IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

CIVIL ACTION NO. _____

JUSTIN E. SMITH,
CHAD DAY,
SHAYNE HEAP,
RONALD B. BRUCE,
CASEY SHERIDAN,
FREDERICK D. MCKEE,
ADAM J. HAYWARD,
JOHN D. JENSON,
MARK L. OVERMAN,
BURTON PIANALTO,
CHARLES F. MOSER, and
PAUL B. SCHAUB,

Plaintiffs,

v.

JOHN W. HICKENLOOPER,
Governor of the State of Colorado,

Defendant.

PLAINTIFFS' COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs Justin E. Smith, Chad Day, Shayne Heap, Ronald B. Bruce, Casey Sheridan, Frederick D. McKee, Adam J. Hayward, John D. Jenson, Mark L. Overman, Burton Pianalto, Charles F. Moser, and Paul B. Shaub, by their undersigned attorneys, bring this civil action for declaratory and injunctive relief, and allege as follows:

INTRODUCTION

1. In this action, the Plaintiffs seek to have this Court declare invalid and preliminarily and permanently enjoin the application and implementation of Section 16 of Article XVIII of the Constitution of the State of Colorado, which was adopted by a ballot measure known as Amendment 64 (this provision is hereafter referred to as "Amendment 64" or "Article XVIII, Section 16"), because Amendment 64 is preempted by federal law and therefore violates the Supremacy Clause (Article VI) of the United States Constitution.

2. In our constitutional system, the federal government has preeminent authority to regulate interstate and foreign commerce, including commerce involving legal and illegal trafficking in drugs, such as marijuana. This authority derives from the United States Constitution, acts of Congress, including the Controlled Substances Act, 21 U.S.C. § 801 *et seq.* ("the CSA"), and international treaties and protocols to which the United States is a signatory.

3. The nation's anti-drug laws reflect a well-established – and carefully considered and constructed – balance of national law enforcement, foreign relations, and societal priorities. Congress has assigned to the United States Department of Justice ("DOJ") and the United States Drug Enforcement Administration ("DEA"), along with numerous other federal agencies, the task of enforcing and administering these anti-drug laws and treaty obligations. In administering these laws, the federal agencies balance the complex – and often competing – objectives that animate federal drug law and policy. Although states may exercise their police power in a manner which has an effect on drug policy and trafficking, a state may *not* establish its own policy that is directly counter to federal policy against trafficking in controlled substances or establish a state-sanctioned system for possession, production, licensing, and distribution of

drugs in a manner which interferes with the federal drug laws that prohibit possession, use, manufacture, cultivation, and/or distribution of certain drugs, including marijuana. The Constitution and the federal anti-drug laws do not permit the development of a patchwork of state and local pro-drug policies and licensed-distribution schemes throughout the country which conflict with federal laws.

4. Despite the preeminent federal authority and responsibility over controlled substances, including marijuana, marijuana extracts, and marijuana-infused products (hereinafter collectively referred to as "marijuana"), the State of Colorado recently enacted and implemented Amendment 64, a sweeping set of provisions which are designed to permit: "Personal use of marijuana" and the "Lawful operation of marijuana-related facilities," and further to require the "Regulation of marijuana," provided that "Such regulations shall not prohibit the operation of marijuana establishments, either expressly or through regulations that make their operation unreasonably impractical." *See* Article XVIII, Section 16(3), Section 16(4) and Section 16(5).

5. Amendment 64 pursues only one goal – legalization of marijuana – a goal which is diametrically opposed to the many objectives which Congress has established, and repeatedly reestablished, for the United States' anti-drug policy and practice for marijuana as a controlled substance. If allowed to continue in effect, Amendment 64's legalization and commercialization scheme will conflict with and undermine the federal government's careful balance of anti-drug enforcement priorities and objectives. It will permit and enable at least hundreds – if not many thousands – of marijuana cultivation, distribution, sales, and consumption operations. It will permit and enable vast quantities of marijuana with a commercial value of billions of dollars to be placed into commerce. It will directly conflict with express federal policy which *prohibits*

entirely the possession and use for any purpose of certain controlled substances, including marijuana products. Finally, it will interfere with vital foreign policy interests by disrupting the United States' relationship with other countries which have entered into treaties and protocols with the United States to control trafficking in marijuana and other controlled substances.

JURISDICTION AND VENUE

6. This action arises under the Constitution of the United States, Article VI, Clause 2 and Article I, Section 8, and the Controlled Substances Act ("CSA"), 21 U.S.C. § 801, *et seq*. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331, and the Plaintiffs seek remedies under 28 U.S.C. §§ 1651, 2201, and 2202.

7. Venue lies in the District of Colorado pursuant to 28 U.S.C. § 1391(b). Defendant John W. Hickenlooper, who is the Governor of Colorado, resides in Colorado. A substantial part of the events or omissions giving rise to this claim occurred in Colorado.

PARTIES

Plaintiff-Sheriffs from Colorado

8. Justin E. Smith is the Sheriff for Larimer County, Colorado. He is suing in his individual capacity. As a result of Amendment 64 and its implementation by Governor Hickenlooper, Sheriff Smith has suffered and continues to suffer direct and significant harm.

9. Chad Day is the Sheriff for Yuma County, Colorado. He is suing in his individual capacity. As a result of Amendment 64 and its implementation by Governor Hickenlooper, Sheriff Day has suffered and continues to suffer direct and significant harm.

10. Shayne Heap is the Sheriff for Elbert County, Colorado. He is suing in his individual capacity. As a result of Amendment 64 and its implementation by Governor

Hickenlooper, Sheriff Heap has suffered and continues to suffer direct and significant harm.

11. Ronald B. Bruce is the Sheriff for Hinsdale County, Colorado. He is suing in his individual capacity. As a result of Amendment 64 and its implementation by Governor Hickenlooper, Sheriff Bruce has suffered and continues to suffer direct and significant harm.

12. Casey Sheridan is the Sheriff for Kiowa County, Colorado. He is suing in his individual capacity. As a result of Amendment 64 and its implementation by Governor Hickenlooper, Sheriff Sheridan has suffered and continues to suffer direct and significant harm.

13. Frederick D. McKee is the Sheriff for Delta County, Colorado. He is suing in his individual capacity. As a result of Amendment 64 and its implementation by Governor Hickenlooper, Sheriff McKee has suffered and continues to suffer direct and significant harm.

Plaintiff-Sheriffs from Neighboring States Harmed by Colorado-Sourced Marijuana

14. Adam J. Hayward is the Sheriff for Deuel County, Nebraska. He is suing in both his individual and his official capacity. As a result of Amendment 64 and its implementation by Governor Hickenlooper, Sheriff Hayward and his Department have suffered and continue to suffer direct and significant harm.

15. John D. Jenson is the Sheriff for Cheyenne County, Nebraska. He is suing in both his individual and his official capacity. As a result of Amendment 64 and its implementation by Governor Hickenlooper, Sheriff Jenson and his Department have suffered and continue to suffer direct and significant harm.

16. Mark L. Overman is the Sheriff for Scotts Bluff County, Nebraska. He is suing in both his individual and his official capacity. As a result of Amendment 64 and its implementation by Governor Hickenlooper, Sheriff Overman and his Department have suffered

and continue to suffer direct and significant harm.

17. Burton Pianalto is the Sheriff for Sherman County, Kansas. He is suing in both his individual and his official capacity. As a result of Amendment 64 and its implementation by Governor Hickenlooper, Sheriff Pianalto and his Department have suffered and continue to suffer direct and significant harm.

County Attorneys from Neighboring States Harmed by Colorado-Sourced Marijuana

18. Charles F. Moser is the County Attorney for the Counties of Sherman, Wallace, and Greeley in Kansas. He is suing in both his individual and his official capacity. As a result of Amendment 64 and its implementation by Governor Hickenlooper, Mr. Moser and his Office have suffered and continue to suffer direct and significant harm.

