

IN THE DISTRICT COURT OF LANCASTER COUNTY,
NEBRASKA

JOHN KUEHN,

Plaintiff,

vs.

JAMES D. PILLEN, in his official
capacity as the Governor of
Nebraska; ROBERT B. EVNEN,
in his official capacity as the
Secretary of State of Nebraska;
and ANNA WISHART, CRISTA
EGGERS, and ADAM MORFELD,

Defendants.

Case No. D02DI24-_____

**PLAINTIFF'S VERIFIED
COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

INTRODUCTION

1. In November 2024, taxpayers paid for two statewide votes which together sought to obtain an objective that was unconstitutional, unlawful, and impossible: the legalization of the manufacturing, dispensing, and profiting off marijuana products for so-called medical purposes. The votes were held on two activist-drafted initiative measures which had, to that point, evaded any judicial review for their compliance with the United States Constitution or Nebraska Constitution. The time for that reckoning is now, before further taxpayer funds are spent on a futile effort. This lawsuit seeks a determination that both marijuana measures are in direct conflict with federal law, and therefore are preempted and cannot be law. It also seeks a determination that the initiative wrongly delegates to an unelected board the people's legislative power to determine what principles and standards—that is, what law—should govern the new

marijuana industry, freezing out all other legislative or executive efforts to ensure the public's health, safety, and welfare. This violation of the non-delegation doctrine upends the separation of powers in the Nebraska Constitution and, as a result, places the public directly at risk.

2. This Court has the jurisdiction to act, and at least three different causes of action support Plaintiff's claims. The Court should act now. Activists should commandeer neither energies of the electorate nor the resources of the state until they have drafted measures that protect the Good Life by complying with the supreme law of the land and of this state.

PARTIES

3. Plaintiff John Kuehn ("Plaintiff") is an individual resident of Nebraska, a registered Nebraska voter, and property owner in Nebraska, who pays income, property, and sales taxes in the State of Nebraska. He also is a citizen opponent of Initiative Measures 437 and 438, and the underlying initiative petitions that sought to place those measures on the November 5, 2024 general election ballot ("Petitions").

4. Defendant Robert B. Evnen ("Evnen" or "Secretary") is the Secretary of State of Nebraska. Evnen is charged with administering the election laws of this State and supervising the conduct of general elections in this State. NEB. REV. STAT. §§ 32-201, 32-202. He is sued in his official capacity.

5. Defendant James D. Pillen ("Governor") is the Governor of the State of Nebraska. He is sued in his official capacity.

6. Defendant Anna Wishart is a sponsor of record of the Petitions and, as such, is a necessary party under NEB. REV. STAT. § 32-1412(2). The Sponsor Sworn Statement for each Petition lists Wishart's address as "911 E Street," with no city, state, or zip code. True and correct copies of the Sponsor Sworn Statements for the Petitions

obtained from the Secretary's website are attached hereto as **Exhibits A and B**, and incorporated by reference.

7. Defendant Crista Eggers is a sponsor of record of the Petitions and, as such, is a necessary party under NEB. REV. STAT. § 32-1412(2). The Sponsor Sworn Statement for each Petition lists Eggers's address as "11013 S. 172nd St. Omaha, NE 68136."

8. Defendant Adam Morfeld is a sponsor of record of the Petitions and, as such, is a necessary party under NEB. REV. STAT. § 32-1412(2). The Sponsor Sworn Statement for each Petition lists Morfeld's address as "3637 Holdrege Street, Lincoln, NE 68503."

9. Collectively, Defendants Wishart, Eggers, and Morfeld are referred to as "Sponsors."

JURISDICTION AND VENUE

10. Jurisdiction for injunctive and declaratory relief is proper. NEB. CONST. ART. V, § 9.

11. Jurisdiction and venue are proper in Lancaster County because that is where Defendants Governor and Secretary reside. NEB. REV. STAT. § 25-403.01.

12. Jurisdiction and venue are also proper because "[t]he district court of Lancaster County shall have jurisdiction over all litigation arising under sections 32-1401 to 32-1416." NEB. REV. STAT. § 32-1412.

13. This Court has jurisdiction over this action and the relief sought herein under NEB. REV. STAT. §§ 25-1062 through 25-1064.02, especially 25-1063 ("When it appears by the complaint that the plaintiff is entitled to the relief demanded, and such relief or any part thereof consists in restraining the commission or continuance of some act, the commission or continuance of which during the litigation would produce great or irreparable injury to the plaintiff, or when,

during the litigation, it appears that the defendant is doing, or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the plaintiff's rights respecting the subject of the action and tending to render the judgment ineffectual, a temporary injunction may be granted to restrain such act, subject to the limitations of sections 25-1062 to 25-1080. It may also be granted in any case specially authorized by statute.”); NEB. REV. STAT. § 32-1412(2) (“On a showing that an initiative or referendum petition is not legally sufficient, the court, on the application of any resident, may enjoin the Secretary of State and all other officers from certifying or printing on the official ballot for the next general election the ballot title and number of such measure. If a suit is filed against the Secretary of State seeking to enjoin him or her from placing the measure on the official ballot, the person who is the sponsor of record of the petition shall be a necessary party defendant in such suit.”); *id.* § 32-1412(4) (“The district court of Lancaster County shall have jurisdiction over all litigation arising under sections 32-1401 to 32-1416.”); *id.* §§ 32-141225-21,149 through 25-21,164 (Declaratory Judgments); and the inherent equitable authority of this Court to enforce the Constitution of the State of Nebraska.

GENERAL ALLEGATIONS

I. Federal law Prohibits the Use, Production, and Distribution of Marijuana.

14. In 1970, Congress passed the Controlled Substance Act (“CSA”), 21 U.S.C. §§ 801–904, under which the manufacturing, distributing, selling, and possessing with intent to distribute certain substances, including marijuana, is illegal. 21 U.S.C. § 802(16). Among the purposes of the CSA was to reduce drug abuse and the illegitimate traffic in controlled substances in the United States by prohibiting the unauthorized production, distribution, or possession of controlled substances.

15. When it passed the CSA, Congress found that “[t]he 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,” *id.* § 801(2), and that “[a] major portion of the traffic in controlled substances flows through interstate foreign commerce.” *Id.* § 801(3).

16. Congress further concluded that to protect interstate commerce, it had to regulate intrastate use of controlled substances:

(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.

Id. § 801(4)-(6).

17. The CSA seeks to address the social and economic problems caused by drug abuse and trafficking by prohibiting the illicit drug trade.

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19. To effectuate these ends, the CSA establishes a comprehensive federal framework to regulate the controlled substances market, and “mak[es] it unlawful to manufacture, distribute, dispense, or possess any controlled substance except in a manner authorized by the CSA.” *Gonzales v. Raich*, 545 U.S. 1, 13 (2005) (citing 21 U.S.C. §§ 841(a)(1), 844(a)).

20. The CSA lays out a “schedule” where it categorizes substances from Schedule I to Schedule V, in which Schedule I substances have the highest potential for abuse and Schedule V substances have the lowest potential for abuse. *Id.* § 812(b)(1)–(5).

21. Congress classified marijuana (or cannabis) as a Schedule I substance, deeming it a substance with the highest potential for abuse. *Id.* § 812(b)(1).

22. In making marijuana a Schedule I drug, Congress made the manufacture, distribution, or possession of marijuana a criminal offense with an exception only for the use of the drug as part of a strictly controlled, preapproved research study. *Id.* §§ 823(c), 841(a)(1), 844(a); *see also Gonzales*, 545 U.S. at 14-15.

23. The CSA has made large-scale manufacture and distribution of marijuana a serious felony. A first-time offender convicted of manufacturing or distributing 1,000 kilograms worth or 1,000 or more marijuana plants regardless of weight is subject to a sentence of 10 years to life imprisonment. *Id.* § 841(b)(1)(A).

24. A first-time offender convicted of growing 100 kilograms worth or 100 marijuana plants regardless of weight subjects is subject to a sentence of 5 to 40 years imprisonment. *Id.* § 841(b)(1)(B).

25. A maximum sentence of 20 years is the punishment for conviction of the cultivation and sale of smaller amounts of marijuana. *Id.* § 841(b)(1)(C)–(D).

26. The CSA also criminalizes simple possession for a first-time offender with punishment of up to a year of imprisonment. *Id.* § 844(a).

27. Not only does the CSA prohibit manufacturing, distributing, and possessing marijuana, but it also prohibits a wide range of other conduct and activities connected to the use and operation of the marijuana industry.

28. For example, it is a crime to possess “any equipment, chemical, product, or material” with the intent of using it to manufacture marijuana, or to distribute such material with the knowledge that it will be used to manufacture marijuana. *Id.* § 843(a)(6)–(7).

29. It also is a crime to use a phone, email, mail, or any other “communication facility” in furtherance of the manufacture or sale of marijuana and is also a crime to use the Internet to advertise marijuana for sale. *Id.* § 843(c)(2)(A).

30. Reinvesting proceeds from marijuana operations is another crime. *Id.* § 854(a).

31. Knowingly leasing, renting, maintaining or controlling any place where manufacturing marijuana is a crime. *Id.* § 856.

32. And even simply selling or importing marijuana paraphernalia is a crime carrying a punishment of imprisonment for up to three years. *Id.* § 863.

33. These criminal prohibitions on practically every aspect of the marijuana industry make federal policy on marijuana clear—federal law takes seriously the dangers of marijuana.

II. Nebraska Attorney General Issues Opinion Deeming State Medical Marijuana Bill to Be Unconstitutional.

34. LB 110 was a bill introduced in the Nebraska State Legislature on January 10, 2019. The bill, had it been enacted, would have created the Medical Cannabis Act (“MCA”), which would have legalized and regulated the use of medical marijuana in the State of Nebraska.

35. On August 1, 2019, Nebraska’s then-Attorney General Douglas J. Peterson, and then-Deputy Solicitor General David A. Lopez (now Chief of Staff to the Governor), issued an opinion on the constitutionality of LB 110.

36. The opinion was memorialized in a letter, a true and accurate copy of which is attached hereto as **Exhibit C** and incorporated by reference.

37. The letter was also entered into the Legislative Journal.

38. The letter described the comprehensive scheme Congress created in enacting the CSA.

39. The letter also discussed how the MCA “would authorize the production, distribution, sale, and consumption of medical marijuana in Nebraska and establish an electorate, state-run regulatory system to govern those activities.” **Ex. C, at 4.**

40. The Attorney General cautioned against the MCA, arguing that the MCA would violate the Supremacy Clause because it was preempted by the CSA.

41. Specifically, the Attorney General argued that the “U.S. Supreme Court’s decision in *Gonzales v. Raich* establishes that state-level marijuana schemes like the Medical Cannabis Act are preempted by the CSA and therefore unconstitutional.” **Id. at 5.**

42. The Attorney General went on to conclude that “there is no doubt that *Congress* intended the CSA to serve the purpose of making *all* manufacture, sale, and possession of regulated drugs

illegal, except to the extent explicitly authorized by the CSA. Nothing about the federal government’s relaxed view of its enforcement obligations under the CSA changes the fact that *Congress* intended the CSA to prohibit the type of legalization proposed by the MCA.” *Id.* at 7.

43. The Attorney General’s reasoning did not stop with the MCA. It extended to any legalization or state regulation of marijuana.

44. After the Legislature received the Attorney General’s opinion letter, it refused to act on LB 110.

III. Initiative Measures 437 and 438 Unlawfully Pass in 2024.

a. Marijuana Proponents’ Past Efforts

45. As the Legislature refused to legalize medical marijuana use in the State, Nebraskans for Medical Marijuana (“NMM”), a registered ballot committee with Sponsors at the helm, worked to qualify ballot initiatives that would do the same.

46. NMM’s first attempt to put medical marijuana on the ballot began in February 2019 for the November 2020 ballot. But this initiative was ultimately struck down as legally insufficient for violating the single subject rule of the Nebraska Constitution. *State ex rel. Wagner v. Evnen*, 307 Neb. 142 (2020).

47. In 2022, NMM tried again, but this time they failed to gather enough signatures.

b. Initiative Measures 437 and 438, the Marijuana Measures

48. On its third try, NMM placed Initiative Measures 437 and 438 (“the Measures” or “Marijuana Measures”) on the ballot for the 2024 election.

49. Initiative Measure 437 purports to eliminate state and local penalties and legalize the “use, possess[ion], and acqui[sition]” of up to five ounces of cannabis for “the alleviation of a medical condition,” or even its “symptoms,” or “side effects of the condition’s treatment.” It also allows for “caregiver[s]” to assist in these activities, subject to minimal restrictions. The measure does not define “medical condition” and allows individuals to use marijuana so long as a single health care practitioner opines that “potential benefits” outweigh “potential harms.” **Ex. D, at 23** (Initiative Measure 437).

50. Initiative Measure 438 purports to authorize the possession, manufacture, distribution, delivery, and dispensing of marijuana under the same parameters as Initiative Measure 437. ***Id.* at 28** (Initiative Measure 438). It also establishes a regulatory commission, the Nebraska Medical Cannabis Commission, which is allegedly empowered to register businesses who possess, manufacture, and distribute marijuana for medical purposes. ***Id.* at 27-29** (Initiative Measure 438).

51. The Commission is granted rulemaking authority to set criteria for registration and to grant, revoke, deny, or suspend registrations, but the law provides no standards or criteria for the Commission to consider in its rulemaking or enforcement functions. Nor does the law provide any mechanism whatsoever for regulating or even tracking the process of dispensation, the provision of medical opinion, or consumption. Yet, this Commission is given “exclusive[]” power to regulate “all phases of the control of the possession, manufacture, distribution, delivery, and dispensing of cannabis for medical purposes.” ***Id.* at 29** (Initiative Measure 438).

c. The Marijuana Measures and the 2024 General Election

52. Article III, Sections 1 through 4 of the Nebraska Constitution reserve to the voters the power to directly enact statutes.

53. The Measures were certified for the 2024 general election on September 13, 2024, pursuant to these sections. **Ex. E** (Secretary of State certification).

54. The 2024 general election was held November 5, 2024.

55. The Measures both received sufficient votes to become law pursuant to Article III, Section 4 of the Nebraska Constitution.

56. As of the November 2024 election, no Court had examined the substantive legality of either Measure.

d. The Marijuana Measures require further official action before becoming law.

57. On December 2, 2024, the Board of State Canvassers completed its canvass of the votes cast for and against the Measures pursuant to NEB. REV. STAT. § 32-1414.

58. By statute, “The Governor shall, within ten days of the completion of the canvass, issue his or her proclamation giving the whole number of votes cast in the state approving and rejecting each measure and declaring such measures as are approved by the constitutional number or majority of those voting to be in full force and effect as the law of the State of Nebraska from the date of such proclamation.” NEB. REV. STAT. § 32-1414.

59. The Governor’s proclamation deadline for the Measures is December 12, 2024.

60. As of the date of this filing on December 10, 2024, the Governor has yet to issue a proclamation.

61. Therefore, the Measures have yet to go into effect as laws of the State of Nebraska.

62. In certifying the Measures, canvassing the number of votes cast, and making the proclamation, taxpayer resources are being expended on Measures.

63. Employees in the Governor's office have spent and will spend in the future public time and money to issue the proclamation.

64. On December 6, 2024, Plaintiff, by and through counsel, served a demand letter to the Governor requesting that he not issue the proclamation and explaining why such a proclamation would violate the Nebraska and United States Constitutions. Counsel asked for a response from the Governor to the demand letter by 10:00 A.M. on December 10, 2024, confirming that the Governor would not issue "a proclamation of declaring the Marijuana Measures as the law of Nebraska." Counsel further requested the Governor to issue a proclamation rejecting the Marijuana Measures as invalid under the U.S. and Nebraska Constitutions. **Ex. F.**

65. The Governor did not respond and thereby refused to accept the terms of the demand letter. **Ex. F.** The issuance of the proclamation is a ministerial duty. Therefore, the only reasonable conclusion is that at this moment, the Governor is spending taxpayer resources in preparation to issue a proclamation that will violate the Nebraska and United States Constitutions.

IV. The Supremacy Clause Bars the Measures from Going into Effect.

a. Federal law preempts state marijuana regulation.

66. The Supremacy Clause of the United States Constitution provides: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land." U.S. CONST. art. VI, cl. 2.

67. Pursuant to the Supremacy Clause, federal laws preempt state laws that conflict with federal law. Preemption of a state law by a federal law renders the state law invalid.

68. Federal law may preempt state law in several ways. First, conflict preemption occurs when state law “conflicts with a federal statute,” or state law does “major damage to clear and substantial federal interests.” *In re Elias L.*, 277 Neb. 1023, 1026-27 (2009) (quotation and footnote omitted).

69. Federal law also preempts state law in the case of field preemption, “[w]hen a federal regulatory scheme occupies the field because of its pervasive nature, leaving no room for state action” or “when Congress intend[s] to foreclose any state regulation in the [regulated] area, irrespective of whether state law is consistent or inconsistent with federal standards.” *Pharma. Rsch. & Mfrs. of Am. v. McClain*, 95 F.4th 1136 (8th Cir. 2024) (quotation and citation omitted). “Congress’s intent to preempt a field can be inferred from a framework of regulation so pervasive . . . that Congress left no room for the States to supplement it or a federal interest . . . so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject.” *Id.* (quotation and citation omitted).

