causes severe vomiting flare-ups.

17. Approximately one and one half years ago, Mr. Matthews' physician recommended that he use medicinal marijuana to control his seizures and gastroparesis flare-ups. Upon that recommendation, Mr. Matthews obtained an identification card from the DPHHS registering him as a qualifying patient under the MMA.

18. Once he was registered as a qualifying patient, Mr. Matthews began consuming medicinal marijuana, mostly in a liquid (tincture) form. Since Mr. Matthews began ingesting medicinal marijuana, he has only had two minor seizures (not full blown seizures) and his gastroparesis flare-ups have mostly stopped. Mr. Matthews' quality of life has improved drastically as a result of his medicinal use of marijuana.

19. Mr. Matthews is on probation under the supervision of the Montana Department of Corrections. Given his status as a probationer, upon implementation of Senate Bill 423's amendments to the MMA, it will no longer be lawful for Mr. Matthews to consume medicinal marijuana to control his seizures and gastroparesis flare-ups. Mr. Matthews is scared to attempt to live again without the benefits of medicinal marijuana.

20. Senate Bill 423's amendments to the MMA will intrude into Mr. Matthews' relationship with his physician by interfering with his physician's ability to provide candid professional medical advice.

Shirley Hamp

21. Shirley Hamp, age 78, residing at 2007 Fairway Drive in Bozeman, underwent an esophagectomy because of cancer of the esophagus. After her surgery, Mrs. Hamp lost significant weight, dropping from 105 pounds to 88 pounds. After experiencing such a significant drop in weight, Mrs. Hamp's physician at the Mayo Clinic, in Rochester, Minnesota, indirectly recommended to Mrs. Hamp that she consider using an herbal compound (meaning medical marijuana) to help her with weight gain.

22. Returning to Bozeman, Mrs. Hamp sought the medical advice of her local physician. Mrs. Hamp's local physician agreed with the Mayo Clinic's recommendation and issued a written certification stating that Mrs. Hamp suffers from a debilitating medical condition that would benefit from the medicinal consumption of marijuana. Based upon that recommendation, Mrs. Hamp obtained an identification card issued by the DPHHS identifying her as a qualifying patient.

23. Given Mrs. Hamp's medical condition, smoking marijuana is nearly impossible and dangerous. Mrs. Hamp has tried numerous alternative means of ingesting medical marijuana, including baked edible products. None of those products were well-suited to Mrs. Hamp's needs. Ultimately, Mrs. Hamp found that she could best manage her illness by using a marijuana tincture. Mrs. Hamp drips the tincture into an ordinary beverage, such as her morning coffee.

24. Neither Mrs. Hamp, nor her husband, Charlie Hamp (discussed below), have the experience or knowledge necessary to grow marijuana and manufacture marijuana tincture. Consequently, Mrs. Hamp uses a local caregiver registered under the MMA to supply her with her marijuana medicine.

25. Mrs. Hamp's caregiver will go out of business due to the onerous restrictions placed on caregivers under Senate Bill 423's amendments to the MMA. Put simply, given the high expense associated with raising marijuana and manufacturing marijuana infused products, Mrs. Hamp's caregiver cannot afford to provide qualifying patients with medicinal marijuana products under Senate Bill 423's restrictions.

26. Without access to a ready supply of marijuana tincture, Mrs. Hamp will be forced to rely upon her 79-year-old husband to grow and manufacture her medicine. Although Mrs. Hamp has no experience manufacturing marijuana medicine, it is her understanding that it will take up to six months for her husband to produce a usable marijuana tincture for her. The prospect of living without her marijuana medication for up to six months is terrifying to Mrs. Hamp.

27. Senate Bill 423's amendments to the MMA intrude into Mrs. Hamp's relationship with her physician by interfering with her physician's ability to provide candid professional medical advice.

Shelly Yeager

28. Shelly Yeager, age 50, residing at 680 B Street in Columbus, is a qualifying patient under the MMA. In 2003, Ms. Yeager was diagnosed with gastrointestinal stromal tumors (GIST). GIST is an extraordinarily rare type of cancer that occurs in connective tissues, bones, muscles, fat, nerves, blood vessels, and cartilage. When it was discovered, Ms. Yeager's

GIST tumor was the size of a dinner plate and the thickness of a pancake. The tumor was attached to Ms. Yeager's spine, pancreas, stomach, and intestines.