19. Paul B. Schaub is the County Attorney for the County of Cheyenne, Nebraska. He is suing in both his individual and his official capacity. As a result of Amendment 64 and its implementation by Governor Hickenlooper, Mr. Schaub and his Office have suffered and continue to suffer direct and significant harm.

Defendant

20. Defendant John W. Hickenlooper is the Governor of Colorado, and is being sued in his official capacity based upon his enforcement and implementation of Amendment 64.

STATEMENT OF THE CLAIM

Federal Authority and Law Governing Controlled Substances and Other Drugs

21. The Supremacy Clause of the Constitution mandates that:

> "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or shall be made, under the authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the

> Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const. art. VI, cl. 2.

22. The Constitution affords the federal government the power to "regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." U.S. Const. art. I, § 8, cl. 3. The Constitution further affords the federal government the power "[t]o make all Laws which shall be necessary and proper for carrying into Execution" its authority to "regulate Commerce." U.S. Const. art. I, § 8, cl. 18. As such, the federal government has broad authority to regulate the status of drugs within the boundaries of the United States.

23. The U.S. Congress has exercised its authority to do so. The CSA, enacted in 1970 as part of the Comprehensive Drug Abuse Prevention and Control Act, 84 Stat. 1242-1284, is a lengthy and detailed statute creating a comprehensive framework for regulating the production, distribution, and possession of five classes of "controlled substances." The CSA places various plants, drugs, and chemicals (such as narcotics, stimulants, depressants, hallucinogens, and anabolic steroids) into one of these five classes, called "Schedules," based on the substance's medical use, potential for abuse, and safety or dependence liability. 21 U.S.C. §§ 811-812.

24. Most of those substances – those listed in Schedules II through V – "have a useful and legitimate medical purpose and are necessary to maintain the health and general welfare of the American people." 21 U.S.C. § 801(1). The regulatory scheme is designed to foster the beneficial use of those medications, to prevent their misuse, and – by Congressional mandate – *to prohibit entirely* the possession or use of substances listed in Schedule I, except as a part of a strictly controlled research project.

25. The CSA establishes a comprehensive regime to combat the international and

national traffic in illicit drugs. The main objectives of the CSA are to prevent drug abuse and its debilitating impacts on society and to control the legitimate and illegitimate traffic in controlled substances. In particular, Congress made the following findings:

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

21 U.S.C. § 801(1)-(6).

26. Congress stated its particular concern with the need to prevent the diversion of drugs from legitimate to illicit channels. H.R. Rep. No. 91-1444, pt. 2, at 22 (1970).

27. To effectuate these goals, Congress devised a closed regulatory system making it unlawful to manufacture, distribute, possess with intent to distribute, possess without a valid prescription, or dispense any controlled substance except in a manner authorized by the CSA. 21 U.S.C. §§ 841(a)(1), 844(a). The CSA groups controlled substances into five Schedules based on their accepted medical uses, the potential for abuse, and their psychological and physical effects on the body. *Id.* §§ 811, 812. Each Schedule is associated with a distinct set of controls regarding the manufacture, distribution, and use of the substances listed therein. *Id.* §§ 821-830. The CSA and its implementing regulations set forth strict requirements regarding registration, labeling and packaging, production quotas, drug security, and recordkeeping. *Id.;* 21 C.F.R. § 1301 *et seq.* (2013).

28. For example, the CSA requires persons who handle controlled substances or listed chemicals (such as drug manufacturers, wholesale distributors, doctors, hospitals, pharmacies, and scientific researchers) to register with the DEA, which administers and enforces the CSA within the DOJ. *See* 21 U.S.C. § 823. Registrants must maintain detailed records of their respective controlled substance inventories, as well as establish adequate security controls to minimize theft and diversion. *See* 21 C.F.R. § 1304.11(a) ("Each inventory shall contain a complete and accurate record of all controlled substances on hand…"). In addition, "[a]ll applicants and registrants shall provide effective controls to guard against theft and diversion of controlled substances…." *See* 21 C.F.R. § 1301.74(a). According to the DEA, more than 770,000 manufacturers, distributors, pharmacies, and other handlers of controlled substances

currently are registered with the federal agency.

29. In enacting the CSA, Congress classified marijuana as a Schedule I drug. 21 U.S.C. § 812(c). Marijuana is therefore subject to the *most* severe restrictions contained within the CSA. Schedule I drugs are categorized as such because of their high potential for abuse, lack of any accepted medical use, and absence of any accepted safe use in medically supervised treatment. 21 U.S.C. § 812(b)(1).

30. While the statute provided for the periodic updating of the five schedules, Congress itself made the initial classifications. It identified 42 opiates, 22 opium derivatives, and 17 hallucinogenic substances as Schedule I drugs. 84 Stat. 1248. Congressional intent is clear: by classifying marijuana as a Schedule I drug, as opposed to listing it on a lesser schedule, Congress *mandated* that the manufacture, distribution, or possession of marijuana be a criminal offense, with the sole exception being the use of the drug as part of a United States Food and Drug Administration pre-approved research study. 21 U.S.C. §§ 823(f), 841(a)(1), 844(a).

31. The Schedule I classification of marijuana was merely one of many essential parts of a larger regulation of economic activity, in which the regulatory scheme would be undercut unless the *intrastate* activity identified by Congress were regulated as well as the interstate and international activity. Congress specifically included marijuana intended for intrastate consumption in the CSA because it recognized the likelihood that high demand in the interstate market would significantly attract such marijuana. *See, e.g.*, 21 U.S.C. § 801(3)-(6). The diversion of marijuana from Colorado contradicts the clear Congressional intent and frustrates the federal interest in eliminating commercial transactions in the interstate controlled-substances market in their entirety, as well as the treaty and convention obligations of the United States to

effectively control international and domestic trafficking in controlled substances. *See, e.g.*, 21 U.S.C. § 801(3)-(7). The regulation of such transactions involving marijuana as a Schedule I Controlled Substance is squarely within the commerce power of Congress because production of, and trafficking in, the commodity – even if meant only for intrastate consumption – has a substantial effect on supply and demand in the national market for that commodity.

32. Although various factors contribute to the ultimate sentence received, the simple possession of marijuana generally constitutes a misdemeanor offense, with a maximum penalty of up to one year imprisonment and a minimum fine of $1,000. 21 U.S.C. § 844(a). Conversely, the cultivation, manufacture, or distribution of marijuana, or the possession of marijuana with the intent to distribute, is subject to significantly more severe penalties. Such conduct generally constitutes a felony with a maximum penalty of up to five-years imprisonment and a fine of up to $250,000. 21 U.S.C. § 841(b).

33. It also is unlawful to conspire to violate the CSA, 21 U.S.C. § 846; to knowingly open, lease, rent, use, or maintain property for the purpose of manufacturing, storing, or distributing controlled substances, 21 U.S.C. § 856(a)(1); and to manage or control a building, room, or enclosure and knowingly make it available for the purpose of manufacturing, storing, distributing, or using controlled substances. 21 U.S.C. § 856(a)(2). Federal law further criminalizes aiding and abetting another in committing a federal crime, conspiring to commit a federal crime, assisting in the commission of a federal crime, concealing knowledge of a felony from the United States, and laundering the proceeds of CSA offenses. 18 U.S.C. §§ 2-4, 371, 1956.

34. By enacting the CSA, Congress did not intend to preempt the entire field of drug

enforcement. Under 21 U.S.C. § 903, the CSA shall not "be construed" to "occupy the field" in which the CSA operates "to the exclusion of any [s]tate law on the same subject matter which would otherwise be within" the state's authority. Rather, Section 903 provides that state laws are preempted only when "a positive conflict" exists between a provision of the CSA and a state law "so that the two cannot consistently stand together." *Id.*

35. Given the directly contradictory provisions in Colorado Amendment 64 and the CSA, a "positive conflict" clearly exists and "the two cannot consistently stand together." The enforcement of the CSA violates Colorado law, and conversely adherence to Colorado law violates the CSA.