70. Consequently, “a state statute is void to the extent it conflicts with a federal statute - if, for example, compliance with both federal and state regulations is a physical impossibility . . . or where the law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.” *Maryland v. Louisiana*, 451 U.S. 725, 747 (1981) (citations omitted) (cleaned up).

71. In ascertaining whether a federal statute preempts a state measure or statute, the Court must give effect to all words in the federal statute.

72. The U.S. Supreme Court has already performed this analysis, and has concluded that state laws legalizing the personal,

medical use of medical marijuana are preempted by the CSA. *See, e.g., Gonzales*, 545 U.S. 1.

73. The Attorney General of Nebraska has reached the same conclusion. **Ex. C.**

74. For the same reasons, the present Marijuana Measures are unconstitutional because they are preempted by the CSA.

75. The Measures' purported legalization and regulation of marijuana use directly conflict with the federal CSA, which classifies marijuana as a Schedule I controlled substance—the strictest classification.

76. Even though the Measures purport to allow Nebraska residents to legally use medical marijuana under certain circumstances and require the government to regulate its use, both Measures would lead residents and the government to violate federal law. The Measures attempt to legalize action that state law cannot legalize.

77. Federal law also preempts the Measures because the CSA comprehensively regulates the field with its “categorical prohibition of the manufacture and possession of marijuana as applied to the intrastate manufacture and possession of marijuana for medical purposes,” given its significant potential for abuse and dependence and its undeniable impact on interstate commerce; therefore, the CSA leaves no room for state laws like the Measures, even where those state laws purport to focus on intrastate consumption for supposedly medical purposes. *See Gonzalez v. Raich*, 545 U.S. 1 (2005); 21 U.S.C. § 801 (“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.”).

b. A Nebraska initiative measure that would violate the Supremacy Clause is outside the legislative power of the state and cannot be valid.

78. The Nebraska Constitution enshrines preemption as a limit on state legislative power. This limit on state legislative power applies to all instances of that power—including the right of the initiative. It therefore prevents the Measures from going into effect.

79. The Nebraska Constitution provides: “The constitutional limitations as to the scope and subject matter of statutes enacted by the Legislature shall apply to those enacted by the initiative.” NEB. CONST. ART. III, § 2.

80. The people of Nebraska may not enact an initiative pursuant to the initiative power that “violate[s] the federal Constitution or conflict[s] with federal statutes or treaties.” *Johnson v. Gale*, 273 Neb. 889, 896 (2007) (per curiam) (footnote and citation omitted).

81. Accordingly, the initiative power does not extend to preempted laws, and a preempted measure subject to a vote, even if passed, is no law at all. *See Van Horn v. State*, 46 Neb. 62, 83 (1895).

82. The Measures’ violation of the Supremacy Clause renders them equally insufficient under the provisions of Nebraska’s Constitution concerning the initiative power because they are not a proper exercise of that power. *See* NEB. CONST. ART. III, §§ 1-4. In other words, because the Measures violate the U.S. Constitution, they cannot be lawfully enacted under Nebraska law.

c. The Governor lacks authority to issue a proclamation that violates the United States Constitution or Nebraska Constitution.

83. The Governor lacks authority to issue a proclamation that violates the Supremacy Clause or the Nebraska Constitution.

84. The Governor has a duty to refuse to spend taxpayer dollars, or to otherwise exercise the executive powers of his office, in support of a measure or statute that cannot be “law” under the Nebraska Constitution or the U.S. Constitution.

85. The Governor is an officer charged with a constitutional duty to uphold the Nebraska Constitution: “The supreme executive power shall be vested in the Governor, who shall take care that the laws be faithfully executed and the affairs of the state efficiently and economically administered.” NEB. CONST. ART. IV, § 6.

86. The Governor cannot take office without uttering these words: “I do solemnly swear (or affirm) that I will support the constitution of the United States, and the constitution of the State of Nebraska, and will faithfully discharge the duties of according to the best of my ability[.]” *Id.* at ART. XV, § 1 (ellipsis in original).

87. Given the Governor’s constitutional charge, he may refuse to perform even a ministerial duty imposed by an election statute where that ministerial act would, because of the content of the measure being approved, cause him to violate the U.S. Constitution.

88. “Ministerial officers, upon whom the legislature has sought to impose a duty by statute, may assert the unconstitutionality of that statute as a defense to an application for a mandamus to require them to perform the supposed duty.” *State ex rel. Wright v. Pepperl*, 221 Neb. 664, 673 (1986) (quoting *Van Horn v. State*, 46 Neb. 62 (1895) (Syllabus of the Court)).

89. The Governor has not only the power, but also the duty not to expend public funds illegally and not to issue a proclamation giving legal effect to an initiative that violates the Nebraska and the United States Constitutions and is therefore no law at all.

V. The Nondelegation Doctrine Bars these Measures from Going into Effect.

90. Under NEB. CONST. ART. II, § 1, “The powers of the government of this state are divided into three distinct departments, the legislative, executive, and judicial, and no person or collection of persons being one of these departments shall exercise any power properly belonging to either of the others except as expressly directed or permitted in this Constitution.”

91. NEB. CONST. ART. III, § 1 grants legislative authority to the Legislature but reserves the right to enact legislation by initiative to the People.

92. Subject only to limitations expressly stated in the constitution, the legislative power exercised by the Legislature and the People are equal in legislative authority. *See Loontjer v. Robinson*, 266 Neb. 902, 909 (2003).

93. Legislative authority may not be delegated to the executive branch. *Schumacher v. Johanns*, 272 Neb. 346, 364 (2006)

94. Legislation authorizing an executive authority to promulgate rules and regulations is only the establishment of administrative authority and not an improper delegation of legislative authority if “limitations of the power granted and the standards by which the granted powers are to be administered [are] clearly and definitely stated in the authorizing act. Such standards may not rest on indefinite, obscure, or vague generalities, or upon extrinsic evidence not readily available.” *Id.* (cleaned up).

95. The legislative power is subject to the same constitutional limitations whether exercised by the Legislature or the People. NEB. CONST. ART. III § 2.

96. More specifically, the same limits on legislative authority and the delegation thereof to the executive branch apply to the People's legislative authority to act through the initiative process and delegation thereof to the executive branch. NEB. CONST. ART. III, § 2 ("The constitutional limitations as to the scope and subject matter of statutes enacted by the Legislature shall apply to those enacted by the initiative.").

97. Initiative Measure 438 creates the Nebraska Medical Cannabis Commission ("the Commission"). **Ex. D, at 27-29** (Initiative Measure 438 § 4(1)).

98. The Measure vests the Commission with "exclusive[]" regulatory authority that extends to "all phases of the control of the possession, manufacture, distribution, delivery, and dispensing of cannabis for medical purposes by registered cannabis establishments in the state . . ." ***Id.*** (Initiative Measure 438 § 5).

99. The only purpose given for the Commission's authority to exercise this broad grant of regulatory authority is that it is "necessary." *See id.* (Initiative Measure 438 § 4(1)).

100. The only limitation that is placed on the Commission's regulatory authority, or standard by which it is to be administered is that its regulations be "reasonable." *See id.* (Initiative Measure 438 § 6).

101. The terms "necessary" and "reasonable" are "indefinite, obscure, or vague generalities" that do not "clearly and definitely" state the "limitations" on the Commission's regulatory authority or the "standards by which the granted powers are to be administered." *Schumacher*, 272 Neb. at 364.

102. Accordingly, the Measures violate Article II, Section 1 of Nebraska's Constitution.

103. The Measures also violate the provisions of Nebraska's Constitution concerning the People's initiative power because the Measures are not a proper exercise of that power. *See* NEB. CONST. ART. III, §§ 1-4.

104. The Governor lacks authority to issue a proclamation that violates the Nebraska Constitution.

105. The Governor has a duty to refuse to spend taxpayer dollars, or to otherwise exercise the executive powers of his office, in support of a measure or statute that cannot be "law" under the Nebraska Constitution.

106. Given the Governor's constitutional charge, he may refuse to perform even a ministerial duty imposed by an election statute where that ministerial act would, because of the content of the measure being approved, cause him to violate the Nebraska Constitution.

107. "Ministerial officers, upon whom the legislature has sought to impose a duty by statute, may assert the unconstitutionality of that statute as a defense to an application for a mandamus to require them to perform the supposed duty." *State ex rel. Wright v. Pepperl*, 221 Neb. 664, 673 (1986) (quoting *Van Horn v. State*, 46 Neb. 62 (1895) (Syllabus of the Court)).

108. The Governor has not only the power, but also the duty not to expend public funds illegally and not to issue a proclamation giving legal effect to an initiative that violates the Nebraska Constitution and is therefore no law at all.

COUNT I

(Taxpayer Claim Against the Governor to Enjoin Proclamation)

109. The foregoing paragraphs are incorporated as if fully stated herein.

110. Nebraska “taxpayers have an equitable interest in public funds, including state public funds.” *Thompson v. Heineman*, 289 Neb. 798, 814 (2015) (footnote and citation omitted).

111. Accordingly, taxpayers have standing to bring lawsuits to “enjoin the illegal expenditure of public funds.” *Id.* (footnote and citation omitted).

112. Plaintiff is a resident taxpayer of the State of Nebraska who contributes to the State’s public funds through his taxpayer dollars.

113. The Governor and his agents have spent or will spend government employee time and public funds to issue the proclamation declaring the Measures to have passed into law.

114. For the reasons previously stated, the Governor and his agents’ expenditures of these public funds to issue the proclamation is illegal under the Nebraska and U.S. Constitutions because the proclamation would effectuate laws that violate the Supremacy Clause of the U.S. Constitution and the nondelegation doctrine of the Nebraska Constitution.

115. If the Court finds that Plaintiff does not have standing under Count III, which states a cause of action under NEB. REV. STAT. § 32-1412, the only way to challenge the legality of these Measures under the Supremacy Clause and stop them from going into effect is through an exception to the standing requirement—either through taxpayer standing or great public concern standing, as outlined in Count II.

116. On December 6, 2024, Plaintiff, by and through counsel, made a demand to the Governor to not issue a proclamation. The demand letter asked the Governor to issue a response by 10:00 A.M., December 10, 2024. The Governor refused to accede to the demand.
Ex. F.

117. Plaintiff has thereby exhausted all potential avenues of relief.

118. For the foregoing reasons, Plaintiff is entitled to equitable relief, declaratory relief, and all other remedies the Court deems just and proper.

COUNT II

(Claim to Enjoin the Governor from Issuing Proclamation on a Matter of Great Public Concern)

119. The foregoing paragraphs are incorporated as if fully stated herein.

120. Nebraska citizens and taxpayers have standing to bring lawsuits with regard to “matters of great public concern that far exceed the type of injury in fact an individual could normally assert in an action against government officials or entities.” *Thompson*, 289 Neb. at 814-15 (footnotes and citations omitted).

121. For example, taxpayers have “great public concern” standing to challenge a measure when “the Legislature enacted a law that undermines the fundamental limitations on government powers under the Nebraska Constitution.” *Id.* at 823. “[T]he delegation of powers under the Nebraska Constitution . . . are fundamental matters of great public concern to all resident taxpayers.” *Id.* at 822.

122. As discussed at length in the preceding and incorporated paragraphs, unless enjoined or declared unlawful, the Governor will issue a proclamation declaring the Measures valid even though they undermine the fundamental limitations of his own executive power, the initiative power, and the legislative power not only under the Nebraska Constitution but also the U.S. Constitution, which declares that federal law is the Supreme Law of the land.

123. The pending proclamation raises issues of great public concern for at least three reasons.

124. First, the pending proclamation that these Measures are valid laws violates the distribution of powers under the Nebraska Constitution for the reasons previously stated.

125. Specifically, the pending proclamation that these Measures are valid laws violates the nondelegation doctrine under the Nebraska Constitution.

126. Accordingly, because this “action raises every citizen’s interest in the [Governor’s] obedience to the fundamental distribution of power in this state, the public interest necessarily rises to the level of a ‘great public concern.’” *Id.* at 824.

127. Second, the pending proclamation raises an even greater, independent public concern than the usual great public concern case because the proclamation that the Measures are valid would not merely violate the Nebraska Constitution—it would independently violate the Supremacy Clause of the U.S. Constitution.

128. There can be no greater public concern than adherence to the Constitution of the United States.

129. Finally, as if that were not enough, the issue of the legal effect of the Marijuana Measures is one of great public concern because it will create many public health and safety risks for Nebraska citizens and in communities.

130. As Congress found based on its research when it enacted the CSA, “[t]he illegal importation, manufacture, distribution, and possession and improper use of controlled substances [including medical marijuana] have a substantial and detrimental effect on the health and general welfare of the American people.” 21 U.S.C. § 801(2).

131. The Nebraska Attorney General reasserted these findings when it issued its opinion denouncing the legalization of medical marijuana. **Ex. C.**

132. The Measures and the Governor's proclamation enacting them into law may go unchallenged absent standing under the great public concern exception.

133. For the foregoing reasons, Plaintiff is entitled to equitable relief, declaratory relief, and all other remedies the Court deems just and proper.

COUNT III

(Claim to Declare Measures Legally Insufficient Under NEB. REV. STAT. § 32-1412)

134. The foregoing paragraphs are hereby incorporated as if fully stated herein.

135. Plaintiff, a resident of this State, is authorized and has standing to bring this action under NEB. REV. STAT. § 32-1412(2), because he alleges and expects to prove that the Measures are not legally sufficient for the reasons set forth in the general allegations.

136. The Measures are legally insufficient because, as previously explained at length and incorporated herein, the Measures violate the Supremacy Clause of the U.S. Constitution and the nondelegation doctrine of Article II, Section 1 of Nebraska's Constitution.

137. Post-election challenges to the legal sufficiency of ballot measures based on substantive grounds are properly brought under NEB. REV. STAT. § 32-1412. *Duggan v. Beermann*, 249 Neb. 411, 424 (1996).

138. For the foregoing reasons, Plaintiff is entitled to relief under NEB. REV. STAT. § 32-1412, including equitable relief, declaratory relief, attorneys' fees, and all other remedies the Court deems just and proper.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff, John Kuehn, requests the following relief:

- A. Pursuant to NEB. REV. STAT. § 32-1412(3), that this suit be advanced on the docket and heard and decided by this Court as quickly as possible.
- B. That the Court set this matter for hearing as soon as practicable.
- C. That the Court enter a declaratory judgment in favor of the Plaintiff and find that the commitment of employee time and the expenditure of tax monies to issue the Governor's proclamation declaring Initiative Measures 437 and 438 to be duly enacted is unlawful and not authorized by law.
- D. That the Court enjoin the Governor from issuing the proclamation declaring Initiative Measures 437 and 438 to be enacted into law.
- E. That the Court enter a declaratory judgment in favor of the Plaintiff and find that the Measures are legally insufficient and for the reasons set forth herein that the measures are invalid.
- F. That the Court issue an Order awarding attorney fees and costs to the Plaintiff, pursuant to NEB. REV. STAT. § 25-2165.
- G. That the Court award such other further relief as the Court may deem just and equitable.

JOHN KUEHN, Plaintiff

BY: /s/ Andrew La Grone
Andrew La Grone, #25948
LA GRONE LAW, LLC
4905 F Road
Dunbar, NE 68346
Telephone: (402) 305-1833
andrew@lagronelawnebraska.com

/s/ Anne Marie Mackin*
Anne Marie Mackin*, Texas Bar
#24078898
VANTAGE LEGAL
P.O. Box 341016
Austin, TX, 78734
Telephone: (512) 354-1785
amackin@vantage.network

/s/ Edward D. Greim*
Edward D. Greim*, Mo. Bar #54034
Katherine E. Graves*, Mo. Bar #74671
Salvatore Paris*, Mo. Bar #76732
GRAVES GARRETT GREIM LLC
1100 Main Street, Suite 2700
Kansas City, MO 64105
Telephone: (816) 256-3181
Fax: 816-256-5958
kgraves@gravesgarrett.com
edgreim@gravesgarrett.com
kgraves@gravesgarrett.com
sparis@gravesgarrett.com

**Application for admission pro hac vice
forthcoming*

VERIFICATION

STATE OF NEBRASKA)
) ss.
COUNTY OF Keosauqua)

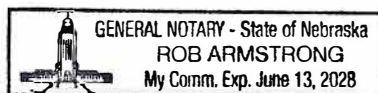
John Kuehn, being first duly sworn upon oath, deposes and states that John Kuehn is the Plaintiff herein, and Plaintiff has read the foregoing Verified Complaint for Temporary and Permanent Injunctive Relief and knows the contents thereof; that he has reviewed the contents of the documents referred to therein; and that the facts stated in the foregoing Verified Complaint for Temporary and Permanent Injunctive Relief are true and correct.

and correct.



John Kuehn, Plaintiff

Subscribed and sworn to before me this 10th day of December, 2024.



