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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO, CENTRAL DIVISION

DARRYL COTTON, an individual, Petitioner, v. STATE OF CALIFORNIA, a public entity; ROB BONTA, an individual acting under color of law; and DOES 1 through 200, inclusive, Respondents/Defendants.	Case No. 37-2021-00053551-CU-WM-CTL **NOTICE OF ERRATA RE PETITIONER'S VERIFIED AMENDED PETITION FOR WRIT OF MANDATE** **Dept: C-64** **Judge: The Honorable John S. Meyer** **Trial Date: Not Set** **Action Filed: December 22, 2021**

To all Parties and their Respective Attorneys of Record:

PLEASE TAKE NOTICE that as a result of an inadvertent error, Petitioner Darryl Cotton's Verified Amended Petition for Writ of Mandate, filed on June 24, 2022, corrected a missing hyperlink, footnote numbering, removed certain duplications and grammatical errors contained within the original version. This version, with the assent of Respondent, replaces the previous version of Petitioner's Verified Amended Petition for Writ of Mandate and has been attached to this Notice of Errata.

Respectfully submitted and executed on June 27, 2022, in San Diego, California.

By: _____
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I. INTRODUCTION

Petitioner hereby files this Verified Amended Petition for Writ of Mandate amending his original Petition for Writ of Mandate ("PWOM") filed December 22, 2021 (RJN 1) pursuant to leave to amend granted to him by this court in its April 29, 2022, Minute Order (RJN 2) and sustaining Respondent's ("Demurrer") (RJN 3-4).

In Respondent's Demurrer (RJN 3-4) and Respondent's Reply thereto ("Reply") (RJN 6), Respondent has indulged in a pattern of misconstruals, misstatements of fact and inaccurate analyses.

One of the misstatements of fact is a "*partially true but misleading … material omission,*" of fact that is absolutely **critical** to the Court's ability to base its ruling in this matter on current law. It thus sinks to the level of being a clear violation of Rule 4.1 of the *State Bar of California: Rules of Professional Conduct.*(RJN 13) It is the first of Respondents' allegations which Petitioner addresses herein.

The entirety of Respondent's Demurrer and Reply depend for validity on whether or not the Court chooses to accept the misconstruction, **contrary to *stare decisis*,** with which Respondent begins the substance of his Reply (RJN 6), or opts to recognize Petitioner's reliance on precedent, logic and common sense.

Ironically, Petitioner's path leading to this courtroom today, began here *six years ago* in *City of San Diego v. Darryl Cotton*, San Diego Superior Court Superior Court Case No. 37-2016-00005526-CU-MC-CTL filed 02/18/16 (RJN 7) in which your Honor presided over a Temporary Restraining Order (TRO)(RJN 8) hearing on March 15, 2016, which as stated in Plaintiff's moving papers, alerted Petitioner that from Plaintiff's perspective, when engaging in cannabis activities within the City of San Diego, Petitioner was in violation of federal law, regardless of license status. (RJN 8 at 2:7-18.)

II. RESPONDENT'S COUNSEL HAS VIOLATED STATE BAR OF CALIFORNIA, RULES OF PROFESSIONAL CONDUCT.

Petitioner raises this here as it directly impeaches the reliability of all allegations brought forth by Respondents' Counsel. Although Counsel nods in the direction of the *bright line* of cases which define §531's reach and strictures by citing "Plainly, the budget rider [sic] does enjoin the United States

Department of Justice from expending funds to undertake specified types of actions, but it cannot be interpreted to create any private right….*"* (Reply RJN 6, at 7:19-26), he has not set forth what those "specified types of actions" are. In failing to do so Respondent's Counsel has omitted the **critical and dispositive in petitioner's favor** fact, that the '*specified types of actions*" so enjoined have been held by the courts specifically to include prosecuting those medical cannabis program participants who are in substantive compliance with state medical marijuana regulations which can *consistently stand together* with federal cannabis regulation.

This is blatant misrepresentation by omission; of the type proscribed by the State Bar of California: Rules of Professional Conduct: Rule 4.1, Truthfulness in Statements to Others (RJN 13), Rule 3.3 Candor Toward the Tribunal (RJN 14), Rule 3.4, Fairness to Opposing Party and Counsel (RJN 15) and in the California Business & Professions Code §6068 (d) (RJN 16) as a misrepresentation by both omission AND implication. The implication that the Courts have NOT so held is directly contrary to the *bright line* of cases referred to immediately below.

III. PETITIONER HAS AN ESTABLISHED BENEFICIAL INTEREST

The *Doctrine of Stare Decisis* mandates that this court follow the *bright line* of precedent cited at length in Petitioner's PWOM (RJN 1) and Petitioner's Opposition (RJN 5). Beginning with *U.S. v. Marin Alliance for Medical Marijuana* ("MAMM") 139 F. Supp 3d 1039 (N.D. Cal.2015)(RJN 17), running through *U.S. v McIntosh* ("McIntosh") 883 F. 3d. 1163 (9th Cir. 2016)(RJN 18) and resting currently at *U.S. v Bilodeau* ("Bilodeau") 2002 U.S. App. LEXIS 2383 (1st Cir. 2022)(RJN 19). The time limit has passed for the US DOJ to file an appeal.

In each of these cases the Courts have ruled and/or affirmed that what had been an Amendment (commonly referred to as "Rohrabacher" or "Rohrabacher-Farr") to every federal budget passed since 2014, (beginning with the Consolidated Appropriations Act (2016) §542 (RJN-21) and which continue uninterrupted to the current Consolidated Appropriations Act (2022) §531 (RJN-22), enjoins interfering with states' implementation of their medical marijuana laws by prosecuting participants who are in substantive compliance with their states' ***purely*** medical marijuana regulatory regime. In doing so, this language *establishes*, by federal law, a *beneficial interest* for members of the *class* composed of

substantively compliant state medical participants, in the *privilege*[1] of *immunity* from federal prosecution for actions which implement their state's ***purely*** medical marijuana regulatory regime. This is, and will remain, the law of the land unless Congress chooses to either repeal or let §531 "sunset" out of effect.

IV. PETITIONER'S 14th AMENDMENT RIGHT TO EQUAL PROTECTION OF THE LAW WAS, AND IS, VIOLATED BY THE STATE MAKING A LAW WHICH ABRIDGES HIS FEDERALLY ESTABLISHED PRIVILEGE OF IMMUNITY.[2]

By *necessary inference,*[3] the courts have found and upheld that §531*, de facto,* establishes a *privilege* [of] *immunity* from being federally prosecuted; solely for the class composed of substantively compliant participants in **purely-medical** cannabis regulatory regimes. This has been the law of the land since the 9th Circuit upheld Judge Breyer's 2015 decision in MAMM, in *US v McIntosh* in 2016.

By merging the **§531-protected**, purely-medical, provisions enacted in the Medical Marijuana/Cannabis Regulation and Safety Act (MCRSA)(RJN 23) with the **not-protected-by-§531** provisions of Proposition 64 which purport, in direct contradiction of federal law on the same subject, to legalize possession, cultivation and commerce in "non-medical" ("adult use") marijuana, "*which the state has itself identified as falling outside it's medical marijuana regime."*[4] in the Adult Use of Marijuana Act ("Prop. 64" or "AUMA" interchangeably)(RJN 24) Respondent's placed

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[1] PRIVILEGE**:** A particular and peculiar benefit or advantage enjoyed by a person, company, or class, beyond the common advantages of other citizens. An exceptional or extraordinary power or exemption. A right, power, franchise, or immunity held by a person or class, against or beyond the course of the law." (*Black's Law Dictionary, 2nd Ed.* https://thelawdictionary.org/privilege/)

[2] IMMUNITY**:** An exemption from serving in an office, or performing duties which the law generally requires other citizens to perform."(Black's Law Dictionary, 2nd Ed. https://thelawdictionary.org/immunity/.)

[3] NECESSARY INFERENCE. One which is inescapable or unavoidable from the standpoint of reason. Taylor v. Twiner, 193 Miss. 410, 9 So.2d 644, 646., (Black's Law Dictionary, 4th Edition, https://www.latestlaws.com/wp-content/uploads/2015/04/Blacks-Law-Dictionery.pdf.)