36. A variety of provisions of the CSA contemplate that the DOJ and DEA will work cooperatively with states and localities "concerning traffic in controlled substances and in suppressing the abuse of controlled substances"; and that the federal government and the states will enter into "contractual agreements… for cooperative enforcement" of the CSA. 21 U.S.C. § 873(a). These provisions of the CSA establish support and cooperation in enforcing the CSA, including grants to state and local governments, 21 U.S.C. § 873(d); authorization to deputize state and local law enforcement officers to support enforcement of the CSA, 21 U.S.C. § 878; and the transfer of property civilly or criminally forfeited for violations of the CSA to any state or local law enforcement agencies that participated in the seizure, in part "to encourage further cooperation between the recipient State or local agency and Federal law enforcement agencies." 21 U.S.C. § 881(e).

37. Furthermore, the CSA provides for plenary seizure and forfeiture as "contraband" of "[a]ll controlled substances in schedule I or II that are possessed, transferred, sold, or offered

for sale in violation of the provisions of [the CSA]." 21 U.S.C. § 881(f). The CSA further provides that "[a]ll species of plants from which controlled substances in schedules I and II may be derived which have been planted or cultivated in violation of [the CSA]… may be seized and summarily forfeited to the United States. 21 U.S.C. § 881(g). By virtue of these provisions, state and local law enforcement officers, including the Plaintiff-Sheriffs in this action, have regularly exercised the power to seize marijuana, marijuana products, and marijuana plants found in their jurisdictions for summary forfeiture to the United States by delivery to Special Agents of the DEA or the FBI.

38. The opportunity that federal law provides for participation by state and local officials does not mean that states are permitted to enact their own controlled-substances policies and regulatory regimes that conflict with the national controlled-substances policy. The formulation of policy for controlling and regulating these controlled substances *and* for balancing of controlled-substances regulation, possession, and distribution priorities is a matter exclusively reserved for the federal government. Such regulations do not fall within the state's traditional police powers and remain the exclusive province of the federal government.

39. Colorado Amendment 64 obstructs a number of the specific goals which Congress sought to achieve with the CSA. By permitting, and in some cases requiring, the cultivation, manufacture, packaging-for-distribution, and distribution of marijuana, Amendment 64 undercuts Congressional edicts, including the Congressional finding that such distribution has a "substantial and detrimental effect on the health and general welfare of the American people," 21 U.S.C. § 801(2); that although local drug trafficking may itself not be "an integral part" of the interstate flow of drugs, it nonetheless has "a substantial and direct effect upon interstate

commerce," *id.* § 801(3); and that *"[f]ederal control of the intrastate incidents" of drug trafficking "is essential to the effective control of the interstate incidents of drug trafficking." Id.* § 801(6) (emphasis added).

40. State and local officials who are now required by Amendment 64 to support the establishment and maintenance of a commercialized-marijuana industry in Colorado are violating the CSA. The scheme enacted by Colorado for retail marijuana is contrary and obstructive to the CSA and U.S. treaty obligations. The retail marijuana laws embed state and local government actors with private actors in a state-sanctioned and state-supervised industry which is intended to, and does, cultivate, package, and distribute marijuana for commercial and private possession and use in violation of the CSA (and therefore in direct contravention of clearly stated Congressional intent). It does so without the required oversight and control by the DOJ (and DEA) that is *required* by the CSA – and regulations adopted pursuant to the CSA – for the manufacture, distribution, labeling, monitoring, and use of drugs and drug-infused products which are listed on lesser Schedules. *See* 21 C.F.R. § 1301 *et seq.*

Treaties and Conventions Governing Controlled Substances and Other Drugs

41. Through its exclusive Constitutional power to conduct foreign policy for the nation, the United States is a party to international treaties and conventions under which it has agreed to control trafficking in drugs and psychotropic substances, such as marijuana, throughout the United States, including Colorado. The three principal treaties or conventions on control of drugs to which the United States is a party and pursuant to which it has agreed to take steps to control drug trafficking, including trafficking in marijuana, are: (1) the Single Convention on Narcotic Drugs of 1961, as amended by the 1972 Protocol ("Single Convention"); (2) the

Convention on Psychotropic Substances of 1971 ("1971 Convention"); and (3) the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 ("1988 Convention").

Single Convention

42. The U.S. became a party to the Single Convention on November 1, 1972. The Single Convention specifically includes "cannabis" (marijuana). The parties to the Single Convention, including the United States, resolved to protect against drug addiction and that the parties "[s]hould do everything in their power to combat the spread of the illicit use of drugs." Single Convention at Resolution III. The Single Convention also requires that the parties to it be "[c]onscious of their duty to prevent and combat the evil" of drug addiction, "[d]esiring to conclude a generally acceptable international convention replacing existing treaties on narcotic drugs, limiting such drugs to medical and scientific use, and providing for continuous international co-operation and control for the achievement of such aims and objectives." *Id.* at Preamble. The Single Convention also established an International Narcotics Control Board, which may take certain steps to ensure execution of the provisions of the Convention by its signatories. *See* Single Convention, Article 14.

43. Under the Single Convention, a party shall adopt any special measures of control which the party determines to be necessary in regard to the particularly dangerous properties of a covered drug; and if in its opinion the prevailing conditions in its country render it the most appropriate means of protecting public health and welfare, a "Party shall… prohibit the production, manufacture, export and import of, trade in, possession or use of any such drug except for amounts which may be necessary for medical and scientific research only." *See* Single

Convention, Article 2, 5(a) and (b). The United States adopted the Controlled Substances Act in part because the United States had become a party to the Single Convention and was therefore committed to its design to establish effective control over international and domestic traffic in controlled substances. 21 U.S.C. § 801(7).

44. Other provisions of the Single Convention which directly correlate with measures which the United States has undertaken in part because of its status as a party are:

> **Article 4, "General Obligations"** – "The Parties shall take such legislative and administrative measures as may be necessary: (a) To give effect to and carry out the provisions of this Convention within their own territories; (b) To co-operate with other States in the execution of the provisions of this Convention; and (c) Subject to the provisions of this Convention, to limit exclusively to medical and scientific purposes the production, manufacture, export, import, distribution of, trade in, use and possession of drugs."
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> **Article 28, "Control of Cannabis"** – "If a Party permits the cultivation of the cannabis plant for the production of cannabis or cannabis resin, it shall" [establish a government agency to maintain controls relating to licensure and designation of areas where cultivation can occur]… "Parties shall adopt measures as may be necessary to prevent the misuse of, and illicit traffic in, the leaves of the cannabis plant."
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> **Article 33, "Possession of Drugs"** – "Parties shall not permit the possession of drugs except under legal authority."
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> **Article 36, "Penal Provisions"** – "Subject to its constitutional limitations, each Party shall adopt such measures as will ensure that cultivation, production, manufacture, extraction, preparation, possession, offering, offering for sale, distribution, purchase, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation and exportation of drugs contrary to the provisions of this Convention, and any other action which in the opinion of such Party may be contrary to the provisions of this Convention, shall be punishable offences when committed intentionally, and that serious offences shall be liable to adequate

> punishment particularly by imprisonment or other penalties of deprivation of liberty."

45. With respect to Single Convention Article 28 in particular, the United States has *not* adopted any law permitting the cultivation of the cannabis plant for the production of cannabis or cannabis resin, and it has *not* established an agency to maintain controls relating to licensure and designation of areas where cultivation can occur. Instead, by virtue of the CSA, the United States has met its treaty obligations under the convention by prohibiting the possession of Schedule I drugs, including marijuana (Article 33), and has adopted measures to "ensure that cultivation, production, manufacture, extraction, preparation, possession, offering, offering for sale, distribution, purchase, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation and exportation of drugs contrary to the provisions of this Convention… shall be punishable offences when committed intentionally" (Article 36).