29. Ms. Yeager underwent an initial surgery to remove the tumor, along with 85% of her pancreas, a portion of her stomach, and some of her intestines. As part of that initial surgery, doctors replaced some of her intestines with both artificial and substitute pig intestines.

30. Since her initial surgery, Ms. Yeager underwent several more surgical procedures to remove newly formed GIST tumors, repair her intestines, remove surgical scar tissue, and install plates and screws in her tumor-damaged spine.

31. Ms. Yeager's condition causes her chronic pain, severe muscle spasms, nausea, and migraines. There is no cure for GIST. She will undoubtedly require more surgical procedures in the future to remove additional lesions and tumors.

32. Ms. Yeager is allergic to morphine. Likewise, Ms. Yeager's medical condition makes it impossible for her to take time-release medicines, including opiate-based pain killers.

33. The only thing that Ms. Yeager's physician has found that effectively alleviates her chronic pain, spasms, nausea, and migraines is medicinal marijuana. Before Ms. Yeager started using medicinal marijuana, she was taking six to eight different prescription medications at one time with virtually no relief.

34. Ms. Yeager is not a smoker and she does not tolerate marijuana smoke very well. She has found medicinal marijuana is most effective for her when it is consumed in the form of butter and/or oil. In that form, Ms. Yeager's body is able to absorb the beneficial cannabinoids found in the medicine. Additionally, Ms. Yeager prefers to ingest marijuana in this form because it produces less of a "high" feeling, thus allowing her to work without interference.



35. Ms. Yeager does not have the experience or knowledge necessary to grow marijuana and manufacture marijuana butter and oil products. Consequently, Ms. Yeager uses a caregiver in Bozeman who is registered under the MMA to supply her with her marijuana medicine.

36. Ms. Yeager's caregiver will go out of business due to the onerous restrictions placed on caregivers under Senate Bill 423's amendments to the MMA. Put simply, given the high expense associated with raising marijuana and manufacturing marijuana infused products, Ms. Yeager's caregiver cannot afford to provide qualifying patients with medicinal marijuana products under Senate Bill 423's restrictions. Ms. Yeager has been unable to find a caregiver who will supply her with medicinal marijuana products under Senate Bill 423's caregiver restrictions.

37. Without access to a ready supply of marijuana butters and/or oils, Ms. Yeager will be forced to attempt to grow and manufacture her own medicine. Ms. Yeager is doubtful that she will be able to manufacture her own marijuana medicine while enduring the chronic pain, spasms, nausea, and migraines that will return once she runs out of her current medication. Moreover, even if she is successful in producing her own marijuana medicine, Ms. Yeager understands that it will take her up to six months to produce a usable marijuana product for her consumption.

38. Senate Bill 423's amendments to the MMA intrude into Ms. Yeager's relationship with her physician by interfering with her physician's ability to provide candid professional medical advice.

Point Hatfield

39. Point Hatfield, age 60, residing at 110 East Main St. in Gardiner, Montana,

underwent a radical neck dissection because of cancer of the head and neck. After this, and a subsequent surgery to remove further tumors, Mr. Hatfield was required to complete several rounds of chemotherapy and radiation treatment. Dr. Jack Hensold from the Bozeman Deaconess Cancer Center is Mr. Hatfield's oncologist.

40. Mr. Hatfield's chemotherapy and radiation treatments caused him extreme nausea, constant vomiting, and significant weight loss. Mr. Hatfield's weight dropped from 160 pounds to 124 pounds. Unfortunately, the numerous anti-nausea medications prescribed by Dr. Hensold were ineffective at quelling Mr. Hatfield's nausea.

41. Dr. Hensold recommended that Mr. Hatfield try medical marijuana to control his nausea. Based upon Dr. Hensold's recommendation, Mr. Hatfield applied for and obtained an identification card issued by the DPHHS identifying him as a qualifying patient. Mr. Hatfield established a relationship with a caregiver registered under the MMA, who provided him with medical marijuana, which he smokes to relieve his nausea. Medical marijuana has proven to be the only effective means for Mr. Hatfield to control his nausea.