[4] "Congress surely did not intend for the rider to provide a safe harbor to all caregivers with facially valid documents without regard for blatantly illegitimate activity in which those caregivers may be engaged **and which the state has itself identified as falling outside its medical marijuana regime."** (emphasis added) (US v Bilodeau, U.S. App. LEXIS 2283,*14-19 (1st CIR.2022)

California's medical cannabis regime irreconcilably into *positive conflict*[5] with federal law on the same subject such that it could not *consistently stand together* with that federal law.

This, in turn, means that the resulting cannabis regime—Prop. 64—was, *prima facie, void ab initio.* Severing the unlawful and self-conflicting provisions would not leave a functional, purely medical cannabis regulatory regime. Nor, minus the unlawful provisions, would SB 94.

Petitioner originally raised the fact that his 14th Amendment right to "equal protection of the laws" was violated through the passage and language of Prop 64, cited in PWOM, (RJN-1 at 3:26-28; 4:1-10; & 34:17,18), which created an irreconcilable *positive conflict* with the language of federal language on the same subject.

This is further expanded on and clarified in Opposition (RJN-5 at 7:13-18, 22-28; & 8:1-13). This violation was continued by the merging of Prop 64 and MCRSA in the *Medical & Adult Use Cannabis Regulation and Safety Act* ("MAUCRSA" or "SB-94") (RJN-59)

Respondent, in Demurrer (RJN-3 at 12:23-28; & 13:1-8), meritlessly avers, that Petitioner has "not alleged anywhere in his pleading that the purported unconstitutional character of MAUCRSA, has threatened any of his legal rights or directly caused any injury;" and cites:

> *"When a party asserts a statute is unconstitutional, standing is not established merely because the party has been impacted by the Statutory scheme in which the assertedly unconstitutional statute belongs. Instead the Courts have stated that '[a]t a minimum, standing means a party must 'show that he personally has suffered some actual* ***or threatened*** *injury as a result of the putatatively illegal conduct of the defendant,'..."* (County of San Diego v. San Diego NORML (2008) 165 Cal.App.4th 798, 814; (internal citations omitted.) (See Minute Order "threatened injury" RJN 2 at pg. 2 ¶1) (emphasis added)

Respondent has accurately stated that "*Petitioner argues that 'he has suffered and continues to suffer – the exigent, ongoing violation of his right to equal protection of the law under the 14th Amendment through the passage of Proposition 64*." (RJN-6 at 5:18-20). However, Respondent

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[5] "A difference between the laws of two or more jurisdictions with some connection to a case, such that the outcome depends on which jurisdiction's law will be used to resolve each issue in dispute, the conflicting legal rules may come from U.S. federal law, the laws of U.S. States of the laws of other countries." (Legal Information Institute, Wex, Conflict of Laws, https://www.law.Cornell.edu/wex/conflict_of_laws).

[W]hen they both claim the right to decide a cause …[it] is called a 'positive conflict…." (West's Encyclopedia of American Law, 2nd ed. https://legal-dictionary.thefreedictionary.com/Conflict))

inaccurately alleges, *"This claim is based on a theory that the creation of an adult use commercial cannabis regulatory program 'removed Petitioner's protection from federal criminal jeopardy, provided by federal law to compliant medical marijuana program participants."* (RJN-6 at 5:20-23)

Petitioner ***HAS NOT*** asserted that it is the *creation* of a non-medical cannabis regime *per se*, which violated his right to equal protection of the laws, even though, absent federal statutory protection, Prop 64 is, on its face at Section 11 and elsewhere, void.[6]

It **is** the effect of **merging** Prop 64's unlawful provisions which*, prima facie*, purport to legalize the not-protected-by-§531 possession, cultivation and commerce in cannabis "*...the state itself has identified as being outside of its medical marijuana regime*," with its purely medical cannabis regime—MCRSA—which removed the protections of §531 from what had been California's purely-medical cannabis regime.

Respondent has acknowledged that the state of California, itself, has identified "adult use" cannabis as being *outside of its medical marijuana regime*:

> *"In 2016, the people of California, through the initiative process, voted to legalize and regulate the **adult-use** of cannabis through the passage of Proposition 64 (citations omitted) These sweeping changes were intended to 'establish a comprehensive system to* [directly contradictory to federal law on the same subject] *legalize, control and regulate the cultivation, processing, manufacture, distribution, testing and sale of **non-medical marijuana**. MCRSA and Proposition 64 were two separate regulatory schemes that were consolidated into the Medicinal and Adult-Use Cannabis Regulation and Safety Act [SB 94]. (citations omitted) SB 94 explicitly recognized that both medicinal [sic] and adult-use cannabis was illegal under federal law. 'Although California has chosen to legalize the cultivation, distribution, and use of cannabis, it remains an illegal Schedule I controlled substance under federal law." (citations omitted)* (RJN-3 @ 11:20-28; 12: 1-5)

That merging has violated Petitioner's 14th Amendment guarantee of "equal protection of the laws," by *abridging* his *established*-by-federal-law *privilege* of *immunity*. It did so by creating an irreconcilable *positive conflict* of state law language regulating non-medical cannabis which, lacking

[6] "Void: Null; Ineffectual; nugatory; having no legal force or binding effect; unable, in law, to support the purpose for which it was intended. "Void" does not always imply entire nullity; but it is, in a legal sense, subject to large qualifications in view of all the circumstances calling for its application, and the rights and interests to be affected in a given case. Brown v. Brown, 50 N. II. 53S, 552. "Void," as used in statutes and by the courts, does not usually mean that the act or proceeding is in absolute nullity. Kearney v. Vaugliau, 50 Mo. 2S4. (Black's Law Dictionary, 2nd Edition, https://thelawdictionary.org/void/)

protection by federal statute, is in direct contradiction of the language of federal law on the same subject, such that they cannot *consistently stand together.* This renders those provisions of Prop 64 *void.*[7]

Participants in every state with a **purely-medical** cannabis regime that are substantively compliant with those regimes enjoy, by federal law in the form of §531, the *privilege* of *immunity* from federal prosecution. This enables them to *consistently stand together* with federal cannabis regulation.

Prior to Prop 64 taking effect, California's regime for regulating medical cannabis, including its participants, enjoyed the protection of what is now §531, too. If Prop 64 had not been enacted, then subsumed into SB 94, the current medical marijuana regime would be some substantially improved version of MCRSA. As such it would **STILL** be under the aegis of §531 and substantively compliant participants, specifically including Petitioner, would be safe from federal prosecution. As the law now stands in irreconcilable *positive conflict*, with federal law on the same subject, ***it lacks that protection*** which, contrary to the will of Congress, as found by the Courts, leaves even its substantively compliant, purely medical, participants at jeopardy of federal prosecution.

This *abridged*, and continues to *abridge,* the *privilege* of *immunity* from prosecution that, as the Courts have held and affirmed, Congress intended be established and recognized for substantively compliant participants in state medical cannabis regimes which do NOT purport to license and/or legalize possession and commerce in cannabis "*which the state has itself identified as falling outside it's medical marijuana regime*" (for instance by designating it as for "*adult use*"), in order for the US Department of Justice (DOJ) to be compliant with §531. This has been the law of the land since MAMM (2015)(RJN-17), as affirmed at the 9th Circuit in McIntosh (2016)(RJN-18), and at the 1st Circuit in Bilodeau (2022)(RJN-19).

Even if this was not a direct violation of Petitioner's 14th Amendment guarantee of "equal protection of the laws," which it was and is, it would still be the Respondents Bonta; the State of California, and others not named herein, making a law which they knew, or should have known, was, and is, the *abridge*ment of Petitioner's Congressionally and judicially *established* federal *privilege* of *immunity* from prosecution for the implementation of those specific provisions of state law that authorize the use, distribution, possession, or cultivation of **medical** marijuana, for as long as the language of §531

[7] "It has long been established that 'a state statute is void to the extent that it actually conflicts with a valid federal statute." (Clark v. Coye, 60 F.3d 600, 603 (9th Cir. 1995) (citing Edgar v. Mite Corp., 457 U.S. 624, 631 (1982.)

is a part of the federal budget. In doing so they violated Section 1, Sentence 2, Clause 1, of Amendment XIV. ***"No State shall make*** *or enforce* ***any law which shall abridge the privileges or immunities of citizens of the United States****…"* (emphasis added) (Constitution of the United States of America, Amendment XIV)

V. PETITIONER IS SUFFERING ONGOING AND EXIGENT *ACTUAL* AND *THREATENED* INJURY AS A RESULT OF THE VIOLATION OF HIS 14th AMENDMENT PROTECTIONS.