1971 Convention

46. The United States became a party to the 1971 Convention on April 16, 1980. The 1971 Convention does not specifically define cannabis or marijuana, but includes it by reference to "psychotropic substance," a classification which includes tetrahydrocannabinol ("THC"), the psychoactive ingredient in marijuana, as a "Schedule I" substance. *See* 1971 Convention, Article I(e) and Schedule I. Per Resolution I of the 1971 Convention, States are invited, "to the extent they are able to do so, to apply provisionally the measures of control provided in the [1971 Convention] pending its entry into force for each of them." *See* 1971 Convention, Resolution I.

47. The 1971 Convention seeks to prevent and combat abuse of certain psychotropic substances, including THC, and the illicit traffic of them. *Id*. at Preamble. In amending the CSA

in connection with the United States becoming a party to the 1971 Convention, Congress declared that it "has long recognized the danger involved in the manufacture, distribution, and use of certain psychotropic substances for non-scientific and non-medical purposes, and has provided strong and effective legislation to control illicit trafficking and to regulate legitimate uses of psychotropic substances in this country. Abuse of psychotropic substances has become a phenomenon common to many countries, however, and is not confined to national borders. It is therefore essential that the United States cooperate with other nations in establishing effective controls over international traffic in such substances." 21 U.S.C. § 801a.

48. Congress further declared that the 1971 Convention was not self-executing, that "the obligations of the United States thereunder may only be performed pursuant to appropriate legislation," and that it is the intent of Congress that the Controlled Substances Act, as amended, "will enable the United States to meet its obligations under the [1971] Convention." *Id.* Those obligations include "establish[ing] effective control over the manufacture, distribution, transfer, and use" of psychotropic substances. *Id.*

49. Under the 1971 Convention there are "Special Provisions Regarding Substances in Schedule I" which provide that the parties to the Convention "shall," among other things: "*prohibit all use* except for scientific and very limited medical purposes"; "require that manufacture, trade distribution and possession be under a special licence"; and prohibit general, commercial import and export of such Schedule I substances. *See* 1971 Convention, Article 7(a) through (f) (emphasis added).

1988 Convention

50. The United States became a party to the 1988 Convention on February 20, 1990.

The purpose of the 1988 Convention is to promote cooperation among countries to address more effectively the various aspects of illicit traffic of narcotic drugs and psychotropic substances having international dimension, including "cannabis." The 1988 Convention mandates that countries which are signatory to the Convention "shall take necessary measures, including legislative and administrative measures," in carrying out the party's obligations under the 1988 Convention. *See* 1988 Convention, Article 2, § 1.

51. Other provisions of the 1988 Convention directly correlate with measures that the United States has undertaken – or is obligated by this treaty to take with respect to controlled substances such as marijuana because of its status as a party, including:

Article 3, titled "Offences and Sanctions" which provides that:

(i) "Each Party shall adopt measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally:" the "production, manufacture, extraction, preparation, offering, offering for sale, distribution, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation or exportation of any narcotic drug or any psychotropic substance contrary to the provisions" of the previous Conventions; the cultivation of cannabis plants; the possession or purchase of any narcotic drug or psychotropic substance for the purpose of any of the activities above; and the organization, management, or financing of any of the offences enumerated above;

(ii) "Subject to its constitutional principles and the basic concepts of its legal system, each Party shall adopt such measures as may be necessary to establish as a criminal offence under its domestic law, when committed intentionally, the possession, purchase or cultivation of narcotic drugs or psychotropic substances for personal consumption contrary to the provisions of the [Conventions]"; and

(iii) The "Parties shall endeavor to ensure that any discretionary legal powers under their domestic law relating to the prosecution of persons for offences established in accordance

> with this article are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences;"
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> **Article 14**, titled "Measures to Eradicate Illicit Cultivation of Narcotic Plants and to Eliminate Illicit Demand for Narcotic Drugs and Psychotropic Substances" which provides that "Each Party shall take appropriate measures to prevent illicit cultivation of and to eradicate cannabis cultivated illicitly in its territory."

Bilateral Initiatives and Trade Agreements

52. In addition, the United States is signatory to numerous bilateral initiatives, such as the Merida Initiative, and trade agreements which provide for mutual commitment, cooperation, and support on the interdiction of Schedule I drugs, including marijuana, internally in the United States and in its trading partner countries, especially in North, Central, and South America, whose purposes are directly contradicted by Amendment 64 in regard to the domestic cultivation, manufacture, distribution, and/or possession of marijuana in the United States. The Merida Initiative is a bilateral initiative between the United States and Mexico to form a partnership designed to improve citizen safety in both countries by, among other objectives, reducing the demand for drugs, including marijuana, on both sides of the border. The U.S. Congress has appropriated $2.1 billion for this partnership with Mexico since the Merida Initiative began in Fiscal Year 2008.

53. The United States meets each of the foregoing bilateral initiative, treaty, and trade obligations pursuant to the requirements of Articles 3 and 14 of the 1988 Convention by prohibiting the cultivation, manufacture, distribution, and/or possession of marijuana, and further prohibiting the aiding and abetting of such cultivation, manufacture, distribution, and/or possession.

Colorado's Amendment 64

54. Amendment 64 was passed as a ballot initiative in Colorado at the biennial regular election held on November 6, 2012. The voters in Colorado approved the Amendment, resulting in its adoption as an amendment to Article XVIII of the Colorado Constitution on December 10, 2012.

55. Section 1 of Article XVIII includes among its "purposes and findings" that "In the interest of the efficient use of law enforcement resources, enhancing revenue for public purposes, and individual freedom, the people of the state of Colorado find and declare that the use of marijuana should be legal for persons twenty-one years of age or older and taxed in a manner similar to alcohol." Section 1 further includes a finding and declaration "that marijuana should be regulated in a manner similar to alcohol" to the effect that: (1) selling, distributing, or transferring marijuana to individuals of twenty-one years of age or older is legal; (2) "taxpaying business people" will be permitted to conduct sales of marijuana; and (3) marijuana offered for sale must be labeled according to state regulations and are subject to additional state regulations.

56. The Colorado General Assembly adopted several bills during the 2013 legislative session to implement Amendment 64, and Governor Hickenlooper signed those bills into law on May 28, 2013. Amendment 64 and the implementing legislation (particularly, House Bill 13-1317) required that the State Licensing Authority, the Executive Director of the Colorado Department of Revenue, promulgate certain rules on or before July 1, 2013. To comply with these requirements, the State Licensing Authority adopted emergency rules governing "Retail Marijuana" in the State of Colorado. Thereafter, on July 15, 2013, the State Licensing Authority filed a Notice of Rulemaking with the Colorado Secretary of State. Following a rule-making

hearing, these rules became effective on October 15, 2013 as The Permanent Rules Related to the Colorado Retail Marijuana Code ("the Permanent Rules"). 1 CCR 212-2. Pursuant to the Permanent Rules, retail marijuana dispensaries and establishments were permitted to commence operations on January 1, 2014. On January 10, 2014, the Colorado Marijuana Enforcement Division adopted Modifications to the Permanent Rules ("the Modifications"), but generally left the Permanent Rules unchanged with respect to the ongoing operations of marijuana dispensaries and establishments. As of March 2, 2014, when the Modifications became effective, the scheme adopted by Colorado for the commercialization and regulation of marijuana under the auspices of state regulation was, in essence, fully implemented.

57. Colorado House Bill 13-1317, among other things, provided for a state marijuana enforcement division and gives the division the authority to regulate medical marijuana and retail marijuana. The law also created a regulatory framework for retail marijuana. The law further requires the state licensing authority to promulgate rules as required by Amendment 64, and authorizes the state licensing authority to promulgate other rules *intended to support the commercialization of marijuana cultivation, distribution, and sale under state auspices* with the assistance of the department of public health and environment.