42. Neither Mr. Hatfield nor his wife, Jennifer, has the necessary knowledge or experience to grow marijuana. He is not sure whether his caregiver will be able to afford to provide him with medical marijuana under Senate Bill 423's restrictions. He does not know how he will continue to obtain his marijuana, and fears the ramifications to his health if he is no longer able to treat his lingering nausea with medical marijuana. Mr. Hatfield has a physically demanding job that requires he be able to maintain his energy and stamina throughout the day. He does not believe this will be possible without the use of medical marijuana to control his nausea.

**B. Caregiver Plaintiffs.**

43. The Caregiver Plaintiffs are “caregivers” as defined by the MMA. The Caregiver Plaintiffs grow and supply medicinal cannabis to “qualifying patients” in Montana. The Caregiver Plaintiffs assert the claims herein on their own behalves and on behalf of other similarly situated individuals in the State of Montana. The Caregiver Plaintiffs’ identities are being withheld to protect them from criminal prosecution and to protect their interests in privacy.

44. Jane Doe is a registered caregiver under the MMA. Jane Doe invested her life savings into opening a medicinal marijuana caregiver business in Missoula. Today, Jane Doe raises marijuana and provides caregiver services to qualified patients. Jane Doe works at her business full-time. If Senate Bill 423’s amendments go into effect, Jane Doe will not be able to continue operating her caregiver business because the expenses associated with producing medicinal marijuana are too high to supply qualifying patients with medicine free of charge.

45. John Doe #1 is a registered caregiver under the MMA. John Doe #1, along with a partner (who is also a caregiver), opened a medicinal marijuana caregiver business in the Bozeman area. John Doe #1’s caregiver business produces and supplies medicinal marijuana and marijuana-infused products to qualifying patients. John Doe #1 and his partner work full-time providing medicinal marijuana to their qualifying patients. If Senate Bill 423’s amendments go into effect, John Doe #1 and his partner will not be able to continue operating their caregiver business because the expenses associated with producing medicinal marijuana are too high to supply qualifying patients with medicine free of charge.

46. John Doe #2 is a registered caregiver under the MMA. John Doe #2 runs a medicinal marijuana caregiver business in the Bozeman area. John Doe #2 produces and supplies medicinal marijuana and marijuana-infused products to qualifying patients, most of

whom are cancer patients undergoing radiation and chemotherapy treatments. John Doe #2 works part-time providing medicinal marijuana to his qualifying patients. If Senate Bill 423's amendments go into effect, John Doe #2's caregiver business will be unable to survive because the expenses associated with producing medicinal marijuana are too high to supply qualifying patients with medicine free of charge.

**C. Physician Plaintiffs.**

**Dr. Michael Geci-Black**

47. Michael Geci-Black, M.D. ("Dr. Geci") is a medical doctor licensed to practice medicine in the State of Montana with an office at 300 North Wilson, Suite 105A, in Bozeman. Dr. Geci received his medical degree at the Medical College of Georgia and finished an Emergency Medicine residency at Thomas Jefferson University Hospital. Dr. Geci has practiced medicine since 1993 and has earned board certification in both emergency medicine and holistic medicine.

48. As a board-certified, residency-trained emergency medicine physician, Dr. Geci became frustrated with practicing community-based emergency medicine. After ten years of practice, he found that most of the patients he was treating did not need the emergency care that he was trained to provide, but rather, needed treatment for the acute exacerbations of chronic diseases.

49. Dr. Geci has provided "written certifications" for his patients whom he believed, in his professional opinion, had debilitating medical conditions for which the potential benefits of the medicinal use of marijuana would outweigh the health risks for the patients.

50. It is Dr. Geci's professional opinion that there are a wide range of modalities that may be used to help treat and heal patients, including medicinal use of marijuana. Before he

recommends medicinal marijuana for a patient, Dr. Geci requires that a patient provide him with current medical records documenting her illness(es) and symptoms, and then conducts an independent patient evaluation to determine whether the patient is eligible to use medical marijuana based on the criteria spelled out in the MMA. Dr. Geci makes every effort to reference research papers from the medical literature to support a patient's use of medical marijuana, when indicated. If he cannot find credible research supporting patient use of medical marijuana, he will not recommend that a patient use medicinal marijuana. Ultimately, whether a patient receives a recommendation for use of medical marijuana is solely dependent upon Dr. Geci's professional discretion as a licensed medical doctor.