As Respondents have cited directly from US v Bilodeau, it is reasonable to presume that Respondent's Counsel is familiar with it. Thus, he either knew or should have known, that the panel had addressed, and specifically proscribed, the mere threat of federal prosecution in relation to substantively compliant participants, as having a potentially chilling effect on states' implementation of their medical cannabis regimes which, because of their protection by federal statute, are able to cross the threshold set by 21 USC §903[8] (RJN-20) and consistently stand together with §531 on the subject of medical cannabis.

In Respondent's Reply, Counsel states that absent Petitioner's "*or any other medicinal cannabis user's arrest or prosecution by federal authorities…the exigent*[9] *ongoing violation of Petitioner's XIVth Amendment right to equal protection of the law, is merely a hypothetical possibility based on faulty legal conclusions*." (RJN-6 at 6:1-5) and in response to Petitioner asserting, "*it is because [of] the exigency of his legal jeopardy that the Petitioner has brought this matter before the Court*" (internal citations omitted), Respondent inaccurately implies that, "*the existence of any 'exigency' is not supported by any*

[8] "The United States Supreme Court has construed §903 as 'explicitly contemplating a role for the states in regulating controlled substances," (Gonzales v. Oregon, 546 U.S. 243, 251 (2006)…Under this construction States may pass laws related to controlled Substances (including marijuana) as long as they do not create a 'positive conflict' such that state law and federal law '…cannot consistently stand together." ("*Is the Department of Justice Adequately Protecting the Public From the Impact of State Recreational Marijuana Legalization?: Hearing Before the Senate Caucus on International Narcotics Control,* 114th Cong. (Apr. 5, 2016) (Testimony of Douglas J. Peterson, Attorney General, State of Nebraska)

[9] "Exigent… Requiring immediate action or aid; urgent (Black's Law Dictionary, Pg. 1730, 8th edition (2004) https://law.en-academic.com/32558/exigent)

factual allegation because the Petitioner has not alleged that he has been arrested or that he is currently engaged in activity which places him in jeopardy of arrest."

This is a *red herring* Respondent is dragging across the path to justice. Legal conclusions based on precedent are NOT "faulty." *'[a]t a minimum, standing means a party must 'show that he personally has suffered some actual or* ***threatened*** *injury."* (emphasis added) (*County of San Diego v. San Diego NORML (2008) 165 Cal.App.4th 798, 814; (internal citations omitted.)*

Under, the *Doctrine of Stare Decisis,* **even the threat of federal prosecution**, especially after years of not having been under what the Bilodeau panel referred to as a *"Sword of Damocles," abridges* the *privilege* of *immunity* substantively compliant participants in California's purely medical cannabis regime were protected by, prior to the enactment of Prop 64 and its evil spawn SB 94.

Petitioner has addressed this by citing to Bilodeau[10] and in Opposition (RJN-5 @ 12:19- 28, 13: 1-9) but will remind the Court of the essence of what it says:

> *"…the point is not that medical marijuana program participants* [e.g., Petitioner] *acting in good faith* ***will be prosecuted*** *for even tiny infractions of* […] *law* ***but that they can be prosecuted****. The government's vague assurances in this case will likely be cold comfort to anyone facing fears that imperfect compliance…could lead to indictment and imprisonment…. (*emphasis added) (US v Bilodeau, U.S. App. LEXIS 2283,*14-19 (1st CIR.2022).

Petitioner, because of Prop 64 as enacted in SB 94, is in current jeopardy of federal arrest and prosecution solely because Prop 64 placed California's medical cannabis regime outside the protection of §531. At the absolute least, the unwarranted threat of arrest and arraignment, with the attendant financial and other costs, which has been hanging over Petitioners head since Judge Breyer's decision

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[10] "With federal prosecution hanging as a sword of Damocles, ready to drop on account of any noncompliance with [State] law, many potential participants in [state] medical marijuana markets would fasten fearful attention on that threat. The predictable result would be fewer market entrants and higher costs flowing from the expansive efforts required to avoid even tiny, unintentional violations. [State's], in turn, would feel pressure to water down [their] regulatory requirements to avoid increasing the risk of noncompliance by legitimate market participants. Likely anticipating these concerns, the district court below appeared to acknowledge that "some sort of technical noncompliance" with [State] regulations might be tolerated even under the strict compliance standard….
The government attempts to downplay these concerns by arguing that prosecutorial discretion and resource allocation can properly ensure that legitimate participants in [] medical marijuana market(s) will not be subject to federal criminal prosecution. But the point is not that medical marijuana program participants [e.g., Petitioner] acting in good faith will be prosecuted for even tiny infractions of state law but that they can be prosecuted. The government's vague assurances in this case will likely be cold comfort to anyone facing fears that imperfect compliance…could lead to indictment and imprisonment…." (Bilodeau, id.) (emphasis added)

in U.S. v MAMM meets the legal definition of "exigent," by requiring immediate action to remedy, even absent an arrest.

Having now exhibited the lack of merit in Respondent's implication that someone has to have been arrested and/or prosecuted, because of 64's passage, in order to have *"suffered some actual or threatened injury,"* Petitioner has attached **extensive** proof that he WAS arrested and lost $30,000 as a result of confusion over the interplay of municipal, state and federal law which arose from the passage of Prop. 64. (see Cotton Declaration at 2:20-28, 3:6-8 and 7:6-7)

VI. THERE WAS/IS CONFUSION ARISING FROM THE CONTRADICTION OF FEDERAL CANNABIS REGULATION BY UNLAWFUL PROVISIONS OF PROP. 64.

Absent Respondent proving otherwise, by citation of relevant precedent, Petitioner asserts that in this jurisdiction it has been determined and is a matter subject to *stare decisis* that there was, and is, *confusion* as to which laws of cannabis regulation apply where and to whom. This is demonstrated by Judge Rachel Cano, of the Superior Court of the State of California, for the County of San Diego, having agreed there was such confusion and signing a stipulated Plea Agreement that despite the passage of Prop 64 in November 2016, (RJN-24) the court recognized the positive conflict that existed between state and federal cannabis law and allowed Petitioner to remain under the Prop 215/SB 420 rules and regulations until the three-year term of probation she placed him on, as a direct result of that confusion had expired. (RJN-38)

Beyond that, as regards confusion arising from conflicting state and federal cannabis regulations, Petitioner offers the following from one of the Justices who heard *Gonzalez v Raich*—Justice of the SCOTUS, Clarence Thomas. This is from his opinion in *Standing Akimbo v. United States*, 141 s. Ct. 2236 (2021)(RJN-26) in which he discusses whether the conflict between federal and state cannabis regulations might cause confusion. In doing so he cites one of Petitioner's foundational cases, "*United States v. McIntosh… (interpreting the rider to prevent expenditures on the prosecution of individuals who comply with state law),"* in discussing the current, as of 2021, interactions of state and federal cannabis regulation. *McIntosh* is also cited to in *Bilodeau*.

> "Whatever the merits of Raich when it was decided, federal policies of the past 16 years have greatly undermined its reasoning. Once comprehensive, the Federal Government's current approach is a half-in, half-out regime that simultaneously tolerates and forbids local use of marijuana. This contradictory and unstable state of affairs strains basic

principles of federalism and conceals traps for the un-wary." (Standing Akimbo, LLC, et al. v. United States, 594 U.S. 141S. Ct 2236 2021)

"In 2009, Congress enabled Washington D. C.'s government to decriminalize medical marijuana under local ordinance.

Moreover, in every fiscal year since 2015, Congress has prohibited the Department of Justice from "spending funds to prevent states' implementation of their own medical marijuana laws." United States v. McIntosh, 833 F. 3d 1163, 1168, 1175–1177 (CA9 2016) (interpreting the rider to prevent expenditures on the prosecution of individuals who comply with state law).