Rob Armstrong
Notary Public

EXHIBIT A

Nebraska Secretary of State

Petition Sponsor Sworn Statement

RECEIVED

MAY 18 2023

SECRETARY OF STATE

Petition: Patient protection act for medical cannabis legalization
(Brief description of petition for identification purposes)

Sponsor Name: Anna Wishart

Street Address: 911 E Street

Phone Number: (402) 314-5688 Email: adwishart@gmail.com

Sponsor Name: Crista Eggers

Street Address: 11013 S. 172nd st. Omaha, NE 68136

Phone Number: 402-651-3495 Email: Cristaeggers@gmail.com

Sponsor Name: Adam M. Felt

Street Address: 3637 Holligan Street Lincoln NE 68503

Phone Number: 402-613-0724 Email: Adam.M.Felt@gmail.com

Sponsor Name: _____

Street Address: _____

Phone Number: _____ Email: _____

(Please attach copies of this page if there are more than four sponsors.)

STATE OF NEBRASKA)
COUNTY OF Lancaster) ss.

I hereby swear that this is a complete list containing the names and street addresses of every person, corporation, or association sponsoring the aforementioned petition.

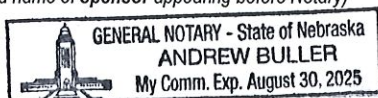
IN WITNESS WHEREOF, I have hereunto subscribed my name this 18th day of May, 2023.
(Day) (Month) (Year)

[Signature]
Signature of Sponsor

Subscribed in my presence and sworn to before me this 18th day of May, 2023.
(Day) (Month) (Year)

by Anna Wishart
(Printed name of sponsor appearing before Notary)

(SEAL)



[Signature]
Signature of Notary Public

RECEIVED

JUN 09 2023

SECRETARY OF STATE

Object Statement:

The object of this petition is to enact a statute that makes penalties inapplicable under state and local law for the use, possession, and acquisition of limited quantities of cannabis for medical purposes by a qualified patient with a written recommendation from a health care practitioner, and for a caregiver to assist a qualified patient in these activities.

Proposed Text of Statutory Initiative Petition:

AN ACT relating to cannabis; to adopt the Nebraska Medical Cannabis Patient Protection Act.

Be it enacted by the People of the State of Nebraska:

Section 1. Sections 1 to 3 of this act shall be known and may be cited as the Nebraska Medical Cannabis Patient Protection Act.

Sec. 2. For purposes of the Nebraska Medical Cannabis Patient Protection Act:

(1)(a) Allowable amount of cannabis means up to five ounces of cannabis.

(b) Allowable amount of cannabis does not include the weight of any other ingredient combined with cannabis as part of topical or oral administrations, food, drink, or other preparations;

(2)(a) Cannabis means all parts of the plant of the genus cannabis whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin.

(b) Cannabis includes marijuana, hashish, and concentrated cannabis.

(c) Cannabis does not include hemp, as defined in Section 2-503(13) of the Nebraska Hemp Farming Act, nor does it include the mature stalks of the plant, fiber produced from such stalks, oil or cake made from the seeds of the plant, the sterilized seed of the plant which is incapable of germination, or cannabidiol contained in a drug product approved by the federal Food and Drug Administration;

(3) Cannabis accessories means any equipment, products, or materials of any kind that are used, intended for use, or designed for use in storing, vaporizing, or containing cannabis, or for ingesting, inhaling, or otherwise introducing cannabis into the human body;

(4) Caregiver means:

(a) In the case of a qualified patient who is eighteen years of age or older and is not under the protection of a legal guardian, a person who:

(i) Is at least twenty-one years of age; and

(ii) Has been designated by a qualified patient in a signed affidavit;

(b) In the case of a qualified patient who is younger than eighteen years of age or a qualified patient under the protection of a legal guardian:

(i) The legal guardian or parent with authority to make health care decisions of the qualified patient; or

(ii) A person designated in a sworn affidavit by the legal guardian or parent with authority to make health care decisions; or

(c) A health care facility as defined in section 71-413 or a home health agency as defined in section 71-417, if the facility or agency has been designated by a qualified

patient or the legal guardian or parent with authority to make health care decisions of a qualified patient in a sworn affidavit and if the facility or agency has agreed in writing to serve as a caregiver for the qualified patient;

(5) Health care practitioner means a physician, an osteopathic physician, a physician assistant, or a nurse practitioner licensed under the Uniform Credentialing Act or who is licensed in any state and practicing in compliance with the Uniform Credentialing Act;

(6) Qualified patient means:

(a) An individual eighteen years of age or older with a written recommendation from a health care practitioner; or

(b) An individual younger than eighteen years of age with a written recommendation from a health care practitioner and with the written permission of a legal guardian or parent with authority to make health care decisions for the individual; and

(7) Written recommendation means a valid signed and dated declaration from a health care practitioner stating that, in the health care practitioner's professional judgment, the potential benefits of cannabis outweigh the potential harms for the alleviation of a patient's medical condition, its symptoms, or side effects of the condition's treatment. A written recommendation is valid for two years after the date of issuance or for a period of time specified by the health care practitioner on the written recommendation.

Sec. 3. (1) Subject to the requirements of the Nebraska Medical Cannabis Patient Protection Act, it shall not be an offense under state or local law for:

(a) A qualified patient to use, possess, and acquire an allowable amount of cannabis and cannabis accessories for the alleviation of a medical condition, its symptoms, or side effects of the condition's treatment; or

(b) A caregiver to assist a qualified patient with the activities set forth in subdivision (1)(a) of this section by possessing and acquiring an allowable amount of cannabis and cannabis accessories on behalf of the qualified patient and delivering an allowable amount of cannabis and cannabis accessories to the qualified patient.

(2) Conduct protected by this section shall not be subject to the Uniform Controlled Substances Act.

INITIATIVE PETITION

For Secretary of State Use Only

The object of this petition is to: (See reverse side for actual text of measure)

Enact a statute that makes penalties inapplicable under state and local law for the use, possession, and acquisition of limited quantities of cannabis for medical purposes by a qualified patient with a written recommendation from a health care practitioner, and for a caregiver to assist a qualified patient in these activities.

To the Honorable Robert Evnen, Secretary of State for the State of Nebraska:

We, the undersigned residents of the State of Nebraska and the county of _____, respectfully demand that the following proposed law shall be referred to the registered voters of the state for their approval or rejection at the general election to be held on the 5th day of November 2024, and each for himself or herself says: I have personally signed this petition on the date opposite my name; I am a registered voter of the State of Nebraska and county of _____ and am qualified to sign this petition or I will be so registered and qualified on or before the date on which this petition is required to be filed with the Secretary of State; and my printed name, date of birth, street and number or voting precinct, and city, village, or post office address are correctly written after my signature.

WARNING TO PETITION SIGNERS-- VIOLATION OF ANY OF THE FOLLOWING PROVISIONS OF LAW MAY RESULT IN THE FILING OF CRIMINAL CHARGES: Any person who signs any name other than his or her own to any petition or who is not qualified to sign the petition shall be guilty of a Class I misdemeanor. Any person who falsely swears to a circulator’s affidavit on a petition, who accepts money or other things of value for signing a petition, or who offers money or other things of value in exchange for a signature upon any petition shall be guilty of a Class IV felony.

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Not more than twenty signatures on one sheet shall be counted. Nebraska Revised Statute §32-1409

STATE OF NEBRASKA)
) ss
COUNTY OF _____)

(name of circulator) being first duly sworn, deposes and says that he or she is the circulator of this petition containing _____ signatures, that he or she is at least eighteen years of age, that each person whose name appears on the petition personally signed the petition in the presence of the affiant, that the date to the left of each signature is the correct date on which the signature was affixed to the petition and that the date was personally affixed by the person signing such petition, that the affiant believes that each signer has written his or her name, street and number or voting precinct, and city, village, or post office address correctly, that the affiant believes that each signer was qualified to sign the petition, and that the affiant stated to each signer the object of the petition as printed on the petition before he or she affixed his or her signature to the petition.

Circulator’s Signature

Address

City, State, Zip

Subscribed and sworn to before me, a notary public, this _____ day of _____, 20 ____ at _____, Nebraska.
(City or village of notarial act.)

(Seal)

Notary Public’s Signature

Proposed Statutory Language:

(underscored language indicates added language, strike-through indicates language being removed)

A BILL

AN ACT relating to cannabis; to adopt the Nebraska Medical Cannabis Patient Protection Act.

Be it enacted by the People of the State of Nebraska:

Section 1. Sections 1 to 3 of this act shall be known and may be cited as the Nebraska Medical Cannabis Patient Protection Act.

Sec. 2. For purposes of the Nebraska Medical Cannabis Patient Protection Act:

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(b) Allowable amount of cannabis does not include the weight of any other ingredient combined with cannabis as part of topical or oral administrations, food, drink, or other preparations;

(2)(a) Cannabis means all parts of the plant of the genus cannabis whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin.

(b) Cannabis includes marijuana, hashish, and concentrated cannabis.

(c) Cannabis does not include hemp, as defined in Section 2-503(13) of the Nebraska Hemp Farming Act, nor does it include the mature stalks of the plant, fiber produced from such stalks, oil or cake made from the seeds of the plant, the sterilized seed of the plant which is incapable of germination, or cannabidiol contained in a drug product approved by the federal Food and Drug Administration;

(3) Cannabis accessories means any equipment, products, or materials of any kind that are used, intended for use, or designed for use in storing, vaporizing, or containing cannabis, or for ingesting, inhaling, or otherwise introducing cannabis into the human body;

(4) Caregiver means:

(a) In the case of a qualified patient who is eighteen years of age or older and is not under the protection of a legal guardian, a person who:

(i) Is at least twenty-one years of age; and

(ii) Has been designated by a qualified patient in a signed affidavit;

(b) In the case of a qualified patient who is younger than eighteen years of age or a qualified patient under the protection of a legal guardian:

(i) The legal guardian or parent with authority to make health care decisions of the qualified patient; or

(ii) A person designated in a sworn affidavit by the legal guardian or parent with authority to make health care decisions; or

(c) A health care facility as defined in section 71-413 or a home health agency as defined in section 71-417, if the facility or agency has been designated by a qualified patient or the legal guardian or parent with authority to make health care decisions of a qualified patient in a sworn affidavit and if the facility or agency has agreed in writing to serve as a caregiver for the qualified patient;

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(7) Written recommendation means a valid signed and dated declaration from a health care practitioner stating that, in the health care practitioner's professional judgment, the potential benefits of cannabis outweigh the potential harms for the alleviation of a patient's medical condition, its symptoms, or side effects of the condition's treatment. A written recommendation is valid for two years after the date of issuance or for a period of time specified by the health care practitioner on the written recommendation.

Sec. 3. (1) Subject to the requirements of the Nebraska Medical Cannabis Patient Protection Act, it shall not be an offense under state or local law for:

(a) A qualified patient to use, possess, and acquire an allowable amount of cannabis and cannabis accessories for the alleviation of a medical condition, its symptoms, or side effects of the condition's treatment; or

(b) A caregiver to assist a qualified patient with the activities set forth in subdivision (1)(a) of this section by possessing and acquiring an allowable amount of cannabis and cannabis accessories on behalf of the qualified patient and delivering an allowable amount of cannabis and cannabis accessories to the qualified patient.

(2) Conduct protected by this section shall not be subject to the Uniform Controlled Substances Act.

EXHIBIT B

Nebraska Secretary of State

Petition Sponsor Sworn Statement

RECEIVED

MAY 18 2023

SECRETARY OF STATE

Petition: Nebraska Medical Cannabis Regulation Act
(Brief description of petition for identification purposes)

Sponsor Name: Anna Wishart

Street Address: 911 E Street

Phone Number: (402) 314-5288 Email: adwishart@gmail.com

Sponsor Name: Crista Eggers

Street Address: 11013 S. 172nd St. Omaha, NE 68136

Phone Number: 402-651-3495 Email: Cristaeggers@gmail.com

Sponsor Name: Adam Montell

Street Address: 3637 Holday Street Lincoln NE 68503

Phone Number: 402-613-0724 Email: AdamMontell@gmail.com

Sponsor Name: _____

Street Address: _____

Phone Number: _____ Email: _____

(Please attach copies of this page if there are more than four sponsors.)

STATE OF NEBRASKA)
COUNTY OF Lancaster) ss.

I hereby swear that this is a complete list containing the names and street addresses of every person, corporation, or association sponsoring the aforementioned petition.

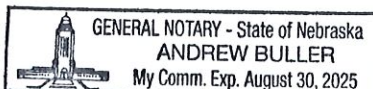
IN WITNESS WHEREOF, I have hereunto subscribed my name this 18th day of May, 2023
(Day) (Month) (Year)

Anna Wishart
Signature of Sponsor

Subscribed in my presence and sworn to before me this 18th day of May, 2023
(Day) (Month) (Year)

by Anna Wishart
(Printed name of sponsor appearing before Notary)

(SEAL)



[Signature]
Signature of Notary Public



Object Statement:

The object of this petition is to enact a statute that makes penalties inapplicable under state law for the possession, manufacture, distribution, delivery, and dispensing of cannabis for medical purposes by registered private entities, and establishing a Nebraska Medical Cannabis Commission to regulate such entities.

Proposed Text of Statutory Initiative Petition:

AN ACT relating to cannabis; to adopt the Nebraska Medical Cannabis Regulation Act.

Be it enacted by the People of the State of Nebraska:

Section 1. Sections 1 to 6 of this act shall be known and may be cited as the Nebraska Medical Cannabis Regulation Act.

Sec. 2. For purposes of the Nebraska Medical Cannabis Regulation Act:

(1)(a) Cannabis means all parts of the plant of the genus cannabis whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin.

(b) Cannabis includes marijuana, hashish, and concentrated cannabis.

(c) Cannabis does not include hemp, as defined in Section 2-503(13) of the Nebraska Hemp Farming Act, nor does it include the mature stalks of the plant, fiber produced from such stalks, oil or cake made from the seeds of the plant, the sterilized seed of the plant which is incapable of germination, or cannabidiol contained in a drug product approved by the federal Food and Drug Administration:

(2) Cannabis accessories means any equipment, products, or materials of any kind that are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, composting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, vaporizing, or containing cannabis, or for ingesting, inhaling, or otherwise introducing cannabis into the human body:

(3) Cannabis for medical purposes means cannabis, cannabis products, and cannabis accessories intended for qualified patients pursuant to any law enacted contemporaneously with the adoption of the Nebraska Medical Cannabis Regulation Act or at any time thereafter and which makes penalties inapplicable to the use of cannabis by qualified patients for the alleviation of a medical condition, its symptoms, or side effects of the condition's treatment:

(4) Cannabis products means products that are comprised of cannabis, cannabis concentrate, or cannabis extract, and other ingredients, and that are intended for use or consumption, such as, but not limited to, edible products, ointments, and tinctures:

(5) Commission means the Nebraska Medical Cannabis Commission:

(6) Registered cannabis establishment means a private entity registered pursuant to the Nebraska Medical Cannabis Regulation Act that possesses, manufactures, distributes, delivers, or dispenses cannabis for medical purposes; and

(7) Registration means a registration granted by the commission to a private entity that processes, manufactures, distributes, delivers, or dispenses cannabis for medical purposes.

Sec. 3. (1) Subject to the requirements of the Nebraska Medical Cannabis Regulation Act, it shall not be an offense under state law for a registered cannabis establishment, its employees,

and its agents to possess, manufacture, distribute, deliver, and dispense cannabis for medical purposes, provided such conduct complies with applicable rules and regulations adopted and promulgated by the Commission pursuant to the Nebraska Medical Cannabis Regulation Act.

(2) Conduct protected by this section shall not be subject to the Uniform Controlled Substances Act.

Sec. 4. (1) For purposes of providing the necessary registration and regulation of persons that possess, manufacture, distribute, deliver, and dispense cannabis for medical purposes pursuant the Nebraska Medical Cannabis Regulation Act, the Nebraska Medical Cannabis Commission is created.

(2) The commission shall consist of no fewer than three and no more than five members.

(3) The three members of the Nebraska Liquor Control Commission shall be ex officio members of the commission, serving terms and receiving appointment in the same manner as provided in section 53-105.

(4) The Governor may appoint two additional members, subject to confirmation by a majority of the members elected to the Legislature, to serve with the members of the Nebraska Liquor Control Commission as members of the Nebraska Medical Cannabis Commission. The members appointed pursuant to this subsection shall serve six-year terms.

(5) The Governor may reappoint members of the commission, subject to approval by a majority of the members elected to the Legislature.

Sec. 5. The power to regulate all phases of the control of the possession, manufacture, distribution, delivery, and dispensing of cannabis for medical purposes by registered cannabis establishments in the state pursuant to the Nebraska Medical Cannabis Regulation Act is vested exclusively in the commission.