51. If Dr. Geci recommends to a patient that she use medicinal marijuana to alleviate a debilitating medical condition, he is careful to advise the patient of the hazards and drawbacks of medicinal marijuana use. Like any medicinal production, marijuana has side effects that Dr. Geci carefully explains to his patients.

52. Senate Bill 423's amendments to the MMA will intrude into Dr. Geci's physician-patient relationships by threatening Dr. Geci's license to practice medicine in Montana if he recommends to his patients that they use medicinal marijuana. In particular, the twenty-five patient recommendation limit imposed by Senate Bill 423 will subject Dr. Geci to investigation by the Montana Board of Medical Examiners, an investigation Dr. Geci must pay for himself. The threat of investigation will chill Dr. Geci's willingness to recommend medical marijuana.

#### Dr. John Stowers

53. John Stowers, M.D. ("Dr. Stowers") is a medical doctor licensed to practice medicine in the State of Montana. Dr. Stowers is an Emergency Room physician at Benefis Healthcare in Great Falls, Montana. Dr. Stowers also operates a part-time medical clinic called

Comfortable Living in Great Falls with an office at 600 Central Avenue. Prior to moving to Great Falls, Dr. Stowers worked as an Emergency Room physician in Missoula.

54. Dr. Stowers received his medical degree from the University of California Davis, and completed an Emergency Medicine residency in Lansing, Michigan in connection with Michigan State University. Dr. Stowers has practiced as an emergency medicine physician for over 15 years and has earned a board certification in emergency medicine.

55. When practicing in Missoula, Dr. Stowers lost a co-worker, and a close friend, to cancer. Dr. Stowers watched his friend struggle through the cancer treatments and endure significant pain and suffering. Although illegal at the time, Dr. Stowers' dying friend coped with the pain, weight loss, and nausea caused by the cancer by using marijuana. Dr. Stowers personally witnessed the positive life-changing results his friend experienced using marijuana.

56. That experience caused Dr. Stowers to start researching the medicinal properties of marijuana. His research unveiled a wealth of scientific studies proving that, in appropriate circumstances, the benefits of marijuana use outweigh its adverse side-effects.

57. Unfortunately, shortly after Dr. Stowers moved to Great Falls he had another co-worker, and close friend, succumb to cancer. Once again, his friend used marijuana to endure the significant pain caused by the cancer and the awful side-effects caused by the cancer treatment.

58. In early 2009, Dr. Stowers was approached by some Vietnam veterans who suffered from debilitating illnesses inquiring as to whether they qualified to use marijuana for medicinal purposes under the MMA. After Dr. Stowers performed his exam and reviewed their medical records, he determined that the veterans would benefit from using marijuana.

59. After that experience, and his experiences with his friends who died from cancer, Dr. Stowers opened Comfortable Living in Great Falls to evaluate patients to determine whether

they would benefit from using medicinal marijuana. Comfortable Living has been operating in Great Falls for almost two years.

60. Comfortable Living is open four to five days a month. Most of the patients Dr. Stowers evaluates are referred to him by other physicians. Comfortable Living does not charge patients suffering from cancer for its services.

61. Dr. Stowers has provided “written certifications” for hundreds of patients who he determined, in his professional opinion, had debilitating medical conditions for which the potential benefits of the medicinal use of marijuana would outweigh the health risks for the patients.

62. It is Dr. Stowers’ professional opinion that there are a wide range of modalities that may be used to help treat and heal patients, including medicinal use of marijuana. Ultimately, whether a patient receives a recommendation for use of medical marijuana is solely dependent upon Dr. Stower’s professional discretion as a licensed medical doctor.

63. If Dr. Stowers recommends to a patient that she use medicinal marijuana to alleviate a debilitating medical condition, he is careful to advise the patient of the hazards and drawbacks of medicinal marijuana use. Like any medicinal production, marijuana has side effects that Dr. Stowers carefully explains to his patients.

64. Senate Bill 423’s amendments to the MMA will intrude into Dr. Stowers’ physician-patient relationships by threatening Dr. Stowers’ license to practice medicine in Montana if he recommends to his patients that they use medicinal marijuana. In particular, the arbitrary twenty-five patient recommendation limit imposed by Senate Bill 423 will subject Dr. Stowers to investigation by the Montana Board of Medical Examiners, an investigation Dr.