That policy has broad ramifications given that 36 States allow medicinal marijuana use and 18 of those States also allow recreational use.

Given all these developments, one can certainly understand why an ordinary person might think that the Federal Government has retreated from its once-absolute ban on marijuana… (emphasis added) (Standing Akimbo, ibid)

As Justice Thomas makes clear, and the Courts have interpreted it, insofar as cannabis '*which the* states have themselves *identified as falling outside* their *medical marijuana regime*[s], it has NOT."

"And, though federal law still flatly forbids the intra-state possession, cultivation, or distribution of marijuana, Controlled Substances Act, 84 Stat. 1242, 1247, 1260, 1264,21 U. S. C. §§802(22), 812(c), 841(a), 844(a), the Government, post-Raich, has sent mixed signals on its views. In 2009 and 2013, the Department of Justice issued memorandums outlining a policy against intruding on state legalization schemes or prosecuting certain individuals who comply with state law…

I could go on. Suffice it to say, the Federal Government's current approach to marijuana bears little resemblance to the watertight nationwide prohibition that a closely divided Court found necessary to justify the Government's blanket prohibition in Raich. If the Government is now content to allow States to act "as laboratories" " 'and try novel social and economic experiments,' " Raich, 545 U. S., at 42 (O'Connor, J., dissenting), then it might no longer have authority to intrude on "[t]he States' core police powers . . . to define criminal law and to protect the health, safety, and welfare of their citizens." (*Standing Akimbo, ibid.*)(RJN-26)

Given all these developments, one can certainly understand why an ordinary person might think that the Federal Government has retreated from its once-absolute ban on marijuana… (emphasis added)

As Justice Thomas makes clear, and the Courts have interpreted it, insofar as cannabis '*which the* states have themselves *identified as falling outside* their *medical marijuana regime*[s], it has NOT."

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VII. PETITIONER IS CURRENTLY IN JEOPARDY OF ARREST AS A RESULT OF PROP. 64'S PASSAGE AND MERGING WITH MCRSA IN SB 94.

Even though Respondent, seemingly, does not acknowledge that the court in Bilodeau defined what does or does not have the protection of §531, Petitioner asks the Court, "Given that under federal cannabis regulations even simple possession of under an ounce is a crime, how can Petitioner acknowledge being an active medical cannabis program participant in a program which has been legislatively removed from §531's protection and NOT, by *necessary implication*, be performing activities which put them, *de jure*, at risk of federal criminal prosecution?" Petitioner cannot be more specific without confessing, on record, to federal crimes which, because SB 94 is without the protection of §531, would be exposing himself to further criminal jeopardy.

(However slight Respondent chooses to portray that risk as being, it is a risk the U.S. Court of Appeals for the 1st Circuit, in U.S. v Bilodeau, found is proscribed because it interferes with States'—protected by §531—implementations of their purely medical cannabis regimes.[11])

Because of the provisions of Prop 64, as enacted in SB 94, which are in irreconcilable *positive conflict* with federal cannabis regulation, Petitioner is suffering an ongoing and exigent (because the risk has not gone away) violation of his 14th Amendment protection. For someone who has been through the

[11] "...the point is not that Petitioner will [certainly] be prosecuted for even tiny infractions of [federal] law but that [Petitioner] can be prosecuted." (US v Bilodeau, U.S. App. LEXIS 2283,*14-19 (1st CIR.2022).

trauma of arrest and has lost in excess of $30,000 as a direct result of that arrest and its consequences, being in jeopardy of further criminal prosecution is a constant stress Petitioner lives under.

VIII. STATE-LEGAL, PURELY MEDICAL CANNABIS IS NOT CONTRABAND.

Respondent has, in his Reply (RJN-6 @ 8:5-11) accurately asserted that cannabis continues to be listed as a Schedule I Controlled Substance and that as such it "remains contraband, *per se*, except in narrow specific circumstances…"

Respondent then lists provisions of the Controlled Substances Act, ("CSA") implying that the provisions he cites are the complete list of "*narrow specific circumstances*" under which possession of, and commerce in, cannabis is legally allowed. They are not.

Raich was the ruling precedent, prior to MAMM, e.g., "By the terms of the Act, marijuana is 'contraband for any purpose,' and, if there is any conflict between federal and state law with regard to marijuana legislation, federal law shall prevail pursuant to the Supremacy Clause." United States v. Walsh, 654 F. App'x 689, 695 (6th Cir. 2016) , quoting Gonzales v. Raich, 545 U.S. 1, 14 (2005).

This is no longer the case. The Courts, by *necessary inference*, have found and upheld that Congress, in passing §531, has defined a set of *narrow specific circumstances* in which possession, cultivation and commerce in, cannabis which the states identify as being part of their purely medical cannabis regimes, is legally protected. That which is legally protected is allowed and cannot, by definition, be considered contraband, a synonym for "prohibited."

If this was not an accurate analysis these state MEDICAL cannabis regulations could not, *consistently stand together* with federal law and the rulings of 14 federal District Court judges, affirming and explicating §531's protection of substantively compliant state medical cannabis programs and their participants would have been stricken down by one or the other of the federal Circuit Courts of Appeal (First and Ninth), which upheld those rulings. The federal Department of Justice has not appealed these rulings.

As is cited in Petitioner's Opposition (RJN-5 @ 17:5,6) "in the end, the [Raich] Court held, 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"

Petitioner asserts that, solely as regards purely medical cannabis regimes, the Courts have, by necessary inference, held that Congress, in §531, has granted that permission. This is supported, at length, in testimony from both sponsors and opponents of the original "Rohrabacher Amendment" in MAMM.

IX. §531 IS AND HAS BEEN XIVTH AMENDMENT PROTECTED FEDERAL LAW SINCE 2015.

Respondent, in his Reply, has alleged, by implication, that the immunity provided by §531 is not subject to 14th Amendment protection because §531 requires periodic renewal. "Moreover, the budget rider expires at the termination of each budget cycle, so no cannabis cultivator or medical cannabis patient can be expected to be protected from potential federal prosecution from year to year." (RJN-6, @ 8:11-14)

Presumably, Respondent is leaning on the panel in McIntosh's comments about this:

> **"***The CSA prohibits the manufacture, distribution, and possession of marijuana. Anyone in any state who possesses, distributes, or manufactures marijuana for medical or recreational purposes (or attempts or conspires to do so) is committing a federal crime. The federal government can prosecute such offenses for up to five years after they occur. Congress currently restricts the government from spending certain funds to prosecute certain individuals. But Congress could restore funding tomorrow, a year from now, or four years from now, and the government could then prosecute individuals who committed offenses while the government lacked funding." (emphasis added). (United States v. McIntosh, 833 F.3d 1163 (9th Cir. 2016)),*

without paying mind to the next to the last paragraph of their Opinion:

> *"Conversely, this temporary lack of funds could become a more permanent lack of funds if Congress continues to include the same rider in future appropriations bills."* (*McIntosh, id.*)

Even if §531 expired tomorrow, it would still have been federal law until 00:00:01 a.m. of the day after tomorrow. Congress has chosen to renew it in every budget since 2014.

Respondent was partially accurate in stating in his Reply,

> *"The budget rider was renewed in subsequent years [footnote omitted*], [but inaccurate in stating] *"... and was most recently referred to as the "Blumenauer, McClintock, Norton Lee Amendment."* (RJN-6 @ 8:1-2)

Respondent is inaccurate as to the current iteration of what used to be Rohrabacher in saying it was still a "budget rider." While that was true in 2020, the budget submitted by POTUS Biden in 2021 included what had, until then, been a "budget rider" as a line item, which was enacted in Consolidated

Appropriations Act (2022)(RJN-22) and is reportedly being included as a line item, again, in POTUS Biden's next budget proposal.

Yes, it needed, and got, renewal as an amendment a number of times. This does NOT mean that as a "budget rider" it wasn't federal law during the period it was in effect. Nor did it mean either that the immunity it provided, while §531's language is in effect, was not a "protection of the law" which is guaranteed by the 14th Amendment and/or a federally-established *privilege* of *immunity*.