58. Colorado Senate Bill 13-283, as passed, implements certain provisions of Amendment 64. Among its provisions, the bill: (1) requires recommendations to the General Assembly regarding criminal laws which need to be revised to ensure statutory compatibility with Amendment 64; (2) designates a relatively small number of specified locations where marijuana may *not* be consumed; (3) allows retail marijuana stores to deduct certain business expenses from their state income taxes that are prohibited by federal tax law; and (4) authorizes

the Defendant, Governor Hickenlooper, to designate state agencies to carry out other duties under the bill.

59. The State of Colorado projected gross sales of retail marijuana under this scheme (for sales tax purposes only, thus not including untaxed personal transactions) of $164.9M for Fiscal Year 2013-14 and $520.9M for Fiscal Year 2014-15. These projections reflect an enormous increase in the quantity of marijuana being sold under Colorado law – a clear majority of which (58 percent) is being sold to out-of-state buyers according to the State. In addition, while the actual sales of retail marijuana under Colorado's scheme have greatly exceeded the original projections, Colorado's collection of revenues from marijuana taxes, licenses, and fees has fallen far short of the original projections. Given the much-larger-than-expected actual sales of marijuana, the lower revenue-generation to the State underscores the underreporting, underpayment, abuses, and illegality of many of the commercial marijuana operations overall.

60. Amendment 64 directly conflicts with federal law and undermines express federal priorities in the area of drug control and enforcement, and enables the retail and other use of marijuana in the United States. Colorado's adoption of a law that regulates and supports the commercialization of marijuana cultivation, distribution, and sale under state auspices with the assistance of the Colorado Department of Public Health and Environment undermines the national enforcement regime set forth in the CSA and reflected in the long-standing and well-established federal controlled-substances enforcement policy and practice as it relates to marijuana, including the federal government's prioritization of enforcement against Schedule I drugs. Amendment 64 also interferes with U.S. foreign relations and broader narcotic and psychotropic-drug-trafficking interdiction and security objectives, and thereby harms a wide

range of U.S. interests. Because Amendment 64 attempts to set state-specific drug regulation and use policy, it legislates in an area constitutionally reserved to the federal government, conflicts with the federal drug-control laws and federal drug-control policy, conflicts with foreign policy and relations, and obstructs the accomplishment and execution of the full purposes and objectives of Congress – and is therefore preempted.

61. Amendment 64 implements Colorado's stated legalization and commercialization policy for marijuana through a novel and comprehensive program. This program creates a state-supported and state-controlled regulatory and licensing scheme (Sections 3-5) which: (1) permits and enables personal cultivation, possession, use, display, purchase, distribution, or transport of marijuana accessories or one ounce or less of marijuana, or aiding and abetting another to do so (Section 3); (2) allows for and provides licenses to enable the operation of marijuana-cultivation facilities, marijuana- and marijuana-products-manufacturing facilities, licensed marijuana-testing facilities, and licensed retail establishments to sell marijuana, including the transportation, distribution, advertising, packaging, and sales in support of these licensed operations (Section 4); (3) prohibits regulations which would ban such commercial marijuana establishments; (4) requires the issuance of a license to operate marijuana establishments; (5) requires regulation of advertising in support of marijuana sales; and (6) requires health and safety regulations and standards for the manufacture of marijuana products (Section 5).

62. The State of Colorado's pursuit of a policy to promote widespread possession and use and the commercial cultivation, distribution, marketing, and sales of marijuana, and ignoring every objective embodied in the federal drug control and regulation system (including the federal government's prioritization of the interdiction of Schedule I drugs including marijuana), directly

conflicts with and otherwise stands as an obstacle to Congress's mandate that *all* possession and use of Schedule I drugs, including marijuana, *be prohibited.* This prohibition embodies not just the considered judgment of Congress, but also the treaty obligations proposed and agreed-to by the United States (and relied upon by other countries who are similarly obligated), and are embodied in the U.S. drug control laws and regulations.

63. Because Amendment 64, in both its stated purpose and necessary operation, conflicts with the federal government's carefully crafted balance of competing objectives in the enforcement of federal drug control laws, its passage already has resulted in detrimental foreign policy implications for United States' relations with other countries, including Mexico, Colombia, Bolivia, and Thailand.

Amendment 64 has subjected the United States to direct criticism from other countries and international organizations, including by the International Narcotics Control Board ("INCB") (established by the Single Convention), which noted in its 2013 Report:

> "We deeply regret the developments at the state level in Colorado and Washington, in the United States, regarding the legalization of the recreational use of cannabis. [The Board] reiterates that *these developments contravene the provisions of the drug control conventions*, which limit the use of cannabis to medical and scientific use only. [The Board] urges the Government of the United States to ensure that the treaties are fully implemented on the entirety of its territory."

In its Annual Report for 2014, the International Narcotics Control Board was again harshly critical of the United States' failure to satisfy the binding obligations of international treaties:

> Like all international conventions, the United Nations drug control treaties lay out a set of binding legal norms and entrust States with the adoption of legal, administrative and policy measures to implement their treaty obligations. While the choice of these measures is the prerogative of States, such measures must

> respect the limits that the international community has set for itself in the international legal order. One of the most fundamental principles underpinning the international drug control framework, enshrined in both the 1961 Convention and in the Convention on Psychotropic Substances of 1971, is the limitation of use of narcotic drugs and psychotropic substances to medical and scientific purposes. This legal obligation is absolute and leaves no room for interpretation (INCB Annual Report 2014, at iii)….
>
> The Board reiterates its concern that action by the [United States] Government to date with regard to the legalization of the production, sale and distribution of cannabis for non-medical and non-scientific purposes in the states of Alaska, Colorado, Oregon and Washington does not meet the requirements of the international drug control treaties. In particular, the 1961 Convention as amended, establishes that the parties to the Convention should take such legislative and administrative measures as may be necessary "to limit exclusively to medical and scientific purposes the production, manufacture, export, import, distribution of, trade in, use and possession of drugs". This provision is strictly binding and not subject to flexible interpretation. In addition, the Convention establishes that States parties have "to give effect to and carry out the provisions of this Convention within their own territories". This provision also applies to States with federal structures (INCB Annual Report 2014, at 25).

In addition, the leader of the majority political party in Mexico's Congress stated:

> "The legalization of marijuana forces us [Mexico] to think very hard about our strategy to combat criminal organizations mainly because the largest consumer in the world has liberalized its [marijuana] laws."

His top aide added: "This changes the rules of the game in the relationship with the United States."

Amendment 64 in these ways has undermined the international commitments of the United States on foreign policy related to drug control and interdiction.

64. Numerous other states and localities subsequently have passed or are contemplating passing legislation similar to Amendment 64. The development of various conflicting state and local drug legalization and regulation policies to enable commercial trafficking in marijuana – or other narcotics and psychotropic substances – would result in

further and significant damage to: (1) U.S. foreign relations; (2) the United States' ability to fairly and consistently enforce our federal drug laws, prevent interstate and international trafficking in controlled substances, and provide safe and effective drugs to the public for federally approved medical purposes only; and (3) the United States' ability to exercise the discretion vested in the executive branch under the CSA. The ability of Colorado or other states and cities to enact a "patchwork" of marijuana laws – in conflict with federal law – would create an enforcement scheme full of conflicts and contradictions, and in violation of American national and international commitments.

Section 3 of Amendment 64

65. Section 3 of Amendment 64 is entitled "PERSONAL USE OF MARIJUANA." It provides that "*Notwithstanding any other provision of law*" certain acts "are not unlawful and shall not be an offense under Colorado law or the law of any locality within Colorado or be a basis for seizure or forfeiture of assets under Colorado law for persons twenty-one years of age or older." Amendment 64, Section 3 (emphasis added).