Stowers must pay for himself. The threat of investigation will chill Dr. Stowers' willingness to recommend medical marijuana.

65. Moreover, Senate Bill 423's amendments to the MMA dictate on Dr. Stowers a standard of care for practicing medicine that is unreasonably burdensome for him and his patients. Indeed, the requirement that patients undergo numerous diagnostic tests and exams, and the mandate for a second opinion, are cost prohibitive for many of Dr. Stowers' patients.

66. Senate Bill 423 assumes the old model of medicine where most people had employee-sponsored health care and a primary doctor they could see on an ongoing basis. However, in Dr. Stowers' practice, the majority of his patients have limited access to health care and cannot afford to seek ongoing routine care from a "primary care doctor." Dr. Stowers has found that in Montana, and across the nation, an individual's "primary care doctor" has been replaced by physicians in Urgent Care Centers and Emergency Departments. By accessing health care through such means it is almost assured that patients never consistently see the same health care provider. So the concept of a "Bona Fide Professional Relationship," as repeatedly referenced in Senate Bill 423, is outdated, inaccurate, and, most importantly, unfairly disadvantages patients who cannot affordably access healthcare.

67. Dr. Geci and Dr. Stowers assert the claims herein on their own behalf and on behalf of other similarly situated individuals.

**D. Putative Provider Plaintiff.**

68. Charlie Hamp, age 79, residing at 2007 Fairway Drive in Bozeman, is Shirley Hamp's husband. Mr. Hamp is not a qualifying patient nor is he a registered caregiver. Mr. Hamp has no experience growing marijuana or producing marijuana tincture. Mr. Hamp has no



idea where to obtain marijuana seeds or clones from which to grow marijuana plants should he be forced to grow marijuana for his wife. Moreover, obtaining seeds and/or clones is illegal under Senate Bill 423.

69. Senate Bill 423's amendments to the MMA will prevent Mrs. Hamp's current caregiver from supplying her with medicinal marijuana tincture. Consequently, Mr. Hamp will be involuntarily thrust into the role of Mrs. Hamp's caregiver at the age of 79. Since Mr. Hamp will be forced to start producing marijuana from scratch, Mrs. Hamp will be without access to medicine for at least six months.

70. Senate Bill 423's amendments to the MMA will prevent Mr. Hamp from growing medical cannabis in his home. Accordingly, Mr. Hamp will have to either purchase additional real property in order to grow marijuana, or he will have to lease property from a landlord who is willing to allow him to grow marijuana on the landlord's property. Mr. Hamp is concerned that he will not be able to find such accommodations, and will consequently be unable to grow marijuana for Mrs. Hamp.

71. Mr. Hamp asserts the claims herein on his own behalf and on behalf of other similarly situated individuals.

**E. Montana Cannabis Industry Association.**

72. The MTCIA, a Montana non-profit trade association, is dedicated to promoting professionalism, credibility, quality, and vitality in the cannabis industry in Montana. MTCIA is a broad-based organization consisting of members who are qualifying patients and caregivers under the MMA.

73. The individual Plaintiffs (named above) are members of the MTCIA. MTCIA asserts the claims herein on behalf of the individual Plaintiffs, as well as its member patients and

caregivers and other similarly situated individuals. Despite the unconstitutionality of Mont. Code Ann. § 27-19-104 (addressed below), the individual Plaintiffs' names and addresses are set forth above in compliance with the statute, with the exception of the Jane and John Does who have overriding constitutional needs for confidentiality and privacy.

**F. Defendant.**

74. The Defendant is the State of Montana.

**JURISDICTION AND VENUE**

75. This Court has jurisdiction over the parties and this action pursuant to the Montana Declaratory Judgments Act (Mont. Code Ann. §§ 27-8-101 *et seq.*) and the Montana Code Ann. §§ 27-19-101 *et seq.*, which relate to obtaining preliminary injunctive relief.