Sec. 6. The commission shall:

(1) No later than July 1, 2025, establish criteria to accept or deny applications for registrations, including adopting, promulgating, and enforcing reasonable rules, regulations, and eligibility standards for such registrations;

(2) No later than October 1, 2025, begin granting registrations to applicants that meet eligibility standards and other requirements established by the commission;

(3) Grant, deny, revoke, and suspend registrations based upon reasonable criteria and procedures established by the commission;

(4) Have the authority to adopt, promulgate, and enforce distinct sets of rules and regulations for different categories of registered cannabis establishments;

(5) Administer oaths or affirmations as necessary to carry out the Nebraska Medical Cannabis Regulation Act;

(6) Issue subpoenas for the attendance of witnesses or the production of any records, books, memoranda, documents, or other papers or things at or prior to any hearing as is necessary to enable the commission to effectively discharge its duties;

(7) Inspect the operation of any registered cannabis establishment for the purpose of verifying compliance with rules and regulations adopted and promulgated by the commission;

(8) Have the authority to impose, subject to judicial review under the Administrative Procedure Act, administrative fines for each violation of any rules and regulations adopted and promulgated pursuant to the Nebraska Medical Cannabis Regulation Act;

(9) Collect administrative fines imposed under this section and remit the fines to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska;

(10) Establish procedures for the governance of the commission;

(11) Acquire necessary offices, facilities, counsel, and staff; and

(12) Do all things necessary and proper to carry out its powers and duties under the Nebraska Medical Cannabis Regulation Act, including the adoption and promulgation of rules and regulations and such other actions as permitted by the Administrative Procedure Act.

INITIATIVE PETITION

For Secretary of State Use Only

The object of this petition is to: (See reverse side for actual text of measure)

Enact a statute that makes penalties inapplicable under state law for the possession, manufacture, distribution, delivery, and dispensing of cannabis for medical purposes by registered private entities, and establishing a Nebraska Medical Cannabis Commission to regulate such entities.

To the Honorable Robert Evnen, Secretary of State for the State of Nebraska:

We, the undersigned residents of the State of Nebraska and the county of _____, respectfully demand that the following proposed law shall be referred to the registered voters of the state for their approval or rejection at the general election to be held on the 5th day of November 2024, and each for himself or herself says: I have personally signed this petition on the date opposite my name; I am a registered voter of the State of Nebraska and county of _____ and am qualified to sign this petition or I will be so registered and qualified on or before the date on which this petition is required to be filed with the Secretary of State; and my printed name, date of birth, street and number or voting precinct, and city, village, or post office address are correctly written after my signature.

WARNING TO PETITION SIGNERS-- VIOLATION OF ANY OF THE FOLLOWING PROVISIONS OF LAW MAY RESULT IN THE FILING OF CRIMINAL CHARGES: Any person who signs any name other than his or her own to any petition or who is not qualified to sign the petition shall be guilty of a Class I misdemeanor. Any person who falsely swears to a circulator’s affidavit on a petition, who accepts money or other things of value for signing a petition, or who offers money or other things of value in exchange for a signature upon any petition shall be guilty of a Class IV felony.

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Not more than twenty signatures on one sheet shall be counted. Nebraska Revised Statute §32-1409

STATE OF NEBRASKA)
) ss
COUNTY OF _____)

_____, (name of circulator) being first duly sworn, deposes and says that he or she is the circulator of this petition containing _____ signatures, that he or she is at least eighteen years of age, that each person whose name appears on the petition personally signed the petition in the presence of the affiant, that the date to the left of each signature is the correct date on which the signature was affixed to the petition and that the date was personally affixed by the person signing such petition, that the affiant believes that each signer has written his or her name, street and number or voting precinct, and city, village, or post office address correctly, that the affiant believes that each signer was qualified to sign the petition, and that the affiant stated to each signer the object of the petition as printed on the petition before he or she affixed his or her signature to the petition.

Circulator’s Signature
Address
City, State, Zip

Subscribed and sworn to before me, a notary public, this _____ day of _____, 20 ____ at _____, Nebraska.
(City or village of notarial act.)

(Seal)

Notary Public’s Signature

Proposed Statutory Language:

(underscored language indicates added language, strike through indicates language being removed)

A BILL

AN ACT relating to cannabis; to adopt the Nebraska Medical Cannabis Regulation Act.

Be it enacted by the People of the State of Nebraska:

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(2) Cannabis accessories means any equipment, products, or materials of any kind that are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, composting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, vaporizing, or containing cannabis, or for ingesting, inhaling, or otherwise introducing cannabis into the human body;

(3) Cannabis for medical purposes means cannabis, cannabis products, and cannabis accessories intended for qualified patients pursuant to any law enacted contemporaneously with the adoption of the Nebraska Medical Cannabis Regulation Act or at any time thereafter and which makes penalties inapplicable to the use of cannabis by qualified patients for the alleviation of a medical condition, its symptoms, or side effects of the condition's treatment;

(4) Cannabis products means products that are comprised of cannabis, cannabis concentrate, or cannabis extract, and other ingredients, and that are intended for use or consumption, such as, but not limited to, edible products, ointments, and tinctures;

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(6) Registered cannabis establishment means a private entity registered pursuant to the Nebraska Medical Cannabis Regulation Act that possesses, manufactures, distributes, delivers, or dispenses cannabis for medical purposes; and

(7) Registration means a registration granted by the commission to a private entity that processes, manufactures, distributes, delivers, or dispenses cannabis for medical purposes.

Sec. 3. (1) Subject to the requirements of the Nebraska Medical Cannabis Regulation Act, it shall not be an offense under state law for a registered cannabis establishment, its employees, and its agents to possess, manufacture, distribute, deliver, and dispense cannabis for medical purposes, provided such conduct complies with applicable rules and regulations adopted and promulgated by the Commission pursuant to the Nebraska Medical Cannabis Regulation Act.

(2) Conduct protected by this section shall not be subject to the Uniform Controlled Substances Act.

Sec. 4. (1) For purposes of providing the necessary registration and regulation of persons that possess, manufacture, distribute, deliver, and dispense cannabis for medical purposes pursuant the Nebraska Medical Cannabis Regulation Act, the Nebraska Medical Cannabis Commission is created.

(2) The commission shall consist of no fewer than three and no more than five members.

(3) The three members of the Nebraska Liquor Control Commission shall be ex officio members of the commission, serving terms and receiving appointment in the same manner as provided in section 53-105.

(4) The Governor may appoint two additional members, subject to confirmation by a majority of the members elected to the Legislature, to serve with the members of the Nebraska Liquor Control Commission as members of the Nebraska Medical Cannabis Commission. The members appointed pursuant to this subsection shall serve six-year terms.

(5) The Governor may reappoint members of the commission, subject to approval by a majority of the members elected to the Legislature.

Sec. 5. The power to regulate all phases of the control of the possession, manufacture, distribution, delivery, and dispensing of cannabis for medical purposes by registered cannabis establishments in the state pursuant to the Nebraska Medical Cannabis Regulation Act is vested exclusively in the commission.

Sec. 6. The commission shall:

(1) No later than July 1, 2025, establish criteria to accept or deny applications for registrations, including adopting, promulgating, and enforcing reasonable rules, regulations, and eligibility standards for such registrations;

(2) No later than October 1, 2025, begin granting registrations to applicants that meet eligibility standards and other requirements established by the commission;

(3) Grant, deny, revoke, and suspend registrations based upon reasonable criteria and procedures established by the commission;

(4) Have the authority to adopt, promulgate, and enforce distinct sets of rules and regulations for different categories of registered cannabis establishments;

(5) Administer oaths or affirmations as necessary to carry out the Nebraska Medical Cannabis Regulation Act;

(6) Issue subpoenas for the attendance of witnesses or the production of any records, books, memoranda, documents, or other papers or things at or prior to any hearing as is necessary to enable the commission to effectively discharge its duties;

(7) Inspect the operation of any registered cannabis establishment for the purpose of verifying compliance with rules and regulations adopted and promulgated by the commission;

(8) Have the authority to impose, subject to judicial review under the Administrative Procedure Act, administrative fines for each violation of any rules and regulations adopted and promulgated pursuant to the Nebraska Medical Cannabis Regulation Act;

(9) Collect administrative fines imposed under this section and remit the fines to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska;

(10) Establish procedures for the governance of the commission;

(11) Acquire necessary offices, facilities, counsel, and staff; and

(12) Do all things necessary and proper to carry out its powers and duties under the Nebraska Medical Cannabis Regulation Act, including the adoption and promulgation of rules and regulations and such other actions as permitted by the Administrative Procedure Act.

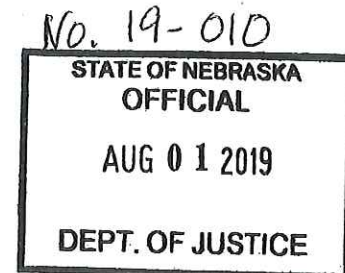
EXHIBIT C



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DOUGLAS J. PETERSON
ATTORNEY GENERAL



SUBJECT: Constitutionality of LB 110 – Adoption of the Medical Cannabis Act

REQUESTED BY: Senator Andrew La Grone
Nebraska Legislature

WRITTEN BY: Douglas J. Peterson, Attorney General
David A. Lopez, Deputy Solicitor General

INTRODUCTION

You have requested an opinion from this office regarding the constitutionality of LB 110, which would create the Medical Cannabis Act ("MCA"). Committee Amendment 1680 to LB 110 ("AM1680"), currently pending on General File, would authorize the cultivation, processing, wholesale distribution, and retail sale of cannabis (marijuana) and cannabis products for medical uses under Nebraska law. It would establish a regulatory framework to govern these activities and a wholly new government agency—the "Cannabis Enforcement Department"—to enforce this regulatory scheme through producer and patient registration, inspections, licensure, fee collection, and related rulemaking.

Your specific question asks whether the MCA, if enacted, would be preempted by the federal Controlled Substances Act ("CSA"), the money laundering statutes, the unlicensed money transmitter statute, or the Bank Secrecy Act. To the extent the latter three categories of statutes govern this question, it is primarily based on the underlying CSA provisions. See, e.g., 18 U.S.C. §§ 1956(c)(7)(B)(i), 1957 (money laundering); 18 U.S.C. § 1960(b)(1)(C) (unlicensed money transmitting); 31 U.S.C. § 5318; 31 C.F.R. § 1020.320 (Bank Secrecy Act regulation requiring financial institutions to file suspicious

activity reports for transactions involving funds derived from federally illegal activities). The following analysis will thus focus on preemption under the CSA. As explained below, it is the opinion of this office that the MCA would be preempted.

ANALYSIS

I. The Controlled Substances Act

The CSA establishes a comprehensive federal scheme to regulate the market in controlled substances. This "closed regulatory system mak[es] it unlawful to manufacture, distribute, dispense, or possess any controlled substance except in a manner authorized by the CSA." *Gonzales v. Raich*, 545 U.S. 1, 13 (2005) (citing 21 U.S.C. §§ 841(a)(1), 844(a)).

To effectuate that "closed" system, the CSA "authorizes transactions within 'the legitimate distribution chain' and makes all others illegal." *United States v. Moore*, 423 U.S. 122, 141 (1975) (quoting H.R. Rep. No. 1444, *supra*, Pt. 1, at 3). Violators of the CSA are subject to criminal and civil penalties, and ongoing or anticipated violations may be enjoined. 21 U.S.C. §§ 841-863, 882(a).

The CSA categorizes all controlled substances into five schedules. *Id.* at § 812. The CSA's restrictions on the manufacture, distribution, and possession of a controlled substance depend upon the schedule in which the drug has been placed. *Id.* at §§ 821-829. The drugs are grouped together based on their accepted medical uses, the potential for abuse, and their psychological and physical effects on the body. *Id.* at §§ 811, 812. Each schedule is associated with a distinct set of controls regarding the manufacture, distribution, and use of the substances listed therein. *Id.* at §§ 821-830.

Since Congress enacted the CSA in 1970, marijuana and tetrahydrocannabinols have been classified as Schedule I controlled substances. See Comprehensive Drug Abuse Prevention and Control Act of 1970, Pub. L. No. 91-513, § 202, 84 Stat. 1249 (Schedule I(c)(10) and (17)); 21 U.S.C. § 812(c) (Schedule I(c)(10) and (17)).

A drug is listed in Schedule I if it has "a high potential for abuse," "no currently accepted medical use in treatment in the United States," and "a lack of accepted safety for use . . . under medical supervision." 21 U.S.C. § 812(b)(1)(A)-(C). By classifying marijuana as a Schedule I drug, Congress mandated that the manufacture, distribution, or possession of marijuana be a criminal offense, with the sole exception being use of the drug as part of a Food and Drug Administration preapproved research study. 21 U.S.C. §§ 823, 841(a)(1), 844(a); *United States v. Oakland Cannabis Buyers' Coop.*, 532 U.S. 483, 489-490, 492 (2001).

In the CSA, Congress included findings and declarations regarding the effects of drug distribution and use on the public health and welfare and the effects of intrastate drug activity on interstate commerce. Congress found, for example, that "[t]he 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.” 21 U.S.C. § 801(2). Congress also found:

A major portion of the traffic in controlled substances flows through interstate and foreign commerce. Incidents of the traffic which are not an integral part of the interstate or foreign flow, such as manufacture, local distribution, and possession, nonetheless have a substantial and direct effect upon interstate commerce because—

(A) after manufacture, many controlled substances are transported in interstate commerce,

(B) controlled substances distributed locally usually have been transported in interstate commerce immediately before their distribution, and

(C) controlled substances possessed commonly flow through interstate commerce immediately prior to such possession.

Id. at § 801(3). Congress further found that “[l]ocal distribution and possession of controlled substances contribute to swelling the interstate traffic in such substances,” *id.* at § 801(4); that “[c]ontrolled substances manufactured and distributed intrastate cannot be differentiated from controlled substances manufactured and distributed interstate” and “[t]hus, it is not feasible to distinguish” between such substances “in terms of controls,” *id.* at § 801(5); and that “[f]ederal control of the intrastate incidents of the traffic in controlled substances is essential to the effective control of the interstate incidents of such traffic,” *id.* at § 801(6). The federal executive branch confirmed this understanding of the intent and purpose of the CSA in 2004. Brief for the Petitioners, *Ashcroft v. Raich*, 545 U.S. 1 (2005) (No. 03-1454), 2004 WL 1799022, at *11.

Congress has not amended the CSA to remove marijuana from Schedule I, nor have considerable efforts to administratively reschedule marijuana been successful.¹

¹ Notably, even the recent farm bill, legislation which legalized the commercial production of hemp (defined as cannabis or cannabis derivatives with a tetrahydrocannabinol concentration (“THC”) of 0.3 percent or less), stopped well short of removing marijuana from Schedule I. Agriculture Improvement Act of 2018, Pub. L. No. 115-334, §§ 10113, 12619 (2018). Likewise, continuing federal appropriations provisions which prohibit the U.S. Department of Justice from using funds to interfere with state medical marijuana laws in no way modify the CSA, much less remove marijuana from Schedule I. See, e.g., Consolidated Appropriations Act, 2018, Pub. L. No. 115-141, § 538 (2018). Any argument that such provisions substantively change the underlying CSA marijuana prohibition misapprehends the state of the controlled substances laws, generally, and the function of appropriations riders, specifically.

II. LB 110—the Medical Cannabis Act

The MCA (under AM1680 to LB 110) would authorize the production, distribution, sale, and consumption of medical marijuana in Nebraska and establish an elaborate, state-run regulatory system to govern those activities. There is no material dispute that its text is intended to establish as comprehensive a regime as possible to place the state itself in the position of authorizing, licensing, inspecting, and monitoring these activities, and to collect fees from entities permitted by the state to produce, process, and dispense marijuana and marijuana products. Several of the MCA's provisions are worth specifically highlighting.

The MCA would permit certified patients and designated caregivers to apply to a newly-created "Cannabis Enforcement Department" for enrollment in a registry program, after which they would be permitted to purchase and consume marijuana and marijuana products. AM1680, §§ 8-10, 31. Non-Nebraska residents would be permitted to participate subject to certain conditions. §§ 17, 32. Patients would qualify for participation after a diagnosis of a "qualifying medical condition," which the MCA defines by enumerating seventeen specific health conditions. § 24.

The new Cannabis Enforcement Department would be charged with developing an application for patient enrollment in the registry program, § 34, registration of designated caregivers, § 35, permitting non-patient "caregivers" to possess marijuana and distribute it to patients, § 36, and for creating a written certification form to be used by participating health care practitioners. § 39(1). The new agency is also required to develop requirements for a medical necessity waiver to allow a patient to possess a greater quantity of cannabis than otherwise allowed, § 39(3), and to provide for classification and regulation of commercial producers based on size. § 39(4).

The MCA would require that "[a] producer of cannabis *shall provide a reliable and ongoing supply* of cannabis needed for the registry program." § 41(1) (emphasis added). It would direct the Cannabis Enforcement Department to register and regulate a limited number of producers and all qualifying processors for the production and processing of all cannabis within Nebraska. § 40. The Department would also be required to register a limited number of dispensaries for the dispensing and sale of all cannabis for medical use in the state. § 43. The MCA would direct the Nebraska State Patrol to assist in executing the MCA by conducting criminal background checks of industry participants. § 47.

Additionally, the MCA would provide for the collection of fees by the Cannabis Enforcement Department, directing the new agency to collect an application fee of \$25,000 for dispensaries, an application fee of up to \$5,000 for producers or processors or, for producers or processors in the tier allowed to cultivate the largest number of plants, an application fee of not more than \$25,000. § 61. The Department shall establish an annual fee for producers in the tier allowed to cultivate the largest number of plants of not more than \$40,000, and an annual fee of not more than \$5,000 for producers not in such

tier. *Id.* Processors not licensed to perform solvent-based extractions on cannabis are subject to an annual fee of not more than \$5,000, while processors permitted to perform additional solvent-based extractions are subject to an annual fee of not more than \$40,000. *Id.* The Department shall establish an annual fee for dispensaries of not more than \$25,000. *Id.* Laboratories are to be assessed an annual fee not to exceed \$15,000. *Id.*

In sum, the MCA would, through its extensive licensure and regulatory scheme, place the state in the position of affirmatively facilitating the cultivation, processing, wholesale distribution, and retail sale of marijuana and marijuana products.