The acts which Section 3 deems lawful notwithstanding any other provision of law – including the CSA – are:

- "Possessing, using, displaying, purchasing, or transporting marijuana accessories or one ounce or less of marijuana";
- "Possessing, growing, processing, or transporting no more than six marijuana plants… and possession of the marijuana produced by the plants on the premises where the plants were grown, provided that the growing… is not conducted openly or publicly, and is not made available for sale";

- "Transfer of one ounce or less of marijuana without remuneration to a person who is twenty-one years of age or older";
- "Consumption of marijuana…"; and
- "Assisting another person who is twenty-one years of age or older in any of the acts described in… this subsection."

66. Section 3 of Amendment 64 permits and enables personal cultivation, possession, use, display, purchase, distribution, or transport of marijuana accessories, one ounce or less of marijuana, or six marijuana plants regardless of weight, or aiding and abetting another to do so, a provision of Amendment 64 which has significantly increased the cultivation of, access to, and consumption of marijuana since its January 1, 2013 effective date.

Section 4 of Amendment 64

67. Section 4 of Amendment 64 is entitled "LAWFUL OPERATION OF MARIJUANA-RELATED FACILITIES." It provides that "*Notwithstanding any other provision of law*" certain acts "are not unlawful and shall not be an offense under Colorado law or the law of any locality within Colorado or be a basis for seizure or forfeiture of assets under Colorado law for persons twenty-one years of age or older." Amendment 64, Section 4 (emphasis added).

The acts which Section 4 deems lawful notwithstanding any other provision of law – including the CSA – are:

- "Manufacture, possession, or purchase of marijuana accessories or the sale of marijuana accessories to a person who is twenty-one years of age or older";
- "Possessing, displaying, or transporting marijuana or marijuana products; purchase of marijuana from a marijuana cultivation facility; purchase of

marijuana or marijuana products from a marijuana product manufacturing facility; or sale of marijuana or marijuana products to consumers, if the person conducting the activities described in this paragraph has obtained a current, valid license to operate a retail marijuana store or is acting in his or her capacity as an owner, employee or agent of a licensed retail marijuana store";

- "Cultivating, harvesting, processing, packaging, transporting, displaying, or possessing marijuana; delivery or transfer of marijuana to a marijuana testing facility; selling marijuana to a marijuana cultivation facility, a marijuana product manufacturing facility, or a retail marijuana store; or the purchase of marijuana from a marijuana cultivation facility, if the person conducting the activities described in this paragraph has obtained a current, valid license to operate a marijuana cultivation facility or is acting in his or her capacity as an owner, employee, or agent of a licensed marijuana cultivation facility";
- "Packaging, processing, transporting, manufacturing, displaying, or possessing marijuana or marijuana products; delivery or transfer of marijuana or marijuana products to a marijuana testing facility; selling marijuana or marijuana products to a retail marijuana store or a marijuana product manufacturing facility; the purchase of marijuana from a marijuana cultivation facility; or the purchase of marijuana or marijuana products from a marijuana product manufacturing facility, if the person conducting the activities described in this paragraph has obtained a current, valid license to operate a marijuana product manufacturing facility or is acting in his or her capacity as an owner, employee, or agent of a licensed

marijuana product manufacturing facility";

- "Possessing, cultivating, processing, repackaging, storing, transporting, displaying, transferring or delivering marijuana or marijuana products if the person has obtained a current, valid license to operate a marijuana testing facility or is acting in his or her capacity as an owner, employee, or agent of a licensed marijuana testing facility"; and
- "Leasing or otherwise allowing the use of property owned, occupied or controlled by any person, corporation or other entity for any of the activities conducted lawfully in accordance with… this subsection."

68. Section 4 of Amendment 64 permits and enables the operation of marijuana-cultivation facilities, marijuana- and marijuana-products-manufacturing facilities, licensed marijuana-testing facilities, licensed retail establishments to sell marijuana; the transportation, distribution, advertising, packaging and sales in support of these licensed operations; leasing, renting, and maintaining property for the purpose of such trafficking; and/or aiding and abetting another to do so. As of February 2015, there were 103 licensed retail marijuana product manufacturers; 30 licensed retail marijuana-testing facilities; 420 licensed retail marijuana cultivations; and 336 licensed retail marijuana stores operating in Colorado. Reports issued by the Colorado Department of Revenue Marijuana Enforcement Division show steady and substantial increases in each of these areas (for example, an increase in the last 11 months in registered marijuana vendors from 97 to 336).

Section 5 of Amendment 64

69. Section 5 of Amendment 64 is entitled "REGULATION OF MARIJUANA." It provides, among other things, that "Not later than July 1, 2013, the [Department of Revenue] shall adopt regulations necessary for implementation of this section. Such regulations *shall not prohibit the operation of marijuana establishments*, either expressly or through regulations that make their operation unreasonably impracticable." Amendment 64, Section 5 (emphasis added). The regulations that Section 5 mandates, despite their express conflict with the CSA and the treaty obligations of the United States "shall" include, among others, the following:

- "Procedures for the issuance, renewal, suspension, and revocation of a license to operate a marijuana establishment…";
- "A schedule of application, licensing and renewal fees…";
- "Qualifications for licensure…";
- "Security requirements for marijuana establishments";
- "Labeling requirements for marijuana and marijuana products sold or distributed by a marijuana establishment"; and
- "Health and safety regulations and standards for the manufacture of marijuana products and the cultivation of marijuana."

70. Section 5 of Amendment 64 prohibits state regulations which would ban commercial marijuana establishments of the type permitted and enabled by Section 4, requires the issuance by state employees of licenses to operate marijuana establishments, requires regulation by state employees of advertising in support of marijuana sales, and requires state employees to develop health and safety regulations and standards for the manufacture of

marijuana products.

71. This permission and enabling in Colorado by Sections 3, 4, and 5 of Amendment 64 stands in direct opposition to the CSA, the regulatory scheme of which is designed to foster the beneficial and lawful use of those medications on Schedules II-V, to prevent their misuse, and to *prohibit entirely* the possession or use of marijuana, as one of the controlled substances listed in Schedule I, anywhere in the United States, except as a part of a strictly controlled research project. It also stands in direct opposition to the obligations of the United States as a party to the Single Convention, the 1971 Convention, and the 1988 Convention to *prohibit entirely* the cultivation of cannabis or tetrahydrocannabinol except, in limited circumstances, as specifically authorized or regulated by the United States, and the production, manufacture, extraction, preparation, offering, offering for sale, distribution, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation, or exportation of any narcotic drug or any psychotropic, specifically including cannabis or tetrahydrocannabinol. The comprehensive federal regulatory scheme also has specific requirements for registration, inventory control, and advertising and packaging for drugs as to which such activities are permissible in some circumstances (i.e., because they are not listed on Schedule I). Such interference with federal priorities, driven by a state-determined policy as to how possession and use of a controlled substance should be regulated, constitutes a violation of the Supremacy Clause.

72. Sections 3, 4, and 5 of Amendment 64 conflict with and otherwise stand as an obstacle to the full purposes and objectives of Congress, including to fulfill the treaty obligations of the United States pursuant to the international Conventions, in creating a uniform and singular

federal policy and regulatory scheme for interstate or intrastate possession and use of controlled substances, a scheme which expressly includes marijuana, and its regulatory scheme for registration, inventory control, advertising, and packaging for drugs intended for human consumption. Colorado's permission and enabling in direct contravention of these prohibitions also conflicts with and otherwise stands as an obstacle to the full purposes and objectives of Congress in creating a comprehensive system of penalties for individuals who are unlawfully in possession of, or using, marijuana in the United States in violation of the CSA's scheme for interstate or intrastate possession and use of controlled substances, or who are aiding and abetting another to do so, and for registration, inventory control, advertising, and/or packaging for drugs intended for human consumption.

73. By reason of the foregoing, Defendant's actions have caused and will continue to cause substantial and irreparable harm to the Plaintiffs for which Plaintiffs have no adequate remedy except by this action.