Respondents have acknowledged that medical cannabis **CAN**,"**…expect to be protected**," by §531."*Moreover, the budget rider expires at the termination of each budget cycle, so no cannabis cultivator or medical cannabis patient can be expected to be protected from potential federal prosecution from year to year* ***UNLESS SUCH AMENDMENTS ARE INSERTED IN APPROPRIATIONS BILLS AND PASSED INTO LAW***." (emphasis added) (RJN-6 @ 8:11-14) ***IT WAS!***.

This year the 44 Representatives (almost 15% of the House of Representatives) who are members of the bi-partisan Congressional Cannabis Caucus attempted to expand Section 531's protection to non-medical cannabis by asking that the language be revised to omit the word "medical." Congress showed its will for medical cannabis to remain legal and non-medical cannabis to remain illegal by retaining the original wording. (RJN-21). This is discussed in a newsletter from NORML, dated 08/05/21 (RJN-47) As they reported the word "medical" was not struck from §531 in furtherance of a broader federal policy towards adult-use. (RJN-22)

Until such time as exceptions are amended into the language of the 14th Amendment, as regards abridging privileges and immunities and equal protection of the laws, that language is unambiguously without qualification or exception applicable to ALL federal law.

"*No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States…nor deny to any person within its jurisdiction the equal protection of the laws*." (U.S. Constitution, Amendment XIV §1, Sentence 2, Clauses 1&4)

X. THE LANGUAGE OF SB 94 DENIES CALIFORNIA'S MEDICAL CANNABIS PROGRAM AND PETITIONER THE PROTECTION OF §531.

The same *bright line* of cases which held and/or affirmed that §531 *de facto establishes* a *privilege* of *immunity* from federal prosecution for substantively compliant participants makes it transparently clear that this *privilege* only applies to state medical cannabis regimes which do NOT

purport, as Prop 64 did, and SB 94 does, to allow possession of and/or commerce in cannabis *"the state has itself identified as falling outside its medical marijuana regime,"* e.g., "*adult use*"

US v Marin Alliance for Medical Marijuana: [RJN 17]

"This Court's only task is to interpret and apply Congress's policy choices, as articulated in its legislation. And in this instance, Congress dictated in [Rohrabacher] that it intended to prohibit the Department of Justice from expending any funds in connection with the enforcement of any law that interferes with California's ability to 'implement [its] own State law[ ] that authorize[s] the use, distribution, possession, or cultivation of medical marijuana." 2014 Appropriations Act § 538 [Rohrabacher]. The CSA remains in place, and this Court intends to enforce it to the full extent that Congress has allowed in Rohrabacher, that is, with regard ***to any medical marijuana not in full compliance with "State law [] that authorize[s] the use, distribution, possession, or cultivation of medical marijuana."*** *(emphasis added) (United States v. Marin Alliance for Medical Marijuana, 139 F.Supp.3d 1039, 1044 (N.D. Cal. 2015).)*

US v McIntosh: [RJN 18]

"Given this context and the restriction of the relevant laws to those that authorize conduct, we conclude that [Rohrabacher] prohibits the federal government only from preventing the implementation of those specific rules of state law that authorize the use, distribution, possession, or cultivation of medical marijuana. DOJ does not prevent the implementation of rules authorizing conduct when it prosecutes individuals who engage in conduct unauthorized under state medical marijuana laws. Individuals who do not strictly comply with all state-law conditions regarding the use, distribution, possession, and cultivation of medical marijuana have engaged in conduct that is unauthorized, and prosecuting such individuals does not violate [Rohrabacher]. Congress could easily have drafted [Rohrabacher] to prohibit interference with laws that address medical marijuana or those that regulate medical marijuana, but it did not. Instead, it chose to proscribe preventing states from implementing laws that authorize the use, distribution, possession, and cultivation of MEDICAL marijuana." (McIntosh, supra (emphasis added); see also PWOM at 25:8-19.)

US v Bilodeau: [RJN 19]

Although we reject the government's proposed strict compliance approach, we also decline to adopt the defendants' interpretations of the rider. Offering several slightly different formulations, the moving defendants and amicus argue that the rider must be read to preclude the DOJ, under most circumstances, from prosecuting persons who possess state licenses to partake in medical marijuana activity. These proposed formulations stretch the rider's language beyond its ordinary meaning. Congress surely did not intend for the rider to provide a safe harbor to all caregivers with facially valid documents without regard for blatantly illegitimate activity in which those caregivers may be engaged and which the state has itself identified as falling outside its medical marijuana regime. (US v Bilodeau, U.S. App. LEXIS 2283,*14-19 (1st CIR.2022).

XI. "ADULT USE" PROVISIONS OF PROP. 64 AND SB 94, LACKING THE PROTECTION OF §531, ARE IN IRRECONCILABLE POSITIVE CONFLICT, AND CANNOT *CONSISTENTLY STAND TOGETHER*, WITH FEDERAL LAW.

Respondent, in his Demurrer, alleged, (RJN-3 @ 22;14-19), that "*The predominant theme of the Petition is that California's cannabis laws are preempted by Federal law and,* ***supposedly****, by an international treaty*." (Emphasis added)

"Supposedly," meritlessly implies either: a) that Petitioner did not proffer proof thereof in PWOM (RJN-1 @ 17:22-28, 18:1-16) and PWOM Exhibits 12, 13 and in Petitioner's Opposition to Demurrer (RJN-5 @ 15:16,17 and footnote 10; and 16:1-10) or b) that Respondent, without offering a basis for doing so, implicitly alleges that this purported assertion is meritless; and hopes the court will not feel it necessary to consider.

Petitioner, as regards the *Supremacy Clause*, has asserted only that where federal and state law on the same subject are in positive conflict such that they, using the language of both Prop 64, §11 and Title 21 USC, Section 903, "…*cannot consistently stand together*," it is federal law which is preeminent.

Federal law asserts and exerts jurisdiction over regulating cannabis in the form of the federal CSA at 21 U.S.C. §§ 841, 844 and 846 which proscribe all uses of high (>0.3%) THC cannabis, except for research. It is also federal law through this nation's status as a signatory to the United Nations Single Convention on Narcotic Drugs ("SCND")[12] whereby the agreement amongst 73 member nations is that

[12] "As a matter of domestic law within the United States, Congress may override a pre-existing treaty or Congressional-Executive agreement of the United States. To do so, however, would place the United States in breach of the obligation owed under international law to its treaty partner(s) to honor the treaty or agreement in good faith. Consequently, courts in the United States are disinclined to find that Congress has actually intended to override a treaty or other internationally binding obligation. Instead, they struggle to interpret the Congressional act and/or the international instrument in such a way as to reconcile the two."

"Provisions in treaties and other international agreements are given effect as law in domestic courts of the United States only if they are 'self-executing' or if they have been implemented by an act (such as an act of Congress) having the effect of federal law." "…There are varying formulations as to what tends to make a treaty provision self-executing or non-self-executing, but within constitutional constraints (such as the requirement that appropriations of money originate in the House of Representatives) the primary consideration is the intent--or lack thereof--that the provision become effective as judicially enforceable domestic law without implementing legislation. For the most part, the more specific the provision is and the more it reads like an act of Congress, the more likely it is to be treated as self-executing…"

"…All treaties are the law of the land, but only a self-executing treaty would prevail in a domestic court over a prior, inconsistent act of Congress. A non-self-executing treaty could not supersede a prior inconsistent act of Congress in a U. S. court…."

In addition, if state or local law is inconsistent with an international agreement of the United States, the courts will not allow the law to stand. The reason, if the international agreement is a self-executing treaty, is that such a

cannabis is to be used only for "medical and scientific purposes." (RJN-27) and as further affirmed by the United States during the 63rd Session of the United Nations Commission of Narcotic Drugs (CND)(RJN-28) in 2020.

The State of California, through Prop. 64, as enacted in SB 94 and precedent cannabis regulations from 1996 to date, asserts and exerts jurisdiction over regulating cannabis. The language of SB-94 which purports to legalize and license possession of, and commerce in, non-medical cannabis is **directly contrary** to **all** federal law regarding cannabis; thus, it is impossible for it to consistently stand together with **any** federal cannabis regulation. This is **NOT** the case with the purely medical cannabis regime set forth in MCRSA, which can, thus, consistently stand together with §531.