III. The U.S. Supreme Court's decision in *Gonzales v. Raich* establishes that state-level marijuana schemes like the Medical Cannabis Act are preempted by the CSA and therefore unconstitutional.

The Supremacy Clause of the United States Constitution provides that "[t]his Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land . . . any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." Art. VI, cl. 2. As a consequence of this constitutional command, "a state statute is void to the extent it conflicts with a federal statute – if, for example, 'compliance with both federal and state regulations is a physical impossibility' . . . or where the law 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'" *Maryland v. Louisiana*, 451 U.S. 725, 747 (1981) (citations omitted).

In 1996, California voters passed Proposition 215, known as the "Compassionate Use Act." Under this Act, "seriously ill" California residents were allowed access to marijuana for medical purposes. *Gonzales v. Raich*, 545 U.S. 1, 7 (2005). The Act exempted from criminal prosecution patients and their "primary caregivers" who possessed or cultivated marijuana for medicinal purposes with the recommendation or approval of a physician. *Id.* at 6. The Act required that the marijuana that was being grown by the patient or caregiver be used *only* for the patient's personal use. *Id.* The California scheme was thus a purely noncommercial, compassionate use-based regime.

After DEA agents raided the homes of two seriously ill Californians who were in full compliance with the California Act, those Californians brought suit, seeking injunctive and declaratory relief prohibiting the enforcement of the federal CSA to the extent it prevents them from possessing, obtaining, or manufacturing cannabis for their personal medical use. *Id.* at 7.

The case made its way to the Supreme Court, where the federal government argued that marijuana was a drug with "significant potential for abuse and dependence," and was a "fungible commodity that is regularly bought and sold in an interstate market." Reply Brief for Petitioners, *Ashcroft v. Raich*, 545 U.S. 1 (2005) (No. 03-1454), 2004 WL 2652615, at *1. "That market," the federal government explained, "like the market for

numerous other drugs having a significant potential for abuse and dependence, *is comprehensively regulated by the [CSA].*" *Id.* (emphasis added). Because Congress explicitly found that marijuana has "no currently accepted medical use in treatment in the United States" and had categorized marijuana as a "Schedule I" drug, the CSA was enacted "[i]n order to eradicate the market for such drugs." *Id.* As such, the federal government argued, "the CSA makes it unlawful to manufacture, distribute, dispense, or possess *any* Schedule I drug for *any* purpose, medical or otherwise, except as part of a strictly controlled research project." *Id.* (emphasis in original).

Nor, argued the federal government, was it "relevant that respondents' conduct may be lawful under state law" because "[u]nder the Supremacy Clause, state law cannot insulate conduct from the exercise of Congress's enumerated powers." *Id.* "Here," argued the government, "regulation of intrastate activities is an *essential* part of Congress's regulation of the interstate drug market and Congress's goal of achieving a comprehensive and uniform system that guards against drug abuse and diversion and permits manufacturing and distribution for legitimate medical uses only under carefully prescribed safeguards in the CSA itself." *Id.*

The Supreme Court agreed, having "no difficulty concluding that Congress had a rational basis for believing that failure to regulate the intrastate manufacture and possession of marijuana would leave a *gaping hole in the CSA.*" *Raich*, 545 U.S. at 22 (emphasis added).

"First," the Court said, "the fact that marijuana is used 'for personal medical purposes on the advice of a physician'" is irrelevant, because "the CSA designates marijuana as contraband for *any* purpose." *Id.* at 27 (emphasis in original). "Moreover," said the Court, "the CSA is a comprehensive regulatory regime specifically designed to regulate which controlled substances can be utilized for medicinal purposes, and in what manner." *Id.* "Thus, even if respondents are correct that marijuana does have accepted medical uses . . . the CSA would still impose controls beyond what is required by California law" because "[t]he CSA requires manufacturers, physicians, pharmacies, and other handlers of controlled substances to comply with statutory and regulatory provisions mandating registration with the DEA, compliance with specific production quotas, security controls to guard against diversion, recordkeeping and reporting obligations, and prescription requirements." *Id.* "Accordingly," the Court concluded, "the mere fact that marijuana – like virtually every other controlled substance regulated by the CSA – is used for medicinal purposes cannot possibly serve to distinguish it from the core activities regulated by the CSA." *Id.*

"One need not have a degree in economics to understand why . . . an exemption [from the CSA] for the vast quantity of marijuana (or other drugs) locally cultivated for personal use . . . [would] have a substantial impact on the interstate market for [marijuana]." *Id.* at 28. Thus, the policy judgment Congress made in the CSA "that an exemption for such a significant segment of the total market would undermine the orderly enforcement of the entire regulatory scheme is entitled to a strong presumption of

validity.” *Id.* Nor, said the Court, can “limiting the activity to marijuana possession and cultivation ‘in accordance with state law’ . . . serve to place [California’s law] beyond congressional reach.” *Id.* at 29.

The Court thus soundly rejected the notion that the marijuana production and use at issue “were not ‘an essential part of a larger regulatory scheme’ because they had been ‘isolated by the State of California, and [are] policed by the State of California,’ and thus remain ‘entirely separated from the market.’” *Id.* at 30. “The notion that California law has surgically excised a discrete activity that is hermetically sealed off from the larger interstate marijuana market is a dubious proposition,” concluded the Court, and one that Congress rationally rejected when it enacted the CSA. *Id.*

In the end, concluded the Court, if California wished to legalize the growing, possession, and use of marijuana, it would have to seek permission to do so “in the halls of Congress.” *Id.* at 33.

It is the opinion of this office that the MCA would suffer from the same legal infirmities as the California scheme in *Raich*. Notwithstanding the fact that state-level marijuana legalization schemes have spread in the recent (and discretionary) unwillingness by the federal government to civilly enforce the CSA against states, that exercise of discretion simply does not change the federal law that remains on the books and which Congress has steadfastly maintained.

That is evident from the text of the various administrative memoranda that have been issued to guide the federal government’s present posture of nonenforcement. In the most recent of these, issued in early 2018, even as the U.S. Attorney General directed federal prosecutors to follow well-established principles in determining which marijuana activities merited prosecution within their jurisdiction, he premised his guidance with a reaffirmation of the CSA’s prohibition of the cultivation, distribution, and possession of marijuana. Memorandum from Jefferson B. Sessions, Attorney General, U.S. Department of Justice, to All United States Attorneys (Jan. 4, 2018). Intra-bureaucratic guidance memoranda simply do not change federal law.

Given *Gonzales v. Raich*, and given the text and legislative history of the CSA, there is no doubt that *Congress* intended the CSA to serve the purpose of making *all* manufacture, sale, and possession of regulated drugs illegal, except to the extent explicitly authorized by the CSA. Nothing about the federal government’s relaxed view of its enforcement obligations under the CSA changes the fact that *Congress* intended the CSA to prohibit the type of legalization proposed by the MCA.

Indeed, in the briefing it filed with the Supreme Court in *Gonzales v. Raich*, the federal government confirmed that it shares this understanding of the intent and purpose of the CSA. Brief for the Petitioners, *Ashcroft v. Raich*, 545 U.S. 1 (2005) (No. 03-1454), 2004 WL 1799022, at *11 (“Congress has concluded that regulation of *all* intrastate drug activity ‘is *essential* to the effective control’ of interstate drug trafficking.”) (emphasis

added). Congress has taken no action in the decade-plus since to indicate a different intent and purpose. And, if "excepting drug activity for personal use or free distribution from the sweep of the CSA would discourage the consumption of lawful controlled substances and would undermine Congress's intent to regulate the drug market comprehensively to protect public health and safety" (Brief for the Petitioners, *Ashcroft v. Raich*, 545 U.S. 1 (2005) (No. 03-1454), 2004 WL 1799022, at *11), then the comprehensive commercial distribution scheme proposed by the MCA undoubtedly would do the same.

This is particularly so given the CSA's provision at 21 U.S.C. § 903 that a state law is preempted when a "positive conflict" exists such that a CSA provision and the state law in question "cannot consistently stand together." Such a positive conflict clearly exists between the CSA and the MCA.

CONCLUSION

In sum, we conclude that the MCA, by creating a state regulatory scheme that would affirmatively facilitate the cultivation, processing, wholesale distribution, and retail sale of federal contraband on an industrial scale, would frustrate and conflict with the purpose and intent of the CSA. Accordingly, we conclude that the MCA would be preempted by the CSA and would be, therefore, unconstitutional.

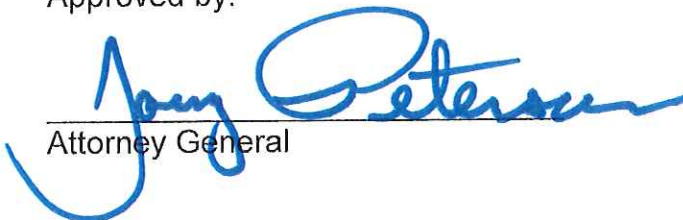
Sincerely,

DOUGLAS J. PETERSON
Attorney General



David A. Lopez
Deputy Solicitor General

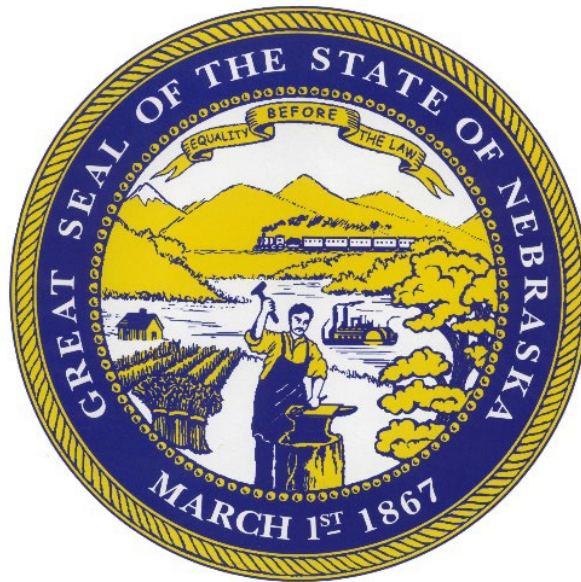
Approved by:


Attorney General

pc: Patrick J. O'Donnell
Clerk of the Nebraska Legislature

EXHIBIT D

Informational Pamphlet
on
Initiative and Referendum Measures
Appearing on the 2024 General Election Ballot



Robert B. Evnen
Nebraska Secretary of State
Phone: (402) 471-2555
Website: sos.nebraska.gov

This pamphlet is intended to provide the voters of Nebraska with additional information about the measures proposed via the initiative and referendum petition process that will appear on the November 5, 2024 General Election ballot.

Each measure contains three portions: the language which will appear on the November ballot, the text of the measure, and arguments supporting and opposing the measure. The arguments are derived from information provided to the Secretary of State from supporters and opponents of these measures.

Additional copies of this pamphlet may be obtained through local election officials or the Office of the Secretary of State. This pamphlet may also be reproduced in whole or in part without prior permission.

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INITIATIVE MEASURE 434

Ballot Title and Text for Initiative Measure 434

Proposed by Initiative Petition

A vote "FOR" will amend the Nebraska Constitution to provide that, except when a woman seeks an abortion necessitated by a medical emergency or when the pregnancy results from sexual assault or incest, unborn children shall be protected from abortion in the second and third trimesters.

A vote "AGAINST" will not amend the Nebraska Constitution in such manner.

Shall the Nebraska Constitution be amended to include a new section which provides: "Except when a woman seeks an abortion necessitated by a medical emergency or when the pregnancy results from sexual assault or incest, unborn children shall be protected from abortion in the second and third trimesters."

☐ For

☐ Against

Full Text of Proposed Initiative Measure 434

OBJECT STATEMENT: The object of this petition is to amend the Nebraska Constitution to provide that except when a woman seeks an abortion necessitated by a medical emergency or when the pregnancy results from sexual assault or incest, unborn children shall be protected from abortion in the second and third trimesters.

Proposed Constitutional Amendment Language

(underscored language indicates added language, ~~strike through~~ indicates language being removed)

TEXT: Article I of the Nebraska Constitution shall be amended by adding a new section 31 that states as follows:

I-31 Except when a woman seeks an abortion necessitated by a medical emergency or when the pregnancy results from sexual assault or incest, unborn children shall be protected from abortion in the second and third trimesters.

Arguments For and Against Initiative Measure 434

Supporters contend:

Initiative 434, Protect Women and Children, provides common sense, scientific, and safe measures put forward by medical professionals. The initiative safeguards a woman's health and safety and provides exceptions for extreme cases like rape, incest, medical emergencies, and life of the mother and provides commonsense protections in the second and third trimester. The use of established scientific terms sets clear parameters for women and their physicians, and avoids political interference through vague terminology. Protect Women and Children upholds current health and safety standards and ensures only licensed physicians will treat and care for women in their most vulnerable moments. Parents' rights to protect the well-being of their minor/young daughters are safeguarded by maintaining parental notification.

Opponents contend:

Vote AGAINST 434 to end the current abortion ban. Initiative 434 opens the door to even more government control over Nebraskans' healthcare, including the power to ban things like IVF and miscarriage care. Nebraska politicians have even said Initiative 434 is the first step to completely banning abortion in the state, without any exceptions. Initiative 434 bans abortions even in cases when the pregnancy has no chance of survival. Vote AGAINST 434.

REFERENDUM MEASURE 435

Ballot Title and Text for Referendum Measure 435

Referendum Ordered by Petition of the People

A vote to “RETAIN” will keep in effect Section 1 of Legislative Bill 1402 enacted in 2024 by the Nebraska Legislature. Section 1 of Legislative Bill 1402 provides for \$10 million annually to fund education scholarships to pay all or part of the cost to educate eligible students attending nongovernmental, privately operated elementary and secondary schools in Nebraska.

A vote to “REPEAL” will eliminate the funding and scholarship provisions in Section 1 of Legislative Bill 1402.

Section 1 of Legislative Bill 1402, enacted by the Nebraska Legislature in 2024, provides for \$10 million annually to fund education scholarships to pay all or part of the cost to educate eligible students attending nongovernmental, privately operated elementary and secondary schools in Nebraska.

Shall Section 1 of Legislative Bill 1402 be repealed?

- ☐ Retain
- ☐ Repeal

Full Text of Proposed Referendum Measure 435

OBJECT STATEMENT: The object of this petition is to repeal Section 1 of LB 1402, passed by the 108th Nebraska Legislature in 2024, which directs \$10 million dollars annually for financial grants-in-aid for eligible students to attend a qualifying privately operated elementary or secondary school in Nebraska.

Proposed Referendum to Repeal LB 1402 Section 1 (2024)

(underscored language indicates language added by LB 1402, ~~strike through~~ indicates language being removed by LB 1402)

TEXT: A BILL FOR AN ACT relating to education scholarships; to amend sections 77-2715.07, 77-2717, and 77-2734.03, Revised Statutes Supplement, 2023; to provide for education scholarships; to repeal the Opportunity Scholarships Act; to harmonize provisions; to provide operative dates; to repeal the original sections; and to outright repeal sections 77-7101, 77-7102, 77-7103, 77-7104, 77-7105, 77-7106, 77-7107, 77-7108, 77-7109, 77-7110, 77-7111, 77-7112, and 77-7113, Revised Statutes Supplement, 2023.