Harm from Amendment 64 to the Colorado Plaintiff-Sheriffs

74. Each of the Plaintiffs who is the elected Sheriff of a Colorado county, namely, Sheriffs Justin Smith, Chad Day, Shayne Heap, Ronald Bruce, Casey Sheridan, and Frederick McKee, (collectively, the "Colorado Sheriffs"), has taken an oath of office to uphold the United States Constitution in the performance of his duties. Each also has taken, in the same oath of office, an oath to uphold the Colorado Constitution. Since the enactment of Amendment 64, these oaths contradict each other. Each Colorado Plaintiff-Sheriff routinely is required to violate one of these oaths in performing his duties relating to conflicting federal and Colorado marijuana laws. Such law enforcement actions have presented themselves on a regular basis since the

adoption of Amendment 64 and will continue to present themselves on a persistent basis for each of these Plaintiffs while he holds office.

75. Each of the Colorado Sheriffs believes that Amendment 64 is in direct conflict with the CSA and treaty obligations of the United States under the Conventions. Each of the Colorado Sheriffs believes that because of this conflict, Amendment 64 is preempted by the United States Constitution, and is therefore unconstitutional and of no force and effect.

76. Each of the Colorado Sheriffs encounters marijuana on a regular basis as part of his day-to-day duties and will continue to do so. These types of encounters arise, among other circumstances, when the Sheriffs make routine stops of individuals who possess marijuana. This includes traffic stops involving individuals who are not from Colorado and are drivers or occupants of vehicles with out-of-state license plates who are headed toward the state line. These encounters also arise under circumstances where the Colorado Sheriffs receive reports about or have reason to observe premises where marijuana is being cultivated or stored. When in the course of these encounters they inspect the marijuana or question the individuals, the Colorado Sheriffs frequently learn that it is held by an individual or individuals in facial compliance with Amendment 64.

77. When these Colorado Sheriffs encounter marijuana while performing their duties, including under such circumstances as described in the foregoing paragraph, each is placed in the position of having to choose between violating his oath to uphold the U.S. Constitution and violating his oath to uphold the Colorado Constitution.

78. Under the U.S. Constitution, the Sheriffs are required to treat the CSA as the supreme law of the land, and thus controlling law in Colorado which is applicable to him, his

staff, and persons he encounters who possess marijuana in violation of the CSA. These Sheriffs violate their oath to uphold the U.S. Constitution when they fail to take steps to enforce the CSA during these encounters and instead allow the illegal marijuana to remain in the possession of the holder for use or further distribution.

79. Each of the Colorado Sheriffs is aware that the CSA authorizes him to seize controlled substances as contraband, including any and all marijuana he encounters during the course of performing his duties, and to deliver such contraband to agents of the federal government for forfeiture and destruction. Each of the Colorado Sheriffs delivered seized marijuana to federal agents for this purpose prior to the enactment of Amendment 64. By seizing or initially taking possession of marijuana they encounter and returning it to someone who possesses it illegally under the CSA, the Colorado Sheriffs believe they personally are violating the CSA by illegally distributing a controlled substance.

80. By not seizing or by returning marijuana they encounter, the Colorado Sheriffs further violate their duties of office because they are placing the residents of their County and other citizens who they serve and are duty-bound to protect into increased jeopardy by allowing controlled substances to remain in increased use and commerce.

81. The alternative for the Colorado Sheriffs is to seize and retain the marijuana for forfeiture and destruction, thereby both complying with and enforcing the CSA. If a Colorado Sheriff acts on this alternative, he will be in violation of his duty to uphold the Colorado Constitution.

82. If a Colorado Sheriff acts on this alternative to seize marijuana that is held by an individual or entity in compliance with Amendment 64, or as to which the Sheriff lacked

probable cause that the possession was an ongoing crime under Amendment 64, he will not be fulfilling his fiscal obligations to his taxpayer-constituents, because he will have created legal exposure for his county, his employees who assist him in the seizure, and himself. The exposure is the costs and damages they would incur for a legal action by the person who owns the marijuana for damages for seizing property in violation of the Colorado Constitution. These damages and the legal costs associated with defending or resolving such claims would be significant.

83. Accordingly, the Colorado Sheriffs have suffered and – unless this Court grants the relief requested – will continue to suffer direct and significant harm arising from their regular encounters with marijuana that is held by an individual or entity in compliance with Amendment 64 (or as to which probable cause of ongoing crime is lacking due solely to Amendment 64), but which are indisputably possessed in violation of the CSA. The Sheriff involved in each such encounter must choose which constitutional mandate he will uphold and which he will disregard, he must violate one or more of the duties he owes to his constituents and other citizens he protects and serves, and he must choose whether to arrest the individual and/or to seize property under the CSA in violation of the Colorado Constitution, thereby exposing himself, his staff, and his taxpayers and constituents to financial harm and/or legal liability.

Harm from Amendment 64 to the Neighboring-State Plaintiff-Sheriffs

84. Each of the Plaintiffs who is the elected Sheriff of a county in a state neighboring Colorado, namely Sheriffs Adam Hayward, John Jenson, Mark Overman, and Burton Pianalto (collectively, the "neighboring-state Sheriffs") believes that Amendment 64 is in direct conflict with the CSA and treaty obligations of the United States under the Conventions. Each of the

neighboring-state Sheriffs believes that because of this conflict, Amendment 64 is preempted by the United States Constitution, and is therefore unconstitutional and of no force and effect.

85. Each of the neighboring-state Sheriffs encounters marijuana on a regular basis as part of his day-to-day duties and will continue to do so. These types of encounters arise, among other circumstances, when the neighboring-state Sheriffs make routine stops of individuals who possess marijuana. This includes traffic stops involving individuals who both are – and are not – from the Sheriffs' own states, and who often are drivers or occupants of vehicles with out-of-state license plates who, in many instances, are headed toward other states. When in the course of these encounters they inspect the marijuana or question the individuals, the neighboring-state Sheriffs frequently learn that it is held by an individual or individuals who purchased the marijuana in Colorado and were at the time of purchase in facial compliance with Amendment 64.

86. Each one of these Plaintiffs has, since the implementation of Amendment 64 in Colorado, dealt with a significant influx of Colorado-sourced marijuana in his county.

87. For each of these Plaintiffs, the result of increased Colorado-sourced marijuana being trafficked in his county due to the passage and implementation of Colorado Amendment 64 has been the diversion of a significant amount of his own time, his staff's time, and the Sheriff's Office's resources to counteract the increased trafficking and transportation of Colorado-sourced marijuana which is illegal in his jurisdiction.

88. For each of these Plaintiffs, their Sheriff's Offices have responsibility for staffing and maintaining a jail, and the costs of staffing and maintaining their county jails are borne by their Sheriff's Offices. There has been a marked increase in the costs to their Sheriff's Offices,

and thus to their counties, as a result of the increased incarceration of suspected and convicted felons who have been charged with violations of their respective state's marijuana laws as a result of arrests made which involved Colorado-sourced marijuana, either because of the number of individuals incarcerated or the duration of incarceration due to the nature of the offense, or both. This includes those individuals arrested by their Sheriff's Offices, and those individuals arrested by other law-enforcement agencies who are incarcerated in the county jails staffed and maintained by their Sheriff's Offices. The increased costs associated with this increased level of incarceration of suspected and convicted felons on charges related to Colorado-sourced marijuana include housing, food, health care, transfer to-and-from court, counseling, clothing, and maintenance.

89. For each of these Plaintiffs, there are increased and significant costs associated with the arrest, impoundment of vehicles, seizure of contraband and suspected contraband, transfer of prisoners, and appearance of Sheriff's Office personnel in court for arraignment, trial, and/or sentencing (including the overtime costs associated with appearing in court and/or obtaining replacement law-enforcement personnel for the court-appearing officers). As a result of the increased influx of Colorado-sourced marijuana in their counties resulting from the implementation of Colorado Amendment 64, these neighboring-state Sheriffs, and their offices, are suffering a direct and significant detrimental impact – namely the diversion of limited manpower and resources to arrest and process suspected and convicted felons involved in the increased illegal marijuana trafficking or transportation in their jurisdictions. In the aggregate, these increased costs represent a significant portion of each of their Sheriff's Office's budget and staff time.