XII. WHETHER OR NOT PETITIONER WAS CONFUSED BY THE LANGUAGE OF PROP 64 IS IRRELEVANT TO THE NARROW ISSUE ADDRESSED HEREIN.

Petitioner, since, and including in *Opposition* (RJN-5), has been clear that he has narrowed the scope of his filings in this matter solely to seeking mandamus relief from the ongoing violation of his 14th Amendment protections.

Petitioner has never asserted that he, himself, was confused as to whether or not Prop 64 created an irreconcilable positive conflict such that it could not, "consistently stand together" with federal law. That he saw it could not was the very reason he sought the plea-agreement signed by Judge Cano. (RJN-38)14th

XIII. WHEN FEDERAL AND STATE LAW ARE IN IRRECONCILABLE POSITIVE CONFLICT, FEDERAL LAW IS PREEMINENT.

While Respondent has not alleged that this is not the case, he has cited, in *Demurrer* (RJN-3 at P. 15, FN. 3) three cases in support of the meritless implication that Prop 64 and SB 94 do not rise to creating a federal *conflict preemption*[13].

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treaty has the same effect in domestic courts as an act of Congress and therefore directly supersedes any inconsistent state or local law."

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[13] "Conflict preemption occurs when simultaneous compliance with both federal and state regulations is impossible ("impossibility preemption… The Court has extended the scope of impossibility preemption in two

Petitioner was unable to find the language cited by Respondent as *Salerno*, anywhere. It is, however, appropriate to point out here that the language purportedly used in *Salerno*, was "exists," not "could exist." There is no **currently existing** set of circumstances in which, **absent federal statutory protection of the state law,** the language of a state law which is in **direct contradiction** of the language of federal law on the same subject does not create an irreconcilable *positive conflict* such that, they "*cannot consistently stand together.*" §531 **IS** that federal statutory protection.

Where there is positive conflict such that federal and state law cannot consistently stand together, it is federal law which is pre-eminent. This derives from the Supremacy Clause (U.S. Const. art. VI). Given current federal law, including international treaty obligations, it is clear that non-medical cannabis cannot be legalized by the states in the same laws which create those states' medical cannabis regulations without placing those reliant on their states' medicinal cannabis regulatory structure in jeopardy of federal criminal prosecution under 21 U.S.C. §§ 841, 844 and 846. The relevant sections of each of these would have to be repealed first. This would, *de jure* require that the USA first withdraw from SCND. The federal CSA is the act of Congress whereby this nation implements the SCND and CND. The language of CSA, particularly in the scheduling of controlled substances, closely parallels that of SCND.and CND.

XIV. RESPONDENT BONTA'S FAILURE TO PERFORM HIS DUTIES, VIOLATES PETITIONER'S XIVth AMENDMENT PROTECTIONS.

Petitioner rephrases herein his earlier allegations – i.e., that Respondent has and/or had ministerial, fiduciary, constitutional and/or professional duties they owed Petitioner the performance of; they were fully aware of these duties and they have clearly shown that they were and/or are unwilling to fulfill those duties unless and until compelled to do so by the judiciary.

As an attorney, Respondent Bonta was, and remains, bound to obey each of the following:

a) the *Constitution of the United States of America*, including the 14th Amendment;
b) *California Constitution*;
c) *State Bar of California: Rules of Professional Conduct*; and

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recent decisions, holding that compliance with both federal and state law can be "impossible" even when a regulated party can (1) petition the federal government for permission to comply with state law, or (2) avoid violations of the law by refraining from selling a regulated product altogether.
(Federal Preemption: A Legal Primer, Pg. 1,¶ 5, https://sgp.fas.org/crs/misc/R45825.pdf)

d) *California Code of Business and Professions*.

His *Duty of Competence* as an attorney included, and includes, the duty to keep abreast of the changes in the law and its practice.[14] If he fulfilled this duty, he knew: a) that the Memorandums of Guidance from Attorneys General of the USA counseling low enforcement priority for state legal cannabis could not, in view of this nation's treaty obligations, apply to anything but medical cannabis; and b) that provisions purporting to permit and license the possession, cultivation and commerce in non-medical cannabis would put any state law to the contrary in irreconcilable *positive contact* with federal law such that it could not pass the threshold set by title 21 USC §903 (RJN 20), and thus would be void on its face.

Respondent had a duty, both as an attorney bound by California Code of Business and Professions §6068 and as an Assemblyman, bound by his Article XX, Oath of Office and California's Government Code to uphold the Constitution. He failed to take the opportunity to fulfill this latter duty, *de minimus*, by making his fellow Assemblypersons and the general public aware of the irreconcilable positive conflict with both federal law and itself created by Prop 64's §11 when, in obedience to Cal. Election Code 9007 the Attorney General sent a copy of the summary and text of Prop 64 to the Assembly. So why didn't this attorney, more knowledgeable than most about cannabis regulation, warn the public at large of this, prior to the passage of Prop 64?

It is true that Respondent had no specific legal obligation to do so, until he became the Attorney General, therefore senior attorney, for the State of California. The duties referred to above are only an included subset of the duties which Respondent Bonta, as Attorney General owed, and continues to owe, the Petitioner fulfillment of.

As an Assemblyperson Respondent Bonta had a major role, from 2014-2020, in the evolution and enactment of SB 94. He was the lead author of Assembly Bill 34 (AB 34), which was combined into AB266, which was one of the three Bills which were combined and enacted as the Medical Marijuana Regulation and Safety Act (MMRSA) in 2015. In 2016 MMRSA had two minor bills added to it and was renamed the Medical Cannabis Regulation and Safety Act (MCRSA).

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[14] "Rule 1.1 Competence
(a) A lawyer shall not intentionally, recklessly, with gross negligence, or repeatedly fail to perform legal services with competence…
Comment
[1] The duties set forth in this rule include the *duty to keep abreast of the changes in the law and its practice*, including the benefits and risks associated with relevant technology…
[3] See rule 1.3 with respect to a lawyer's duty to act with reasonable* diligence.

In 2017 he was one of the sponsors of AB64, which among other things eliminated the line in AUMA which read, "This bill would specify that licensees under the MCRSA may operate for profit or not for profit." In doing so it disregarded the will of the voters as expressed in Prop 215 and Prop 64 and of the Legislature in SB 420 and MCRSA, each of which called for medical cannabis to be available both for profit and not-for-profit. AB64, as proposed, was amended several times and was eventually passed as SB 94. Respondent Bonta was, in effect, one of the Assembly's "subject-matter experts" on cannabis regulation. It is not unreasonable to presume that with that history, his colleagues in the Assembly and the electorate at large would tend to see him as more knowledgeable than most on the subject of cannabis regulation. In 2020 Respondent ran for, and was elected, Attorney General. Purely by coincidence, their positioning as a knowledgeable friend of cannabis was capitalized on as a major political asset.

The duties referred to above, are an included subset of the duties of the Attorney General by which he remains bound. These also include, but are not limited to, the duties specified for the Attorney General in: *Cal. Constitution, Art. II, Voting, Initiative, and Referendum, and Recall, Section 10(d)*; *Cal. Constitution, Article V, Executive; Section 13*; *California Elections Code*.

He is also, ethically, bound by statements made by his subordinates on his behalf *which* the Attorney General does not, timely disclaim. This specifically includes the self-proclaimed, *necessarily implied*, duties and/or responsibilities found at California Office of the Attorney General websites and publications including, but not limited to, *"About the Office of the Attorney General,"* **at** *https://oag.ca.gov/office*.

As Attorney General, Respondent is the state's senior attorney. His *Duty of Competence* is more than merely professional and reaches to ministerial. In the context of contemporary events this, necessarily, specifically includes being familiar with the current state of interaction between federal and California's cannabis regulation. As the state's "top lawyer" the Attorney General has a self-acknowledged duty to fulfill the Mission Statement of the Office of the California Attorney General to **"***Safeguard California's Human, Natural and Financial Resources for This and Future Generations***"** **(***About the Office…, ibid.)* and, as its senior law enforcement official (*see* Cal. Cons. art. V, Executive, § 13) this includes the duty of "enforcing civil rights laws." Thus, it is and was, Respondent's ministerial duty, as Attorney General, to protect Petitioner and other compliant California medicinal cannabis program participants' 14th Amendment right to the protection from federal criminal prosecution mandated by §531.