Be it enacted by the people of the State of Nebraska,

Section 1. (1) The Legislature finds that: (a) Funds appropriated for the education of students in kindergarten through twelfth grade are for a fundamental public purpose of state government and constitute an ordinary expense of state government; (b) Enabling the greatest number of parents and legal guardians to choose among quality educational opportunities for children will improve the quality of education available to all children; (c) Privately operated elementary and secondary schools in Nebraska satisfy the state's requirements for legal operation and provide quality educational opportunities for children; (d) Parents and legal guardians of limited means are less able to choose among quality educational opportunities for their children; and (e) Making it possible for more parents and legal guardians to be able to choose privately operated schools benefits Nebraska parents and taxpayers. (2) For purposes of this section: (a) Education scholarship means a financial grant-in-aid to be used to pay all or part of the cost to educate an eligible student attending a qualified school; (b) Eligible student means a resident of Nebraska who: (i) Is receiving an education scholarship for the first time and is (A)

entering kindergarten or ninth grade in a qualified school or the first grade level offered by the qualified school, (B) transferring from a public school at which the student was enrolled for at least one semester immediately preceding the first semester for which the student receives an education scholarship to a qualified school and is entering any of grades kindergarten through twelve, or (C) a member of an active duty or reserve military family transferring into Nebraska from another state or another country and is entering any of grades kindergarten through twelve in a qualified school; (ii) Has previously received an education scholarship under this section and is continuing education at a qualified school until such student graduates from high school or reaches twenty-one years of age, whichever comes first; (iii) Has previously received an education scholarship under the Opportunity Scholarships Act, as such act existed prior to its repeal by this legislative bill, and is continuing education at a qualified school until such student graduates from high school or reaches twenty-one years of age, whichever comes first; (iv) Is the sibling of a student who is receiving an education scholarship and resides in the same household as such student; or (v) Is currently enrolled in a qualified school and is a member of a family whose household income is no more than two hundred thirteen percent of the federal poverty level; and (c) Qualified school means any nongovernmental, privately operated elementary or secondary school located in this state that (i) is operated not for profit, (ii) complies with the antidiscrimination provisions of 42 U.S.C. 1981, as such section existed on January 1, 2024, (iii) complies with all health and life safety laws or codes that apply to privately operated schools, and (iv) fulfills the applicable accreditation or approval requirements established by the State Board of Education pursuant to section 79-318. (3) The State Treasurer shall establish a program to provide education scholarships to eligible students to pay the costs associated with attending a qualified school. Under such program, the State Treasurer shall: (a) Establish a priority system for awarding education scholarships under the program. Such priority system shall: (i) Give first priority to: (A) Eligible students who received an education scholarship under this section or under the Opportunity Scholarships Act, as such act existed prior to its repeal by this legislative bill, during the previous school year; and (B) The sibling of a student who is receiving an education scholarship, so long as the sibling resides in the same household as such student; (ii) Give second priority to: (A) Eligible students whose household income levels do

not exceed one hundred eighty-five percent of the federal poverty level; (B) Eligible students whose application for the enrollment option program established in section 79-234 has been denied; (C) Eligible students who have an individualized education program; (D) Eligible students who are experiencing bullying, harassment, hazing, assault, battery, kidnapping, robbery, sexual offenses, threat or intimidation, or fighting at school; (E) Eligible students who are in foster care; and (F) Eligible students who are in a family with a parent or guardian in an active duty role in a branch of the armed forces of the United States or in the National Guard, or whose parent or guardian was killed serving in the line of duty; (iii) Give third priority to eligible students whose household income levels exceed one hundred eighty-five percent of the federal poverty level but do not exceed two hundred thirteen percent of the federal poverty level; and (iv) Give fourth priority to eligible students whose household income levels exceed two hundred thirteen percent of the federal poverty level but do not exceed three hundred percent of the income indicated in the income eligibility guidelines for reduced price meals under the National School Lunch Program in 7 C.F.R. part 210; (b) Limit the maximum scholarship amount awarded to any eligible student to the cost necessary to educate the eligible student at the qualified school such student attends; and (c) Limit scholarship amounts awarded to eligible students in a manner that assures that the average of the scholarship amounts awarded per student does not exceed seventy-five percent of the statewide average general fund operating expenditures per formula student for the most recently available complete data year as such terms are defined in section 79-1003. (4) The annual limit on the total amount of education scholarships awarded under this section for fiscal year 2024-25 and each fiscal year thereafter shall be ten million dollars. (5) On or before December 1, 2025, and on or before December 1 of each year thereafter, the State Treasurer shall electronically submit a report to the Governor and the Legislature that includes the following: (a) A summary description of the State Treasurer's policies and procedures for awarding education scholarships; (b) The number of eligible students receiving education scholarships in the most recent fiscal year; (c) The total amount of education scholarships awarded in the most recent fiscal year; (d) The number of eligible students currently wait-listed or denied from receiving an education scholarship and the reason for the wait-listing or denial; and (e) The demographic information of eligible students receiving education scholarships,

including, but not limited to: (i) Income level; (ii) Grade level; and (iii) Geographic location. (6) The State Treasurer may enter into contracts with up to three program managers for the purposes of carrying out the education scholarship program described in this section. (7) It is the intent of the Legislature to appropriate ten million dollars from the General Fund for fiscal year 2024-25 and each fiscal year thereafter to the State Treasurer for the purpose of providing education scholarships as provided in this section. (8) Up to seven and one-half percent of the funds appropriated for purposes of this section may be used by the State Treasurer, or by the program managers with which the State Treasurer contracts, for administrative expenses. (9) This section shall not be construed as granting any expanded or additional authority to the State of Nebraska to control or influence the governance or policies of any qualified school due to the fact that the qualified school admits and enrolls students who receive education scholarships or as requiring any such qualified school to admit or, once admitted, to continue the enrollment of any student receiving an education scholarship.

Arguments For and Against Referendum Measure 435

Supporters contend:

A vote to REPEAL LB1402 will eliminate a Legislative program that uses public funds to pay for private school tuition. The \$10 million in public funds given to pay for private school tuition would otherwise be available to support local public schools, which serve 90% of all children in Nebraska. Private schools are not held to the same taxpayer accountability and transparency standards as public schools. LB1402 is inequitable. Private schools can discriminate against kids – they pick and choose the children they want to enroll. Public funds should be used for public education that is available to all Nebraska students. Indeed, more than half of Nebraska's 93 counties do not have a private school. Nebraska taxpayers cannot afford to fund two separate school systems.

Opponents contend:

Referendum 435 gives voters the choice to retain an education scholarship program, created by a bipartisan super-majority of the Legislature, that empowers families to choose the school that is the best fit for their child. Repealing the program would eliminate record investment in Nebraska schools, and block education freedom reforms that empower parents and hold schools accountable. The education scholarship program is benefiting thousands of Nebraska students and repeal will take away scholarships from those students. Repeal would steal hope and opportunity from thousands of families and children from across Nebraska who are benefiting from a new school setting where they have a better chance to learn and succeed in school.

INITIATIVE MEASURE 436

Ballot Title and Text for Initiative Measure 436

Proposed by Initiative Petition

A vote “FOR” will enact a statute which: (1) provides eligible employees the right to earn paid sick time for personal or family health needs; (2) entitles employees of employers with fewer than 20 employees to accrue and use up to 40 hours of such time annually and those employed by employers with 20 or more employees to accrue and use up to 56 hours of such time annually; (3) specifies conditions regarding paid sick time; (4) prohibits retaliation against employees for exercising such rights; (5) adopts documentation requirements; and (6) establishes enforcement powers and a civil cause of action for violations.

A vote “AGAINST” means such a statute will not be enacted.

Shall a statute be enacted which: (1) provides eligible employees the right to earn paid sick time for personal or family health needs; (2) entitles employees of employers with fewer than 20 employees to accrue and use up to 40 hours of such time annually and those employed by employers with 20 or more employees to accrue and use up to 56 hours of such time annually; (3) specifies conditions regarding paid sick time; (4) prohibits retaliation against employees for exercising such rights; (5) adopts documentation requirements; and (6) establishes enforcement powers and a civil cause of action for violations?

☐ For

☐ Against

Full Text of Proposed Initiative Measure 436

OBJECT STATEMENT: The object of this petition is enact a statute to provide eligible employees the right to earn paid sick time for personal or family health needs, to entitle those employed by employers with fewer than 20 employees to accrue and use up to 40 hours of earned paid sick time per year, to entitle those employed by employers with 20 or more employees to accrue and use up to 56 hours of earned paid sick time per year, to specify conditions for accruing and using earned paid sick time, to prohibit retaliation against an employee for exercising rights granted under the statute, to adopt certain notice and documentation requirements, and to establish enforcement powers and a civil cause of action for violations of the statute.

Proposed Statutory Language

(underscored language indicates added language, ~~strike through~~ indicates language being removed)

TEXT: FOR AN ACT relating to employment; to adopt the Nebraska Healthy Families and Workplaces Act; and to provide severability.

Be it enacted by the people of the State of Nebraska:

Section 1. Act, how cited; declaration of purpose. (1) Sections 1 to 11 of this act shall be known and may be cited as the Nebraska Healthy Families and Workplaces Act. (2) The purpose of the act is to provide eligible employees in Nebraska the right to earn paid sick time for personal or family health needs and provide certain provisions naturally and necessarily related to that purpose.

Sec. 2. Terms, defined. For purposes of the Nebraska Healthy Families and Workplaces Act: (1) Department means the Department of Labor; (2) Employ means to permit to work; (3)(a) Employee means any individual employed by an employer, but does not include an individual who works in Nebraska for fewer than eighty hours in a calendar year. (b) Employee does not include an "employee" as defined by 45 U.S.C. 351(d) who is subject to the federal Railroad Unemployment Insurance Act, 45 U.S.C. 351 et seq.; (4)(a) Employer means any individual, partnership, limited liability company, association, corporation, business trust, legal representative, or organized group of persons who employs one or more employees. (b) Employer does not

include the United States or the State of Nebraska or its agencies, departments, or political subdivisions; (5) Family member means: (a) Any of the following, regardless of age: A biological, adopted, or foster child, a stepchild, a legal ward, or a child to whom the employee stands in loco parentis; (b) A biological, foster, step, or adoptive parent or a legal guardian of an employee or an employee's spouse; (c) A person who stood in loco parentis to the employee or the employee's spouse when the employee or employee's spouse was a minor child; (d) A person to whom the employee is legally married under the laws of any state; (e) A grandparent, grandchild, or sibling, whether of a biological, foster, adoptive, or step relationship, of the employee or the employee's spouse; or (f) Any other individual related by blood to the employee or whose close association with the employee is the equivalent of a family relationship; (6) Health care professional means any person licensed under any federal or state law to provide medical or emergency services; (7) Paid sick time means time that is compensated at the same hourly rate and with the same benefits, including health care benefits, as the employee typically earns during hours worked and that is provided by an employer to an employee for the purposes described in section 4 of this act, and in no case shall the amount of this hourly rate be less than that provided under section 48-1203; (8) Public health emergency means a declaration or proclamation related to a public health threat, risk, disaster, or emergency that is made or issued by a federal, state, or local official with the authority to make or issue such a declaration or proclamation; (9) Retaliatory personnel action means a denial of any right guaranteed under the Nebraska Healthy Families and Workplaces Act and any threat, discharge, suspension, demotion, reduction of hours or pay, or other adverse action against an employee for exercising or attempting to exercise any right guaranteed in the Nebraska Healthy Families and Workplaces Act; (10)(a) Small business means an employer with fewer than twenty employees during a given week, including full-time, part-time, or temporary employees. (b) Small business does not include an employer that maintained twenty or more employees on its payroll in each of twenty or more calendar weeks in the current or preceding calendar year; and (11) Year means a regular and consecutive twelve-month period as determined by the employer.

Sec. 3. Accrual and carryover of paid sick time; paid sick time following transfer or return after separation from employment. (1) All employees shall accrue a minimum of one hour of paid sick time for every thirty hours worked. Unless the

employer selects a higher limit, this section does not entitle an employee to earn or use more than: (a) Forty hours of paid sick time in a year for an employee of a small business; or (b) Fifty-six hours of paid sick time in a year for an employee of an employer that is not a small business. (2) Employees who are exempt from overtime requirements under 29 U.S.C. 213(a)(1) of the federal Fair Labor Standards Act, 29 U.S.C. 201 et seq., shall be assumed to work forty hours in each workweek for purposes of paid sick time accrual unless their typical workweek is less than forty hours, in which case paid sick time accrues based upon that typical workweek. (3) Paid sick time as provided in this section shall begin to accrue at the commencement of employment or October 1, 2025, whichever is later. An employee shall be entitled to use paid sick time as it is accrued. An employer may provide all paid sick time that an employee is expected to accrue in a year at the beginning of the year. (4) Accrued paid sick time shall be carried over to the following year. A small business is not required to permit an employee to use more than forty hours of paid sick time per year, and other employers are not required to permit an employee to use more than fifty-six hours of paid sick time per year. Alternatively, in lieu of carryover of unused paid sick time provided pursuant to this section from one year to the next, an employer may pay an employee for unused paid sick time provided pursuant to this section at the end of a year and provide the employee with an amount of paid sick time that meets or exceeds the requirements of subsections (1) and (3) of this section that is available for the employee's immediate use at the beginning of the subsequent year. (5) Any employer with a paid leave policy, such as a paid time off policy, who makes available an amount of paid leave sufficient to meet the requirements of the Nebraska Healthy Families and Workplaces Act that may be used for the same purposes and under the same conditions as paid sick time under the act is not required to provide additional paid sick time under the act. (6) At its discretion, an employer may loan paid sick time to an employee in advance of accrual by such employee. (7) If an employee is transferred to a separate division, entity, or location, but remains employed by the same employer, the employee is entitled to all paid sick time accrued at the prior division, entity, or location and is entitled to use all paid sick time as provided in the Nebraska Healthy Families and Workplaces Act. When there is a separation from employment and the employee is rehired within twelve months of separation by the same employer, previously accrued paid sick time that had not been used shall be reinstated. The employee shall be entitled to

use accrued paid sick time and accrue additional paid sick time at the recommencement of employment.

Sec. 4. Use of paid sick time; employee notice and documentation; multiemployer paid sick time fund, plan, or program.

(1) Paid sick time shall be provided to an employee by an employer for: (a) An employee's mental or physical illness, injury, or health condition; an employee's need for medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or an employee's need for preventive medical care; (b) Care of a family member with a mental or physical illness, injury, or health condition; care of a family member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; care of a family member who needs preventive medical care; or in the case of a child, to attend a meeting necessitated by the child's mental or physical illness, injury, or health condition, at a school or place where the child is receiving care; or (c) Closure of the employee's place of business by order of a public official due to a public health emergency; an employee's need to care for a child whose school or place of care has been closed by order of a public official due to a public health emergency; or an employee's need to self-isolate or care for the employee or a family member when it has been determined by the health authorities having jurisdiction or by a health care professional that the employee's or family member's presence in the community may jeopardize the health of others because of exposure to a communicable disease, whether or not the employee or family member has actually contracted the communicable disease. (2) Paid sick time under this section shall be provided upon the oral request of an employee. When possible, the request shall include the expected duration of the absence. (3) An employer that requires notice of the need to use paid sick time in accordance with this section shall provide a written policy that contains reasonable procedures for employees to provide notice. An employer that has not provided to the employee a copy of such written policy shall not deny paid sick time to the employee based on noncompliance with such a policy. (4) An employer shall not require, as a condition of an employee's taking paid sick time under this section, that the employee search for or find a replacement worker to cover the hours during which the employee is using paid sick time. (5) Paid sick time under this section may be used in the smaller of hourly increments or the smallest increment that the employer's payroll system uses to account for absences or use of other time. (6) For use of paid sick time for more than three consecutive

work days, an employer may require reasonable documentation that the paid sick time has been used for a purpose covered by subsection (1) of this section. Reasonable documentation shall include (a) documentation signed by a health care professional indicating that paid sick time is or was necessary or (b) if the employee or a family member did not receive services from a health care professional, or if documentation cannot be obtained from a health care professional in reasonable time or without added expense, a written statement from the employee indicating that the employee is taking or took paid sick time for a qualifying purpose covered by subsection (1) of this section. (7) An employer signatory to a multiemployer collective-bargaining agreement may fulfill its obligations under the Nebraska Healthy Families and Workplaces Act by making contributions to a multiemployer paid sick time fund, plan, or program based on the hours each employee accrues pursuant to the act while working under the multiemployer collective-bargaining agreement, if the fund, plan, or program enables employees to collect paid sick time from the fund, plan, or program based on hours they have worked under the multiemployer collective-bargaining agreement and for the purposes specified under the act. Employees who work under a multiemployer collective-bargaining agreement into which their employers make contributions as provided in this subsection may collect from the paid sick time fund, plan, or program based on hours they have worked under the multiemployer collective-bargaining agreement and for the purposes specified under the act.

Sec. 5. Exercise of rights protected; retaliatory personnel action prohibited. (1)

It shall be unlawful for an employer or any other person to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under the Nebraska Healthy Families and Workplaces Act. (2) An employer shall not take retaliatory personnel action against an employee or former employee because the person has exercised or attempted to exercise rights protected under the act. Such rights include, but are not limited to, the right to request or use paid sick time pursuant to the act; the right to file a suit or complaint or inform any person about any employer's alleged violation of the act; the right to participate in an investigation, hearing, or proceeding or cooperate with or assist the department in its investigations of alleged violations of the act; and the right to inform any person of the person's potential rights under the act. (3) It shall be unlawful for an employer's

absence control policy to count paid sick time taken under the act as an absence that may lead to or result in a retaliatory personnel action or any other adverse action.

Sec. 6. Notice and posting. (1) Employers shall give employees written notice of the following at the commencement of employment or by September 15, 2025, whichever is later: That beginning October 1, 2025, employees are entitled to paid sick time; the amount of paid sick time; the terms of its use guaranteed under the Nebraska Healthy Families and Workplaces Act; that retaliatory personnel action against employees who request or use paid sick time is prohibited; that each employee has the right to file a suit or complaint if paid sick time as required by the act is denied by the employer or the employee is subjected to retaliatory personnel action for requesting or taking paid sick time; and the contact information for the department where questions about rights and responsibilities under the act can be answered. (2) The notices required in subsection (1) of this section shall be provided in: (a) English; and (b) Any language that is the first language spoken by at least five percent of the employer's workforce if the department has provided a model notice in such language. (3) The amount of paid sick time available to the employee, the amount of paid sick time taken by the employee to date in the year, and the amount of pay the employee has received as paid sick time shall be recorded in, or on an attachment to, the employee's regular paycheck. (4) Employers shall display a poster that contains the information required in subsection (1) of this section in a conspicuous and accessible place in each establishment where such employees are employed. If an employer does not maintain a physical workplace or an employee teleworks or performs work through a web-based or app-based platform, the employer shall provide notice of such information via electronic communication or a conspicuous posting in the web-based or app-based platform. The poster displayed shall be in: (a) English; and (b) Any language that is the first language spoken by at least five percent of the employer's workforce if the department has provided posters in such language. (5) The department shall create and make available to employers, in all languages spoken by at least five percent of Nebraska's workforce and any language deemed appropriate by the department, model notices and posters that contain the information required under subsection (1) of this section and for employers' use in complying with subsections (1) and (4) of this section.