90. As a result of Colorado Amendment 64 and its resulting greater influx of Colorado-sourced marijuana in their counties, these Sheriffs-Plaintiffs from neighboring states are not allowed to devote their full time and attention to their other law-enforcement programs, policies, and priorities. To the detriment not only of their offices and law-enforcement officers, but to the detriment of their taxpayers and constituents overall, Plaintiff-Sheriffs have been forced, as a result of Amendment 64-related interdiction efforts, to scale back on drug education and awareness programs in schools and their involvement in other outreach programs to community organizations.

91. Colorado Amendment 64 harms these Sheriffs in their individual and official capacities in the performance of their jobs and the accomplishment of their professional goals and objectives as a result of the greater burdens it places and the diversion of resources it necessitates. These Plaintiffs are unable – because of Amendment 64 – to fully commit to what was their policing program of action as it existed prior to the adoption of Colorado Amendment 64, and/or as it was intended, and budgeted for, after the adoption of Colorado Amendment 64.

92. Accordingly, the neighboring-state Sheriffs have suffered and – unless this Court grants the relief requested – will continue to suffer direct and significant harm arising from their regular encounters with Colorado-sourced marijuana which, in many cases, was possessed by an individual or entity in their jurisdictions in violation of the CSA.

Harm from Amendment 64 to the Neighboring-State Plaintiff-County Attorneys

93. Both of the Plaintiffs who are County Attorneys are County Attorneys of a county in a state neighboring Colorado, namely County Attorneys Charles Moser and Paul Schaub (collectively, the "neighboring-state County Attorneys" or "Plaintiff-County Attorneys") who

believe that Amendment 64 is in direct conflict with the CSA and treaty obligations of the United States under the Conventions. Both of the neighboring-state County Attorneys believe that because of this conflict, Amendment 64 is preempted by the United States Constitution, and is unconstitutional and of no force and effect.

94. Each of the neighboring-state County Attorneys prosecutes defendants for drug-related charges under the laws of his state, including marijuana offenses, on a regular basis as part of his day-to-day duties and will continue to do so. These prosecutions for marijuana-related charges occur after neighboring-state Sheriffs and other law-enforcement officers arrest individuals who possess marijuana.

95. Each of these Plaintiff-County Attorneys has, since the implementation of Amendment 64 in Colorado, dealt with a significant increase in the number of prosecutions of defendants on felony charges and/or all other charges related to marijuana in his county. Most of these prosecutions are for marijuana that is from Colorado.

96. The result of increased Colorado-sourced marijuana being trafficked in each of the Plaintiff-County Attorneys counties due to the passage and implementation of Colorado Amendment 64 has been the diversion of a significant amount of his own time, his staff's time, and the County Attorney's Office's resources from prosecuting other matters to prosecuting Colorado-sourced-marijuana cases.

97. As a result of the increased influx of Colorado-sourced marijuana in their counties resulting from the implementation of Colorado Amendment 64, and the corresponding increased arrests, these neighboring-state County Attorneys, and their offices, are suffering a direct and significant detrimental impact – namely the diversion of limited manpower and resources to

prosecute suspected felons involved in the increased illegal trafficking of Colorado-sourced marijuana in their jurisdictions. In the aggregate, their increased caseloads represent a significant portion of their offices' budget and staff time.

98. These Plaintiff-County Attorneys have been forced to make difficult and harmful decisions regarding their prosecutional discretion on which cases to prosecute and how vigorously to prosecute them. Since they have a fixed staff and budget, and since Amendment 64 is resulting in a significantly higher caseload, the normal docket these prosecutors would handle must be managed so that prosecutions which otherwise would be pursued are not, cases which otherwise would be presented to a jury are not, and cases are pleaded on more favorable terms for defendants than otherwise would have occurred. As a result, the interests of justice are compromised, and the effectiveness of the County Attorney's Offices is more limited compared to their effectiveness *before* the enactment of Amendment 64.

99. As a result of Colorado Amendment 64 and its resulting greater influx of Colorado-sourced marijuana in their counties, these Plaintiff-County Attorneys from neighboring states are not allowed to devote their full time and attention to their other community programs and priorities – to the detriment not only of their offices, but also to their taxpayers and constituents.

100. Colorado Amendment 64 harms these Plaintiff-County Attorneys in their individual and official capacities in the performance of their jobs and the accomplishment of their professional goals and objectives as a result of the increased burden it places on their offices and the diversion of resources it necessitates. Since the adoption of Amendment 64, they have found themselves unable to fully implement their prosecutorial priorities as they existed

and had been budgeted prior to the adoption of Colorado Amendment 64.

101. Because Plaintiff-County Attorneys have been required to exercise their discretion differently due to diverted resources to prosecute Colorado-sourced marijuana cases, they have less time to devote to the prosecution of other unrelated offenses – and thus are unable to perform their jobs as effectively – which results in compromised crime prevention and deterrence in their counties.

102. The escalating number of prosecutions related to Colorado-sourced marijuana in states neighboring Colorado also results in less service to the county. For example, in the three counties in Kansas where Charles Moser serves as County Attorney, his office no longer provides legal counsel for civil-forfeiture proceedings for local law enforcement, resulting in the retention of private counsel – at public expense – on civil-forfeiture proceedings. This is a direct result of the County Attorney's increased caseload attributable to Amendment 64.

103. Accordingly, the neighboring-state County Attorneys have suffered and – unless this Court grants the relief requested – will continue to suffer direct and significant harm arising from their increased caseload and prosecutorial reallocation of resources related to the sharply increasing presence of Colorado-sourced marijuana in their jurisdictions.

CAUSES OF ACTION

FIRST CAUSE OF ACTION – VIOLATION OF THE SUPREMACY CLAUSE

104. Plaintiffs incorporate paragraphs 1 through 103 of the Complaint as if fully stated herein.

105. Sections 16(3)-(5) of Amendment 64, taken in whole and in part, represent an impermissible effort by Colorado to establish its own Schedule I drug-legalization and drug-

regulation policies and scheme, and to directly legalize and commercialize the cultivation, distribution, sale, transportation, and use of marijuana, as well as the transportation, manufacture, distribution, sale, and use of marijuana extracts and marijuana-infused products. In particular, Sections 16(3)-(5) conflict with federal law and American foreign policy, contradict the specific Congressional intent of the Controlled Substances Act and related laws enacted by Congress, interfere with federal enforcement in areas committed to the discretion of the United States, and otherwise impede the accomplishment and execution of the full purposes and objectives of federal law and foreign policy.

106. Sections 16(3)-(5) of Amendment 64 violate the Supremacy Clause, and are invalid.

SECOND CAUSE OF ACTION – PREEMPTION UNDER FEDERAL LAW

107. Plaintiffs incorporate paragraphs 1 through 103 of the Complaint as if fully stated herein.

108. Sections 16(3)-(5) of Amendment 64 are preempted by federal law, including 21 U.S.C. § 801, *et seq.*, and by U.S. foreign policy.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs respectfully request the following relief:

1. A declaratory judgment stating that Sections 16(3), (4), and (5) of Article XVIII of the Colorado Constitution are invalid, null, and void;

2. A preliminary and a permanent injunction against John W. Hickenlooper, Governor of the State of Colorado, prohibiting the application and implementation of Sections 16(3), (4), and (5) of Article XVIII of the Colorado Constitution;

3. That this Court award the Plaintiffs their costs in this action; and

4. That this Court award any other relief it deems just and proper.

Dated: March 5, 2015

PLAINTFF-SHERIFFS AND PLAINTIFF-COUNTY ATTORNEYS

By their attorneys,

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