As an Assemblyperson, as an attorney and as Attorney General, Respondent Bonda was, and is, legally bound to "uphold the Constitutions of the United States of America and the State of California." There is no exemption of the 14th Amendment from this duty. Thus, it is and was, Respondent's ministerial duty to protect Petitioner and other compliant California medicinal cannabis program participants' 14th Amendment right to the protection from federal criminal prosecution established by §531.

> "Where the head of a department acts in a case, in which executive discretion is to be exercised; in which he is the mere organ of executive will; it is again repeated, that any application to a court to control, in any respect, his conduct, would be rejected without hesitation." California has embraced this fundamental principle of constitutional law. Subsequently, its courts only issue writs of mandamus when government officials violate a distinct ministerial duty derived from an identifiable statute." (RJN-29 at P. 10 ch. II A. ¶1)

The Attorney General's client is the State of California. This means he owes all of the duties of an attorney to the Executive and Legislative branches of the government, the agencies thereof and the People of the State. Respondent, as Attorney General had, and has, even though a co-author of SB 94, the *Duty of Communication*[15] *with Clients*, to warn the Governor, the People through their representatives in the Legislature, and all appropriate state agencies of the need to resolve the positive conflict SB 94 continued by the merging of MCRSA and Prop 64 into a single set of regulations which purports to legalize the possession, cultivation, processing, distribution and sales of non-medicinal cannabis. As none of these are protected by §531, this is directly contradictory to federal law on the same subject, such that it cannot *consistently stand together* with it.

As Attorney General he knew, or should have known, that his *Duty of Diligence* called for him to seek the severance of those provisions of Prop 64 and/or SB 94 which create irreconcilable positive

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[15] "1.4 Communication with Clients
(a) A lawyer shall:…
(2) reasonably* consult with the client about the means by which to accomplish the client's objectives in the representation;
(3) keep the client reasonably* informed about significant developments relating to the representation, including promptly complying with reasonable* requests for information and copies of significant documents when necessary to keep the client so informed;…
(b) A lawyer shall explain a matter to the extent reasonably* necessary to permit the client to make informed decisions regarding the representation…
Comment
[1] A lawyer will not be subject to discipline under paragraph (a)(3) of this rule for failing to communicate insignificant or irrelevant information. (See Bus. & Prof. Code, § 6068, subd. (m).) Whether a particular development is significant will generally depend on the surrounding facts and circumstances." (State Bar of California: Rules of Professional Conduct

conflict with federal law on the subject of cannabis regulation such that they cannot *consistently stand together* with federal law on the same subject. Respondent had and knew, or should have known they had, these duties the day they took office.

Given that we are several years down the road from when this *Communication* should have, but didn't, happen, it is entirely fair to say the Respondent has, in this regard, been derelict in their performance of both their *Duty of Diligence*[16] and their *Duty of Communication with Clients.* Beyond that, there is no reason to believe that in the two years Respondent Bonta has been Attorney General, any effort has been made by the California Department of Justice to restore the protection of §531 to California's medical cannabis regime participants. Petitioner is here asking the Court to compel Respondent to seek the severance of any and all provisions purporting to legalize and/or license the possession, cultivation and/or commerce in non-medical cannabis from California's medical cannabis regime.

In Respondent Bonta's duties as Attorney General he may not uphold **a**n initiative that violates the protections by the United States Constitution. (*Reitman v. Mulkey*, 387 U.S. 369,373 (1967)(RJN-29 at p. 9 ¶ 2)(striking down an initiative for violating the Equal Protection Clause)

In view of his involvement in the creation of SB 94, the lack of effort in this direction gives the appearance of having strong potential for the type of ***de facto*** though, in California, not ***de jure***, conflict of interest[17] referred to as a "conflict of roles. Given this appearance of potential conflict of interest, this should probably entail employing Independent Counsel or, at the absolute least, Respondent should initiate the necessary legal proceedings, then recuse themself.

On July 19, 2021, when Petitioner, acting as Director of Communications for the Wildstar gubernatorial campaign, advised Respondent, in his role as the State's Top Lawyer, as described on the

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[16] "Rule 1.3 Diligence
(a) A lawyer shall not intentionally, repeatedly, recklessly or with gross negligence fail to act with reasonable diligence in representing a client.
(b) For purposes of this rule, "reasonable diligence" shall mean that a lawyer acts with commitment and dedication to the interests of the client and does not neglect or disregard, or unduly delay a legal matter entrusted to the lawyer.
Comment
…[2] See rule 1.1 with respect to a lawyer's duty to perform legal services with competence

[17] "Rule 1.7 Conflict of Interest: Current Clients
(a) A lawyer shall not, without informed written consent* from each client …represent a client if there is a significant risk the lawyer's representation of the client will be materially limited by the lawyer's… own interests."

California Attorney General's website, of this positive conflict via U.S. Mail, Return Receipt Requested, the receipt came back in a timely fashion. As of eleven months later there has been no response. (RJN 48, 49, 50)

Petitioner asserts there is no administrative remedy available, thus, the sole available path to the restoration of Petitioner's equal protection of federal law—§531—is to compel Respondent through a Writ of Mandamus, to fulfill their duty to seek relief from egregious federal criminal jeopardy *de jure* for Petitioner and every other participant in California's medicinal cannabis program, and thereby remedy the violation, by restoring Petitioner and all California medical cannabis program participants' 14th Amendment protected right to equal protection of §531, through the severance of the provisions of SB 94 which create positive conflict on the subject of non-medicinal cannabis.

Thus, it is and was, Respondent's duty, as Attorney General, to protect Petitioner and other compliant California medicinal cannabis program participants' 14th Amendment right to the protection from federal criminal prosecution mandated by §531.

Given his involvement in the creation of SB 94, Obedience to his *Duty of Competence* would require that he not only "*keep abreast of the changes in the law and its practice*, but also that he fulfills his *Duty of Diligence,* which in this case would have required that immediately upon taking office he warn his clients of the legal significance of the decisions in MAMM and McIntosh. This was also required by his *Duty of Communication with Clients*. There is no evidence of him having done so. Given his involvement in the creation of SB-94, this gives the appearance of the type of ***de facto*** though, in California, not ***de jure***, conflict of interest referred to as a "conflict of roles."

While this isn't a central issue to the matter we are before this court on today, the question; "does Respondent have a duty to keep abreast of the laws?" must be considered. Respondent's actions were either a failure to fulfill his duty of "Competence," which requires that he keep "abreast" of developments in law" or a failure to fulfill his duty of "Communication With Clients" which Wildstar, as a resident of the State of California, was completely ignored in 3 separate attempts to reach out to Respondent and have him, or someone/anyone in his office, address the issues that were raised by Wildstar. (RJN-48, 49, 50)

However, insofar as this APWOM is concerned, those obligations Petitioner, in this matter, is solely seeking that the court mandate that Respondent fulfill those duties which, until now he has chosen to not perform.