76. Venue in this action is appropriate in Lewis and Clark County pursuant to Mont. Code Ann. § 25-2-126.

**VIOLATIONS OF THE MONTANA CONSTITUTION**

**COUNT I**

**Denial of the Rights To Privacy, Dignity, Pursuit of Life's Basic  
Necessities (Including Health), and Freedom of Speech**

**Pursuant to Article II, Sections 3, 4, 7, and 10 of the Montana Constitution**

77. Plaintiffs incorporate herein by reference the allegations made in all preceding Paragraphs set forth above.

78. Article II, Section 10 of the Montana Constitution provides "the right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest."

79. Article II, Section 4 of the Montana Constitution provides "the dignity of the human being is inviolable."

80. Article II, Section 3 of the Montana Constitution provides “[a]ll persons are born free and have certain inalienable rights. They include . . . the rights of pursuing life’s basic necessities, enjoying and defending their lives and liberties, acquiring, possessing and protecting property, and seeking their safety, health and happiness in all lawful ways. In enjoying these rights, all persons recognize corresponding responsibilities.”

81. Article II, Section 7 of the Montana Constitution provides “[n]o law shall be passed impairing the freedom of speech or expression. Every person shall be free to speak or publish whatever she will on any subject, being responsible for all abuse of that liberty.”

82. A central component to the fundamental constitutional right of privacy is the right to personal autonomy, including health. Likewise, the Montana Constitution’s protection of individual dignity and autonomy guarantees each individual the right to make medical judgments affecting her bodily integrity and health in partnership with a chosen health care provider free from government interference.

83. A seriously ill patient’s decision to ingest medication in order to control the manner, and ensure the dignity, of how the patient lives her life with medical suffering is a profoundly personal and intimate decision, directly implicating the individual’s dignity and privacy. Likewise, it is crucial that a patient’s medical decisions be made with the private advice and counsel of a physician without government interference.

84. Senate Bill 423’s amendments to the MMA are unconstitutional because they intrude into the sanctity of the patient-physician relationship and result in a profound chilling effect upon the ability of those in medical need to seek professional care when it comes to access to medical marijuana.

85. Senate Bill 423's amendments to the MMA are unconstitutional because they violate the right to free speech by imposing unconstitutional limitations and risks on physicians who, in their independent professional judgment, would otherwise recommend to patients with debilitating medical conditions that they consume marijuana for medicinal purposes.

## **COUNT II**

### **Denial of Equal Protection**

#### **Pursuant to Article II, Section 4 of the Montana Constitution**

86. Plaintiffs incorporate herein by reference the allegations made in all preceding Paragraphs set forth above.

87. Article II, Section 4 of the Montana Constitution provides that "[n]o person shall be denied the equal protection of the laws."

88. The MMA established a class of citizens who are patients with debilitating medical conditions in need of medical marijuana. Senate Bill 423's amendments to the MMA carve out this class of Montana citizens by treating them as second-class citizens and in an unconstitutional manner. Because Senate Bill 423 impacts fundamental constitutional rights, including the rights of dignity, privacy, pursuit of life's basic necessities and health, and free speech, Senate Bill 423 must be justified by a compelling governmental interest.

89. Separately, Senate Bill 423 denies equal protection of the laws to those persons on probation because the amendments to the MMA prohibit any person who is under the supervision of the Department of Corrections and who suffers from a debilitating medical condition from using medicinal marijuana.

90. There is no justifiable or compelling governmental interest for Senate Bill 423's severe limitations on legitimate medicinal marijuana patients' and their physicians' fundamental rights. For that reason, Senate Bill 423 is unconstitutional.

**COUNT III**  
**Denial of Right to Due Process**

**Pursuant to Article II, Section 17 of the Montana Constitution**

91. Plaintiffs incorporate herein by reference the allegations made in all preceding Paragraphs set forth above.

92. Article II, Section 17 of the Montana Constitution provides “[n]o person shall be deprived of life, liberty and property without due process of law.”

93. The right to earn a livelihood by following the ordinary occupations of life is protected by the Constitution. The right is fundamental, natural, inherent, and inalienable, and is one of the most sacred and valuable rights of a citizen.

94. Even though medical marijuana is legal in Montana, Senate Bill 423 imposes unconstitutional restrictions on caregivers’ abilities to lawfully supply medicinal marijuana to qualifying patients and qualifying patients’ abilities to lawfully obtain medicinal marijuana.