Sec. 7. Department of Labor; enforcement and implementation powers; rules and regulations.

(1) The department shall be responsible for implementation and enforcement of the Nebraska Healthy Families and Workplaces Act. The department may adopt and promulgate rules and regulations as necessary to carry out the act.

(2) The Commissioner of Labor may subpoena records and witnesses related to the enforcement of the act. The commissioner or his or her agent may inspect all related records and gather testimony on any matter relative to the enforcement of the act when the information sought is relevant to a lawful investigative purpose and is reasonable in scope.

Sec. 8. Enforcement.

(1) The Commissioner of Labor shall issue a citation to an employer when an investigation reveals that the employer may have violated the Nebraska Healthy Families and Workplaces Act. (2) When a citation is issued, the commissioner shall notify the employer of the proposed administrative penalty, if any, by certified mail, by any other manner of delivery by which the United States Postal Service can verify delivery, or by any method of service recognized under Chapter 25, article 5. The administrative penalty shall not be more than five hundred dollars in the case of a first violation and not more than five thousand dollars in the case of a second or subsequent violation. (3) The employer has fifteen working days after the date of the citation or penalty to contest such citation or penalty. Notice of contest shall be sent to the commissioner who shall provide a hearing in accordance with the Administrative Procedure Act. (4) Any employer who has an unpaid citation for a violation of the Nebraska Healthy Families and Workplaces Act shall be barred from contracting with the state or any political subdivision until such citation is paid. If a citation has been contested as described in subsection (3) of this section, it shall not be considered an unpaid citation under this subsection until after such contest has been resolved. (5) Citations issued under this section and the names of employers who have been issued a citation shall be made available to the public upon request, except that this subsection shall not apply to any citations that are being contested as described in subsection (3) of this section. (6) An employee having a claim for a violation of the Nebraska Healthy Families and Workplaces Act may institute suit for legal and equitable relief in the proper court. In any action brought to enforce the Nebraska Healthy Families and Workplaces Act, the court shall have jurisdiction to grant such legal or equitable relief as the court deems appropriate to effectuate the purposes of the act. If an employee establishes a claim and secures

judgment on the claim, such employee shall also be entitled to recover the full amount of the judgment and all costs of such suit, including reasonable attorney's fees. (7) If an employee institutes suit against an employer under subsection (6) of this section, any citation that is issued against an employer under subsection (1) of this section and that relates directly to the facts in dispute shall be admitted into evidence unless specifically excluded by the court. If a citation has been contested as described in subsection (3) of this section, it shall not be admitted into evidence under this subsection until such contest has been resolved. (8) A civil action brought under this section shall be commenced no later than four calendar years after the cause of action accrues.

Sec. 9. Confidentiality and nondisclosure. (1) Unless otherwise required by law, an employer shall not require disclosure of the details of an employee's or an employee's family member's health information as a condition of providing paid sick time under the Nebraska Healthy Families and Workplaces Act. (2) Unless otherwise required by law, any health information possessed by an employer regarding an employee or employee's family member shall: (a) Be maintained on a separate form and in a separate file from other personnel information; (b) Be treated as confidential medical records; and (c) Not be disclosed except to the affected employee or with the express permission of the affected employee.

Sec. 10. No effect on more generous paid sick time policies or laws; nonwaiver of rights and remedies. (1) The Nebraska Healthy Families and Workplaces Act provides minimum requirements pertaining to paid sick time, and nothing in the act shall be construed to: (a) Prohibit an employer from the adoption or retention of a paid sick time policy more generous than the one required by the act; (b) Diminish the obligation of an employer to comply with any contract, collective-bargaining agreement, employment benefit plan, or other agreement providing more generous paid sick time to an employee than required by the act; (c) Diminish the rights of public employees regarding paid sick time or use of paid sick time as provided in state or local law; or (d) Preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy, or standard that provides for a greater amount, accrual, or use by employees of paid sick time or that extends other protections to employees. (2) The rights and remedies under the Nebraska Healthy

Families and Workplaces Act shall not be waived by any agreement, policy, form, or condition of employment. Any such waiver shall be void and unenforceable.

Sec. 11. Severability. If any section in this act or any part of any section is declared invalid or unconstitutional, the declaration shall not affect the validity or constitutionality of the remaining portions.

Arguments For and Against Initiative Measure 436

Supporters contend:

No Nebraskan should have to choose between their paycheck and their health or the health of their family. But right now, too many hardworking Nebraskans do not get any paid sick days. Working families are the engine that drives our economy, and paid sick leave will benefit hardworking Nebraskans and businesses. It's time to support working Nebraskans so they can take care of their health without losing pay. Initiative 436 would allow Nebraska workers to earn one hour of paid sick leave for every 30 hours worked. This will benefit full-time, part-time and temporary employees creating healthier workplaces, families, and communities. If passed by the majority of voters, Initiative 436 would go into effect on October 1, 2025.

Opponents contend:

Government-mandated paid leave will hurt small and medium-sized businesses by driving up their cost of doing business and making it harder for them to compete with large national and multinational corporations. Because mandates passed by petition must be written narrowly, this proposal disproportionately hurts small businesses located in rural and lower income areas because it does not account for differences in labor availability, cost-of-living, or other variances across the state. This initiative is a one-size-fits-all government mandate, backed by millions of dollars from outside Nebraska. If passed, it will drive up compliance costs and increase prices for consumers who would otherwise like to shop at local retailers.

INITIATIVE MEASURE 437

Ballot Title and Text for Initiative Measure 437

Proposed by Initiative Petition

A vote "FOR" will enact a statute that makes penalties inapplicable under state and local law for the use, possession, and acquisition of an allowable amount (up to five ounces) of cannabis for medical purposes by a qualified patient with a written recommendation from a health care practitioner, and for a caregiver to assist a qualified patient with these activities.

A vote "AGAINST" means such a statute will not be enacted.

Shall a statute be enacted that makes penalties inapplicable under state and local law for the use, possession, and acquisition of an allowable amount (up to five ounces) of cannabis for medical purposes by a qualified patient with a written recommendation from a health care practitioner, and for a caregiver to assist a qualified patient with these activities?

- ☐ For
- ☐ Against

Full Text of Proposed Initiative Measure 437

OBJECT STATEMENT: The object of this petition is to enact a statute that makes penalties inapplicable under state and local law for the use, possession, and acquisition of limited quantities of cannabis for medical purposes by a qualified patient with a written recommendation from a health care practitioner, and for a caregiver to assist a qualified patient in these activities.

Proposed Statutory Language

(underscored language indicates added language, strike through indicates language being removed)

TEXT: AN ACT relating to cannabis; to adopt the Nebraska Medical Cannabis Patient Protection Act.

Be it enacted by the People of the State of Nebraska:

Section 1. Sections 1 to 3 of this act shall be known and may be cited as the Nebraska Medical Cannabis Patient Protection Act.

Sec. 2. For purposes of the Nebraska Medical Cannabis Patient Protection Act: (1)(a) Allowable amount of cannabis means up to five ounces of cannabis. (b) Allowable amount of cannabis does not include the weight of any other ingredient combined with cannabis as part of topical or oral administrations, food, drink, or other preparations; (2)(a) Cannabis means all parts of the plant of the genus cannabis whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin. (b) Cannabis includes marijuana, hashish, and concentrated cannabis. (c) Cannabis does not include hemp, as defined in Section 2-503(13) of the Nebraska Hemp Farming Act, nor does it include the mature stalks of the plant, fiber produced from such stalks, oil or cake made from the seeds of the plant, the sterilized seed of the plant which is incapable of germination, or cannabidiol contained in a drug product approved by the federal Food and Drug Administration; (3) Cannabis accessories means any equipment, products, or materials of any kind that are used, intended for use, or designed for use in storing, vaporizing, or containing cannabis, or for ingesting, inhaling, or otherwise introducing cannabis into the human body; (4) Caregiver means: (a) In the case of a

qualified patient who is eighteen years of age or older and is not under the protection of a legal guardian, a person who: (i) Is at least twenty-one years of age; and (ii) Has been designated by a qualified patient in a signed affidavit; (b) In the case of a qualified patient who is younger than eighteen years of age or a qualified patient under the protection of a legal guardian: (i) The legal guardian or parent with authority to make health care decisions of the qualified patient; or (ii) A person designated in a sworn affidavit by the legal guardian or parent with authority to make health care decisions; or (c) A health care facility as defined in section 71-413 or a home health agency as defined in section 71-417, if the facility or agency has been designated by a qualified patient or the legal guardian or parent with authority to make health care decisions of a qualified patient in a sworn affidavit and if the facility or agency has agreed in writing to serve as a caregiver for the qualified patient; (5) Health care practitioner means a physician, an osteopathic physician, a physician assistant, or a nurse practitioner licensed under the Uniform Credentialing Act or who is licensed in any state and practicing in compliance with the Uniform Credentialing Act; (6) Qualified patient means: (a) An individual eighteen years of age or older with a written recommendation from a health care practitioner; or (b) An individual younger than eighteen years of age with a written recommendation from a health care practitioner and with the written permission of a legal guardian or parent with authority to make health care decisions for the individual; and (7) Written recommendation means a valid signed and dated declaration from a health care practitioner stating that, in the health care practitioner's professional judgment, the potential benefits of cannabis outweigh the potential harms for the alleviation of a patient's medical condition, its symptoms, or side effects of the condition's treatment. A written recommendation is valid for two years after the date of issuance or for a period of time specified by the health care practitioner on the written recommendation.

Sec. 3. (1) Subject to the requirements of the Nebraska Medical Cannabis Patient Protection Act, it shall not be an offense under state or local law for: (a) A qualified patient to use, possess, and acquire an allowable amount of cannabis and cannabis accessories for the alleviation of a medical condition, its symptoms, or side effects of the condition's treatment; or (b) A caregiver to assist a qualified patient with the activities set forth in subdivision (1)(a) of this section by possessing and acquiring an allowable amount of cannabis and cannabis accessories on behalf of the qualified

patient and delivering an allowable amount of cannabis and cannabis accessories to the qualified patient. (2) Conduct protected by this section shall not be subject to the Uniform Controlled Substances Act.

Arguments For and Against Initiative Measure 437

Supporters contend:

The goal of Initiatives 437 and 438 is to create safe and regulated access to medical cannabis for Nebraska patients with the recommendation of a healthcare practitioner. Initiative 437 provides Nebraskans the ability to possess medical cannabis. Initiative 438 provides the regulatory framework. The National Academies of Sciences released a report that reviewed over 10,000 academic studies. It found substantial evidence that cannabis is effective in treating chronic pain, multiple sclerosis, anxiety, and PTSD. Research also indicates effectiveness in treating epileptic seizures and autism. A 2015 study compared cannabis to many other commonly used substances. The DEA confirms that "[N]o deaths from overdose of marijuana have been reported." Compared to many prescription drugs, cannabis is safer and less addictive.

Opponents contend:

The Medical Cannabis Patient Protection Initiative contradicts federal law by legalizing cannabis in all forms, including marijuana, hashish, and concentrates, and the possession of drug paraphernalia. State and local laws cannot restrict the use, possession, or acquisition of cannabis in the workplace, schools, or any private or public space. While a medical professional must provide a certification of a medical condition, it is not a prescription, nor is it to be dispensed by a licensed pharmacist. The individual obtaining the certificate to possess and use cannabis does not have to be a patient of the certifying medical provider, nor are there restrictions on the type, dose, or frequency of administration. Basic patient protections such as safety, purity, or efficacy of the product are not required.

INITIATIVE MEASURE 438

Ballot Title and Text for Initiative Measure 438

Proposed by Initiative Petition

A vote "FOR" will enact a statute that makes penalties inapplicable under state law for the possession, manufacture, distribution, delivery, and dispensing of cannabis for medical purposes by registered private entities, and that establishes a Nebraska Medical Cannabis Commission to regulate such activities.

A vote "AGAINST" means such a statute will not be enacted.

Shall a statute be enacted that makes penalties inapplicable under state law for the possession, manufacture, distribution, delivery, and dispensing of cannabis for medical purposes by registered private entities, and that establishes a Nebraska Medical Cannabis Commission to regulate such activities?

- ☐ For
- ☐ Against

Full Text of Proposed Initiative Measure 438

OBJECT STATEMENT: The object of this petition is to enact a statute that makes penalties inapplicable under state law for the possession, manufacture, distribution, delivery, and dispensing of cannabis for medical purposes by registered private entities, and establishing a Nebraska Medical Cannabis Commission to regulate such entities.

Proposed Statutory Language

(underscored language indicates added language, strike through indicates language being removed)

TEXT: AN ACT relating to cannabis; to adopt the Nebraska Medical Cannabis Regulation Act.

Be it enacted by the People of the State of Nebraska:

Section 1. Sections 1 to 6 of this act shall be known and may be cited as the Nebraska Medical Cannabis Regulation Act.

Sec. 2. For purposes of the Nebraska Medical Cannabis Regulation Act: (1)(a) Cannabis means all parts of the plant of the genus cannabis whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin. (b) Cannabis includes marijuana, hashish, and concentrated cannabis. (c) Cannabis does not include hemp, as defined in Section 2-503(13) of the Nebraska Hemp Farming Act, nor does it include the mature stalks of the plant, fiber produced from such stalks, oil or cake made from the seeds of the plant, the sterilized seed of the plant which is incapable of germination, or cannabidiol contained in a drug product approved by the federal Food and Drug Administration; (2) Cannabis accessories means any equipment, products, or materials of any kind that are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, composting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, vaporizing, or containing cannabis, or for ingesting, inhaling, or otherwise introducing cannabis into the human body; (3) Cannabis for medical purposes means cannabis, cannabis products, and cannabis accessories intended

for qualified patients pursuant to any law enacted contemporaneously with the adoption of the Nebraska Medical Cannabis Regulation Act or at any time thereafter and which makes penalties inapplicable to the use of cannabis by qualified patients for the alleviation of a medical condition, its symptoms, or side effects of the condition's treatment; (4) Cannabis products means products that are comprised of cannabis, cannabis concentrate, or cannabis extract, and other ingredients, and that are intended for use or consumption, such as, but not limited to, edible products, ointments, and tinctures; (5) Commission means the Nebraska Medical Cannabis Commission; (6) Registered cannabis establishment means a private entity registered pursuant to the Nebraska Medical Cannabis Regulation Act that possesses, manufactures, distributes, delivers, or dispenses cannabis for medical purposes; and (7) Registration means a registration granted by the commission to a private entity that processes, manufactures, distributes, delivers, or dispenses cannabis for medical purposes.

Sec. 3. (1) Subject to the requirements of the Nebraska Medical Cannabis Regulation Act, it shall not be an offense under state law for a registered cannabis establishment, its employees, and its agents to possess, manufacture, distribute, deliver, and dispense cannabis for medical purposes, provided such conduct complies with applicable rules and regulations adopted and promulgated by the Commission pursuant to the Nebraska Medical Cannabis Regulation Act. (2) Conduct protected by this section shall not be subject to the Uniform Controlled Substances Act.

Sec. 4. (1) For purposes of providing the necessary registration and regulation of persons that possess, manufacture, distribute, deliver, and dispense cannabis for medical purposes pursuant the Nebraska Medical Cannabis Regulation Act, the Nebraska Medical Cannabis Commission is created. (2) The commission shall consist of no fewer than three and no more than five members. (3) The three members of the Nebraska Liquor Control Commission shall be ex officio members of the commission, serving terms and receiving appointment in the same manner as provided in section 53-105. (4) The Governor may appoint two additional members, subject to confirmation by a majority of the members elected to the Legislature, to serve with the members of the Nebraska Liquor Control Commission as members of the Nebraska Medical Cannabis Commission. The members appointed pursuant to this subsection shall serve six-year terms. (5) The Governor may reappoint members

of the commission, subject to approval by a majority of the members elected to the Legislature.

Sec. 5. The power to regulate all phases of the control of the possession, manufacture, distribution, delivery, and dispensing of cannabis for medical purposes by registered cannabis establishments in the state pursuant to the Nebraska Medical Cannabis Regulation Act is vested exclusively in the commission.