Petitioner asserts the sole available path to the restoration of his equal protection of federal law—§531 is to compel Respondent, through a Writ of Mandamus, to fulfill their duty to seek relief

from egregious federal criminal jeopardy *de jure* for Petitioner and every other participant in California's medicinal cannabis program, and thereby remedy the violation, by restoring Petitioner and all California medical cannabis program participants' 14th Amendment protected right to equal protection of §531, through the severance of the provisions of SB 94 which create positive conflict on the subject of non-medicinal cannabis

In Respondent Bonta's duties as Attorney General he may not uphold **a**n initiative that violates the protections by the United States Constitution (*Reitman v. Mulkey*, 387 U.S. 369,373 (1967)(RJN-29 at p. 9 ¶ 2)(striking down an initiative for violating the Equal Protection Clause)

"Even though the Attorney General and Governor's decision to support an initiative in court is not ministerial, these officials could still be liable to a mandamus action if their decision stemmed from an abuse of discretionary power." (RJN-29 at p. 17 ch. E ¶1)

"Where the head of a department acts in a case, in which executive discretion is to be exercised; in which he is the mere organ of executive will; it is again repeated, that any application to a court to control, in any respect, his conduct, would be rejected without hesitation." California has embraced this fundamental principle of constitutional law. Subsequently, its courts only issue writs of mandamus when government officials violate a distinct ministerial duty derived from an identifiable statute." (RJN-29 at p. 10 ch. II A. ¶1)

XV. PETITIONER HAS ESTABLISHED EACH OF THE ELEMENTS REQUIRED FOR MANDAMUS RELIEF TO BE APPROPRIATE.

Petitioner has, herein, demonstrated by citation and narrative:

a) The existence of a federally-*established privilege* of *immunity*; (RJN's 21,22,27, 46, 53, 54, 55,56)
b) That he is a member of the class to whom the Courts have, by *necessary implication*, found Congress has granted that *privilege* of *immunity*;
c) That he benefitted from that protection prior to the passage of Prop 64 and its subsequent merging with MCRSA
d) That merging abridged Petitioners' *privilege*
e) How that merging abridged Petitioner's *privilege of immunity*

f) How that abridgement violated Petitioners 14th Amendment Right to "equal protection of the [federal] laws;"

g) Respondents had, and should have known they had, a duty to seek the restoration of §531's protection to California's medical cannabis regime and its substantively compliant participants;

h) That Petitioner has no other path than mandamus relief to remedy his egregious criminal jeopardy than through the disabridging of his *privilege* of *immunity;*

i) That when Respondent Bonta was advised, by certified mail, of the irreconcilable *positive conflict* between State and federal cannabis regulation, his office didn't acknowledge and respond to it;

j) The duties he petitions the Court to require Respondent Bonta, as the State's Senior Attorney to fulfill and the manner in which they are to be fulfilled.

"A writ of mandate may be issued only when there is not a plain, speedy and adequate remedy in the ordinary course of law. (CIV. Proc. Code. Secs. 1086, 1103, subd. (a); *Phelan v Superior Court* (1950) 35 Cal.2d 363, 366; accord, *Dhillon v. John Muir Health* (2017)(b)alleged the specific nature of his injuries (RJN-1 at 8:1-17, 9:1-26, 10:1-24; 11;1-24, 12:1-20) established standing through his direct and beneficial interest; and has defined and cited where to verify that Respondents and did, and do, have duties (RJN's 13,14,14) they have been derelict in performing.

Petitioner has: alleged the specific nature of his injuries; established standing through his direct and beneficial interest; and has defined and cited where to verify that Respondent did, and does, have duties they have been derelict in performing.

The injury to Petitioner is the legal jeopardy and the stress resulting from being deprived of §531's protections. (RJN-1 at 1:20-27, 3:20-24.) This constitutes a "colorable claim" regarding the violation of Petitioner's rights.

> "A writ of mandate may be issued by any court to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station, or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled, and from which the party is unlawfully precluded by that inferior tribunal, corporation, board, or person." (Civ. Proc. Code, sec. 1085, subd. (a).)

Petitioner has established that the beneficial interest is his 14th Amendment rights to not having his privileges and immunities abridged by state law and to equal protection of the law--§531.

The injury to Petitioner is the legal jeopardy and the stress resulting from being deprived of §531's protections. (RJN-1 at 1:16-22, 3:20-24.) This constitutes a "colorable claim" regarding the violation of Petitioner's rights.

XVI. WRIT RELIEF IS REQUIRED

"A writ of mandate is proper if…as has been stated herein, the Petitioner has a beneficial interest that may only be protected by the issuance of the writ (*Waste Management of Alameda County, Inc v. County of Alameda* (2000) 79 Cal. App. 4th 1223, 1232; accord, *Brown v. Crandall* (2011) 198 Cal. App. 4th 1,8.).

"A writ of mandate may be issued by any court to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station, or to compel the admission of a party to the use and enjoyment of a right or which the party is entitled, and from which the party is unlawfully precluded by that inferior tribunal, corporation, board, or person." (Civ. Proc. Code, sec. 1085, subd. (a).)

A writ of mandate is proper if the Court's discretion can be exercised in only one way. (*Huratdo v. Superior Court* (1974) 11 Cal.3d 574, 579; *Flores v Department of Corrections* (2014) 224 Cal. App. 4th 199,208.) Additionally, a writ of mandate is proper when the duty of the court to which the writ is directed is absolute. *(See Butler v. Superior Court* (2002) 104 Cal. App 4th 979, 982 [writ of mandate is proper because trial court failed to comply with appellate court's remand instructions], or actions challenging the validity of a statute or ordinance (*See Pryor v. Municipal Cour*t (1979) 25 Cal. 3d 491,495), or, as has been stated herein, the Petitioner has a beneficial interest that may only be protected by the issuance of the writ (*Waste Management of Alameda County, Inc v. County of Alameda* (2000) 79 Cal. App. 4th 1223, 1232; accord, *Brown v. Crandall* (2011) 198 Cal. App. 4th 1,8.).

XVII. WRIT RELIEF IS MANDATED

A writ of mandate may be issued only when there is not a plain, speedy and adequate remedy in the ordinary course of law. (Cal. Code. Civ. Proc §§1086, 1103 subd. (a); *Phelan v Superior Court* (1950) 35 Cal.2d 363, 366; *accord*, *Dhillon v. John Muir Health* (2017).)

Petitioner has filed this action on his own behalf. (*See Bridget A. v. Superior Court* (2007) 148 Cal.App.4th 285, 300, fn. 5.) While Petitioner prays that his writ would be granted, should it not there

are a significant number of petitioners with a significant interest in this matter that would result in a class action proceeding be brought forth. (*See, e.g.*, *Mooney v. Picket* (1971) 4 Cal.3d 669, 671: *Riese v. St. Mary's Hospital & Med. Ctr*. (1987) 209 Cal.App.3d 1303.) A writ will be granted if it is necessary to protect a substantial right and it is shown that substantial damage will be suffered if the writ is denied. (*Parker v. Bowron* (1953) 40 Cal. 2d 344, 351.)

XVIII. CONCLUSIONS

Petitioner respectfully offers this Verified Amended Complaint for Writ of Mandate after having gone through a complete round of stating his causes of action, citing the law that supports his causes of action and what are, as have been stated herein, obvious conflicts between federal and state law. Petitioner realizes that a lower court may be reluctant to side with Petitioner and grant his Writ of Mandate but I would ask the court to consider the imposition and burden continued litigation will create on the higher courts when this matter can be settled in a lower court. Petitioner has no doubt there will be some "market adjustment: in a return to a not-for-profit, medical use of cannabis in California but Petitioner has every reason to believe that this "adjustment" is not only necessary to support our activities under federal law but to return medical cannabis to the people of California who for generations have toiled to bring the benefits of cannabis to those in need usually without regard to their ability to pay.

Petitioner respects some aspects of Prop. 64 and SB 94. The environmental protections, product testing, sentence expungements and social equity are valued components of these laws. But in the interest of "saving" 64 or 94 we cannot ignore the fact that these laws were passed in an effort to defraud the citizens of this state by asserting they could engage in an adult-use cannabis scheme that would not create a positive conflict with federal law. The granting of Petitioner's Writ of Mandate will immediately begin the process in which the Respondent's will correct the wrongs that Prop. 64 and SB 94 brought to this Petitioner and the People of California.

XIX. PRAYER FOR RELIEF

1. Wherefore Respondent prays the Amended Verified Petition for Writ of Mandate be issued under Code of Civil Procedure §1085,
2. In an alternative, for an order to show cause directed to the Respondent as to why the Court should not issue such a writ,

3. For such other or further relief deemed appropriate in the interest of justice.

XX. VERIFICATION

I, Darryl Cotton, have read the foregoing Amended Verified Petition for Writ of Mandate and all attached exhibits and am familiar with its contents. I am informed and believe the matters stated therein are true and, on that basis, verify that the matters stated therein are true.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct to the best of my knowledge.

Respectfully submitted and executed on June 27, 2022, in San Diego, California.

By: _____
DARRYL COTTON
Petitioner *In Propria Persona*