95. Senate Bill 423’s restrictions are arbitrary, discriminatory, without a compelling state interest, and not reasonably tailored to any governmental needs.

**COUNT IV**  
**Violation of Right Against Unreasonable Searches and Seizures**

**Pursuant to Article II, Section 11 of the Montana Constitution**

96. Plaintiffs incorporate herein by reference the allegations made in all preceding Paragraphs set forth above.

97. Article II, Section 11 of the Montana Constitution provides “[t]he people shall be secure in their persons, papers, homes and effects from unreasonable searches and seizures. No warrant to search any place, or seize any person or thing shall issue without describing the place

to be searched or the person or thing to be seized, or without probably cause, supported by oath or affirmation reduced to writing.”

98. Senate Bill 423 allows the government to “conduct unannounced inspections of registered premises.” Moreover, Senate Bill 423 requires providers to keep meticulous records of its business, and provide those records to the government upon demand. Importantly, Senate Bill 423 does not require the government to have probable cause, or any other reason for conducting the warrantless inspection.

99. Senate Bill 423 also requires cardholders to carry their medical marijuana card and valid photo identification at all times, and, upon demand, to present the card and photo ID to law enforcement. Senate Bill 423 does not limit or restrict the government in any way on when it can demand identification.

100. These provisions of Senate Bill 423 subject citizens of the state of Montana to submit to unreasonable searches and seizures in violation of the Montana Constitution.

**COUNT V**  
**Violation of Right to Engage In Political and Commercial Speech**  
**Pursuant to Article II, Section 7 of the Montana Constitution**

101. Plaintiffs incorporate herein by reference the allegations made in all preceding Paragraphs set forth above.

102. Senate Bill 423 violates the right to free speech because it prohibits citizens of Montana from advertising marijuana or marijuana-related products in any medium, including electronic media.

103. Senate Bill 423 does not define advertising and, as a result, it unconstitutionally infringes on free speech and is void for vagueness. Moreover, because of this vagueness, there is

a threat that such provision may unconstitutionally stifle not only commercial speech, but also political speech.

**COUNT VI**  
**Violation of Right To Association and Petition Government**

**Pursuant to Article II, Sections 6 and 7 of the Montana Constitution**  
**and the First Amendment to the United States Constitution**

104. Plaintiffs incorporate herein by reference the allegations made in all preceding Paragraphs set forth above

105. Mont. Code Ann. § 27-19-104 unconstitutionally infringes on the associational anonymity rights of the individual members of the MTCIA and infringes on such persons' rights to petition the Courts.

**COUNT VII**  
**Denial of Substantive Due Process Rights and**  
**Establishment of Improper Irrebuttable Presumption**

**Pursuant to the Article II, Sections 3 and 17 of the Montana Constitution**  
**and the Fifth and Fourth Amendments to the United States Constitution**

106. Plaintiffs incorporate herein by reference all allegations made in all preceding Paragraphs set forth above.

107. Montana's MMA provides persons with debilitating medical conditions the right to obtain and to grow marijuana for personal use.

108. When a qualifying patient uses medical marijuana in accordance with the MMA, he is receiving lawful medication.

109. When being used in compliance with the MMA, medical marijuana is most properly viewed as a prescription drug.

110. Article II, Section 3 gives Montanans the inalienable right to seek "their safety, health, and happiness in all lawful ways. This includes the right to seek and obtain medical care

from a chosen health care provider and to make personal judgments affecting one's own health and bodily integrity without government interference.

111. Senate Bill 423 prohibits a provider from growing marijuana in a home shared with a spouse if the spouse is a registered cardholder.

112. This prohibition prevents Montanans with debilitating medical conditions who are unable to grow marijuana on their own from using their spouse as a provider.

113. This prohibition violates Plaintiffs' substantive due process rights under the Fifth and Fourteenth Amendment of the United States Constitution and Article II, Section 17 of the Montana Constitution. It is likewise unconstitutional because it creates an improper irrebuttable presumption.

**COUNT VIII**  
**Denial of Substantive Due Process and**  
**Establishment of Improper Irrebuttable Presumption**

**Pursuant to the Article II, Sections 3 and 17 of the Montana Constitution**  
**and the Fifth and Fourth Amendments to the United States Constitution**

114. Plaintiffs incorporate herein by reference all allegations made in all preceding Paragraphs set forth above.

115. Montana's MMA provides persons with debilitating medical conditions the right to obtain and to grow marijuana for personal use.