Sec. 6. The commission shall: (1) No later than July 1, 2025, establish criteria to accept or deny applications for registrations, including adopting, promulgating, and enforcing reasonable rules, regulations, and eligibility standards for such registrations; (2) No later than October 1, 2025, begin granting registrations to applicants that meet eligibility standards and other requirements established by the commission; (3) Grant, deny, revoke, and suspend registrations based upon reasonable criteria and procedures established by the commission; (4) Have the authority to adopt, promulgate, and enforce distinct sets of rules and regulations for different categories of registered cannabis establishments; (5) Administer oaths or affirmations as necessary to carry out the Nebraska Medical Cannabis Regulation Act; (6) Issue subpoenas for the attendance of witnesses or the production of any records, books, memoranda, documents, or other papers or things at or prior to any hearing as is necessary to enable the commission to effectively discharge its duties; (7) Inspect the operation of any registered cannabis establishment for the purpose of verifying compliance with rules and regulations adopted and promulgated by the commission; (8) Have the authority to impose, subject to judicial review under the Administrative Procedure Act, administrative fines for each violation of any rules and regulations adopted and promulgated pursuant to the Nebraska Medical Cannabis Regulation Act; (9) Collect administrative fines imposed under this section and remit the fines to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska; (10) Establish procedures for the governance of the commission; (11) Acquire necessary offices, facilities, counsel, and staff; and (12) Do all things necessary and proper to carry out its powers and duties under the Nebraska Medical Cannabis Regulation Act, including the adoption and promulgation of rules and regulations and such other actions as permitted by the Administrative Procedure Act.

Arguments For and Against Initiative Measure 438

Supporters contend:

The goal of Initiatives 437 and 438 is to create safe and regulated access to medical cannabis for Nebraska patients with the recommendation of a healthcare practitioner. Initiative 437 provides Nebraskans the ability to possess medical cannabis. Initiative 438 provides the regulatory framework. The National Academies of Sciences released a report that reviewed over 10,000 academic studies. It found substantial evidence that cannabis is effective in treating chronic pain, multiple sclerosis, anxiety, and PTSD. Research also indicates effectiveness in treating epileptic seizures and autism. A 2015 study compared cannabis to many other commonly used substances. The DEA confirms that "[N]o deaths from overdose of marijuana have been reported." Compared to many prescription drugs, cannabis is safer and less addictive.

Opponents contend:

The Medical Cannabis Regulation Initiative legalizes a commercial cannabis industry in Nebraska in contradiction to current federal law. The initiative will facilitate possession and the commercial manufacture, distribution, delivery, and dispensing of cannabis in all forms, including marijuana, hashish, and derivatives. The initiative allows the establishment of businesses and use of business equipment for the industrial production of any cannabis product for ingesting, inhaling, or otherwise introducing the drug into the body, with no restriction on production for medical purposes only. In addition, the initiative creates a new government agency, the Nebraska Medical Cannabis Commission, whose appointed board will oversee the newly legalized cannabis industry in Nebraska. This new government entity is granted the power to promulgate and enforce rule and regulations.

INITIATIVE MEASURE 439

Ballot Title and Text for Initiative Measure 439

Proposed by Initiative Petition

A vote “FOR” will amend the Nebraska Constitution to provide that all persons shall have a fundamental right to abortion until fetal viability, or when needed to protect the life or health of the pregnant patient, without interference from the state or its political subdivisions. Fetal viability is defined as the point in pregnancy when, in the professional judgment of the patient’s treating health care practitioner, there is a significant likelihood of the fetus’ sustained survival outside the uterus without the application of extraordinary medical measures.

A vote “AGAINST” will not amend the Nebraska Constitution in such manner.

Shall the Nebraska Constitution be amended to include a new section which provides: “All persons shall have a fundamental right to abortion until fetal viability, or when needed to protect the life or health of the pregnant patient, without interference from the state or its political subdivisions. Fetal viability means the point in pregnancy when, in the professional judgment of the patient’s treating health care practitioner, there is a significant likelihood of the fetus’ sustained survival outside the uterus without the application of extraordinary medical measures.”

☐ For

☐ Against

Full Text of Proposed Initiative Measure 439

OBJECT STATEMENT: The object of this petition is to amend the Nebraska Constitution to provide all persons the fundamental right to abortion without interference from the state or its political subdivisions until fetal viability, which is the point in pregnancy when, in the professional judgment of the patient's health care practitioner, there is a significant likelihood of the fetus' sustained survival outside the uterus without the application of extraordinary medical measures; or when needed to protect the life or health of the pregnant patient.

Proposed Constitutional Amendment Language

(underscored language indicates added language, ~~strike through~~ indicates language being removed)

TEXT: Article I of the Nebraska Constitution shall be amended by adding a new section 31 as shown:

I-31 All persons shall have a fundamental right to abortion until fetal viability, or when needed to protect the life or health of the pregnant patient, without interference from the state or its political subdivisions. Fetal viability means the point in pregnancy when, in the professional judgment of the patient's treating health care practitioner, there is a significant likelihood of the fetus' sustained survival outside the uterus without the application of extraordinary medical measures.

Arguments For and Against Initiative Measure 439

Supporters contend:

Vote FOR 439 to end the current abortion ban so that families are in control of their own personal medical decisions, not the government. Voting FOR 439 ends the current ban that has already prevented doctors from caring for women whose pregnancies put them at risk of bleeding out or organ failure. FOR 439 ensures that in unthinkable situations, such as when a pregnancy will not survive, Nebraska families have options. Doctors can provide their patients with the best care possible without risking criminal prosecution. Vote For 439 to end the dangerous abortion ban. Vote FOR 439.

Opponents contend:

Initiative 439 subjects women and medical professionals to vague, unscientific standards, putting courts in the middle of the doctor-patient relationship. The initiative dangerously allows unlicensed individuals – instead of licensed physicians – to make medical judgements for a woman in a critical situation. The initiative creates a new constitutional right to abortion for "all persons," not just women, leaving women and young girls vulnerable to abortions against their will by perpetrators of abuse. The initiative also eliminates parental notification protections, enabling abusers and allowing human traffickers to prey on victims by forcing abortions without parents or law enforcement being notified. It also forces Nebraska taxpayers to fund abortion. Vague and misleading language is dangerous and deceptive for women and children.

EXHIBIT E



STATE OF NEBRASKA

ROBERT B. EVNEN
SECRETARY OF STATE

For immediate release:

September 13, 2024

Contact:

Jackie Ourada

(402) 471-4086

Secretary of State certifies ballot for November general election

Secretary of State Bob Evnen certified the final list of candidates for office and ballot measures for the November general election ballot.

“County election offices and our Elections Division have put in exemplary work to ensure that all candidates were appropriately filed and that all petitions were verified and certified in time,” Secretary Evnen said.

The 2024 general election ballot will include six initiative and referendum ballot measures. Ballot numbers were selected by random drawing for each measure, beginning with #434.

- #434 Protect Women and Children
- #435 Private Education Scholarship Partial Referendum
- #436 Paid Sick Leave
- #437 Nebraska Medical Cannabis Patient Protection
- #438 Nebraska Medical Cannabis Regulation
- #439 Protect the Right to Abortion

As required by state law, the Secretary of State will host hearings on the ballot measures in each of the three congressional districts. The hearings will be scheduled in October with more detailed event information to come. The Elections Division will create an informational pamphlet to be distributed at the hearings and made available at county election offices.

What's next?

September 30 – County election offices begin mailing out early voting ballots to voters who properly completed and submitted early voting applications.

October 7 – First day for early voting at county election offices.

October 18 – Deadline to register to vote online (by midnight), by mail (postmarked by Oct. 18), at a state agency (DMV, DHHS, Dept. of Ed.), via deputy registrar or via personal agent.

October 25 – Deadline to register to vote at county election offices (by 6pm local time).

October 25 – Deadline to request an early voting application be mailed.

November 4 – Last day to vote early at a county election office.

November 5 – Election Day. Polls open until 8pm CT/7pm MT. Early ballots due back to county election offices by the close of polls.

EXHIBIT F



Edward D. Greim
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Katherine E. Graves
Phone: 816.285.3887
kgraves@gravesgarrett.com

December 6, 2024

VIA EMAIL

Hon. James D. Pillen
c/o David Lopez, Chief of Staff
dave.lopez@nebraska.gov

VIA U.S. MAIL

Hon. James D. Pillen
c/o David Lopez, Chief of Staff
1445 K St.
P.O. Box 94848
Lincoln, NE 68509

Re: Initiative Measures 437 and 438

Dear Governor Pillen:

We represent John Kuehn, a Nebraskan who supports you but who is concerned that in your official capacity, you may feel compelled to issue a proclamation approving Initiative Measures 437 and 438 (the “Marijuana Measures”). *See* Neb. Rev. Stat. 32-1414. In fact, you are under no such compulsion. These Measures violate Article III of the Nebraska Constitution and Article VI, Clause 2 (the Supremacy Clause) of the United States Constitution. Even though your statutory duty to issue proclamations on initiated measures appears to be ministerial, your oath of office—and the law of the land—impose higher duties that protect you and the citizens of this state against any violation of the Constitution of Nebraska or of the United States. The purpose of this letter, then, is to respectfully request that you issue an official proclamation under Neb. Rev. Stat. 32-1414 rejecting the Marijuana Measures. We also request that you decline to issue any statement declaring that the Marijuana Measures are the law of the State of Nebraska.



Initiative Measures 437 and 438

On or about December 2, 2024, the Board of State Canvassers completed its canvass of the votes cast for and against the Marijuana Measures in the November 5, 2024 general election. However, as of that election, no court had passed on the legality of either Measure. As a matter of law, neither Measure is a lawful exercise of the legislative power of this state because each is preempted by federal law under the authority of the Supremacy Clause of the United States Constitution, which provides: “This Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land.” U.S. Const. Art. VI, cl. 2.

Initiative Measure 437 would enact a statute that eliminates state and local penalties for the use, possession, and acquisition of up to five ounces of cannabis for “the alleviation of a medical condition,” or even its “symptoms,” or “side effects of the condition’s treatment.” It also allows for so-called “caregivers” to assist in these activities, subject to minimal restrictions. The Measure does not define “medical condition” and allows individuals to use cannabis so long as a single health care practitioner—for whom the individual does not need to be a patient—opines that “potential benefits” outweigh “potential harms.” This opinion is not a prescription and the cannabis need not be dispensed by a licensed pharmacist. There are no limits on the type, dose, or frequency of administration.

Initiative Measure 438 allows possession, manufacture, distribution, delivery, and dispensing of cannabis under the same parameters as Initiative Measure 437. It establishes a regulatory commission, the Nebraska Medical Cannabis Commission, empowered to register businesses that undertake these activities. The Commission is granted rulemaking authority to set criteria for registration and to grant, revoke, deny, or suspend registrations, but the Measure provides no standards or criteria for the Commission to consider in its rulemaking or enforcement functions. Nor does the Measure provide any mechanism whatsoever for regulating or even tracking the process of dispensation, the provision of medical opinion, or consumption. Yet this Commission with its stripped-down and uncertain powers is nonetheless given “exclusive” power to regulate “all phases of the control of the possession, manufacture, distribution, delivery, and dispensing of cannabis.” This freezes out any other state agencies or law enforcement authorities who are charged with ensuring the health, safety, and welfare of Nebraska citizens.



This scheme places Nebraska squarely at odds with several federal statutes intended to strictly circumscribe the dissemination of marijuana and the business of profiting from, or laundering money gained through, marijuana production and sales. Your office is likely already aware of a well-reasoned and thorough treatment of this issue in Attorney General Opinion 19-010, which covers the constitutionality of legislation previously considered by the Nebraska Legislature. In short, the federal Controlled Substances Act, 21 U.S.C. § 841(a)(1) (the “CSA”), classifies marijuana as a Schedule I controlled substance—the strictest classification. The CSA comprehensively regulates marijuana, given its significant potential for abuse and dependence and its undeniable impact on interstate commerce, and therefore it preempts state laws like Nebraska’s, even where they purport to focus on intrastate consumption for supposedly medical purposes. *See Gonzalez v. Raich*, 545 U.S. 1 (2005). Under *Raich*, Nebraska’s Measures are unconstitutional because they are preempted by federal law, which is the supreme law of the land pursuant to the Supremacy Clause.

The Measures violate not only the United States Constitution, but the Nebraska Constitution as well. That is because in Nebraska, the legislative power does not extend to laws that violate the United States Constitution. “The constitutional limitations as to the scope and subject matter of statutes enacted by the Legislature shall apply to those enacted by the initiative.” Neb. Const. Art. III-2. As the Legislature has no power to enact statutes that violate the Supremacy Clause of the United States Constitution, the same is true of the people acting directly through the initiative. Accordingly, the initiative power simply does not extend to preempted laws, and a measure subject to a vote, even if passed, is no law at all. *See Van Horn v. State*, 46 Neb. 62, 83 (1895). In *Van Horn*, the Nebraska Supreme Court explained this principle as follows:

There can, however, in our mind, be no escape from these propositions, that the constitution is the fundamental law, that an act of the legislature repugnant thereto is not merely voidable by the courts, but is absolutely void and of no effect whatever. It is no law, and binds no one to observe it. The officers of this state are sworn to support the constitution. Where a supposed act of the legislature and the constitution conflict, the constitution must be obeyed and the statute disregarded. Ministerial officers are, therefore, not bound to obey an

unconstitutional statute, and the courts sworn to support the constitution will not by mandamus compel them to do so.

Id.

The Authority of the Governor

The Governor undoubtedly has authority to refuse to spend taxpayer dollars, or to otherwise exercise the powers of his office, in support of a statute that cannot be “law” under the Nebraska Constitution or the United States Constitution. The Governor is an officer charged with a constitutional duty to uphold the Nebraska Constitution. “The supreme executive power shall be vested in the Governor, who shall take care that the laws be faithfully executed and the affairs of the state efficiently and economically administered.” Neb. Const. Art. IV-6. The Governor cannot take office without uttering these words: “I do solemnly swear (or affirm) that I will support the constitution of the United States, and the constitution of the State of Nebraska, and will faithfully discharge the duties of according to the best of my ability[.]” *Id.* at Art. XV-1 (ellipsis in original).

Given the Governor’s constitutional charge, he may refuse to perform even a ministerial duty imposed by the legislature where that ministerial act would cause him to violate the Constitution. “Ministerial officers, upon whom the legislature has sought to impose a duty by statute, may assert the unconstitutionality of that statute as a defense to an application for a mandamus to require them to perform the supposed duty.” *State ex rel. Wright v. Pepperl*, 221 Neb. 664, 673 (1986) (quoting *Van Horn v. State*, 46 Neb. 62 (1895) (Syllabus of the Court)).

That duty easily encompasses the refusal to do a ministerial act that would give legal effect to an unconstitutional statute. *Van Horn* addressed this, as one Nebraska Supreme Court Justice recently recognized:

With citation to *Marbury v. Madison*, the court began by observing that the ‘constitution is the supreme law, binding upon the legislature, as well as upon every citizen, and that no act of the legislature repugnant to the constitution can become a law for any purpose. ‘Given the primacy of the constitution, the court concluded that ‘[m]inisterial officers are . .



. not bound to obey an unconstitutional statute, and the courts sworn to support the constitution will not by mandamus compel them to do so.’

State ex. rel. Spung v. Evnen, 317 Neb. 800, 869-70 (2024) (Funke, J., dissenting) (quoting *Van Horn*, 46 Neb. at 83).

For all of these reasons, the Governor has not only the power, but also the duty not to issue a proclamation giving legal effect to an initiative that violates the Nebraska and the United States Constitutions and is therefore no law at all.

Our Client’s Causes of Action

We are confident that your office will exercise its duty not to expend any taxpayer resources by preparing and issuing a proclamation declaring the Marijuana Measures to be valid Nebraska laws. If, however, you do intend to take this step, our client (and likely others) will have several available causes of action. These include (and are not limited to) a claim to enjoin or declare unlawful the use of taxpayer dollars to purport to assign legal effect to a preempted law; a claim to declare the Marijuana Measures unlawful under the Nebraska Constitution and United States Constitution as a matter of great public concern; and a claim to declare the Measures substantively invalid under Neb. Rev. Stat. § 32-1412(2) and the authority of *Duggan v. Beerman*, 249 Neb. 411, 424 (1996). We respectfully submit this letter as our pre-suit demand for purposes of all of these claims.

Because this is an urgent matter and it may well be that taxpayer dollars are already being expended in preparation for a proclamation, we respectfully request that you confirm by Tuesday, December 10 at 10:00 a.m. that you will not be issuing a proclamation of declaring the Marijuana Measures as the law of Nebraska. Otherwise, we will have no choice but to seek judicial intervention and emergency relief in the Lancaster County District Court.¹

¹ The undersigned counsel are not admitted in Nebraska, but are being assisted by competent Nebraska counsel who would move for our admission pro hac vice contemporaneous with any judicial filing.



Conclusion

Thank you for your attention in carefully considering the authorities in this letter. Perhaps you had already reached the same conclusion. However, given the serious consequences of a proclamation in favor of the Marijuana Measures—and given the serious public injury that may already be occurring, beginning with the expenditure of taxpayer resources—we judged that this letter was prudent. Please feel free to contact us with any questions, and we look forward to receiving your prompt response no later than Tuesday, December 10 at 10:00 a.m.

Respectfully,

A handwritten signature in black ink, which appears to read 'Edward D. Greim', is positioned below the word 'Respectfully,'.

Edward D. Greim

cc: Andrew La Grone, Esq.
Anna Mackin, Esq.
(*pro hac vice* forthcoming)