116. When a qualifying patient uses medical marijuana in accordance with the MMA, he is receiving lawful medication.

117. When being used in compliance with the MMA, medical marijuana is most properly viewed as a prescription drug.



118. Article II, Section 3 gives Montanans the inalienable right to seek “their safety, health, and happiness in all lawful ways. This includes the right to seek and obtain medical care from a chosen health care provider and to make personal judgments affecting one's own health and bodily integrity without government interference

119. Senate Bill 423 prohibits persons under Department of Corrections supervision from using medical marijuana.

120. Not all persons under Department of Corrections supervision are drug users, drug abusers, or have been convicted of drug related offenses.

121. Senate Bill 423 needlessly, arbitrarily, and capriciously impinges upon probationers’ rights to use medical marijuana and, as such, it denies probationer Plaintiffs their rights to due process of law and unconstitutionally creates an improper irrebuttable presumption.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for:

(1) A declaration that Senate Bill 423 violates Plaintiffs’ right to equal protection under Article II, Section 4 and substantive due process under Article II, Section 3 of the Montana Constitution.

(2) A declaration that Senate Bill 423 violates Plaintiffs’ right to privacy under Article II, Section 10 of the Montana Constitution.

(3) A declaration that Senate Bill 423 violates Plaintiffs’ right to dignity under Article II, Section 4 of the Montana Constitution.

(4) A declaration that Senate Bill 423 violates Plaintiffs’ right to pursue life’s basic necessities, including personal health, under Article II, Section 3 of the Montana Constitution.

(5) A declaration that Senate Bill 423 violates Plaintiffs' right to due process under Article II, Section 17 of the Montana Constitution.

(6) A declaration that Senate Bill 423 violates Plaintiffs' right to against unreasonable searches and seizures under Article II, Section 11 of the Montana Constitution.

(7) A declaration that Senate Bill 423 violates Plaintiffs' right to freedom of speech.

(8) A declaration that Mont. Code Ann. § 27-19-104 infringes on the individual Plaintiffs' associational anonymity rights and right to petition the Courts.

(9) An order enjoining the State from codifying or enforcing Senate Bill 423's amendments to the MMA.

(10) An order awarding Plaintiffs their costs and their reasonable attorneys' fees.

(11) An order awarding such other and further relief as the Court deems just and proper.

RESPECTFULLY SUBMITTED this 15<sup>th</sup> day of June, 2011.

GOETZ, GALLIK & BALDWIN, P.C.

By: 

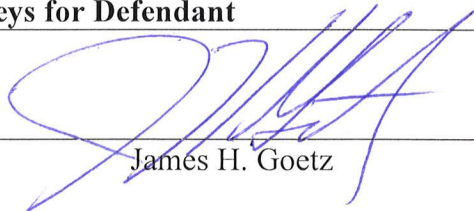
James H. Goetz  
J. Devlan Geddes  
Jim Barr Coleman

**ATTORNEYS FOR PLAINTIFFS**

**CERTIFICATE OF SERVICE**

I certify under penalty of perjury that the foregoing document was served upon the following counsel via first class mail on the 15<sup>th</sup> day of June, 2011.

<input type="checkbox"/> U. S. Mail <input type="checkbox"/> Federal Express <input checked="" type="checkbox"/> Hand-delivery <input type="checkbox"/> Via Fax: (406) 444-3549 <input type="checkbox"/> E-mail: <a href="mailto:jmolloy@mt.gov">jmolloy@mt.gov</a> <a href="mailto:mmattioli@mt.gov">mmattioli@mt.gov</a> <a href="mailto:ssegrest@mt.gov">ssegrest@mt.gov</a>	Steve Bullock, Montana Attorney General James P. Molloy, Chief of Consumer Protection Mark W. Mattioli, Assistant Attorney General J. Stuart Segrest, Assistant Attorney General Montana Department of Justice P.O. Box 201401 Helena, MT 59620-1401 <b>Attorneys for Defendant</b>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

  
\_\_\_\_\_  
James H. Goetz