IN THE DISTRICT COURT OF THE NINTH JUDICIAL DISTRICT
TETON COUNTY, WYOMING

THE STATE OF WYOMING	) Criminal Action No. 2703
	)
Plaintiff	) DEFENDANT'S NOTICE OF MOTION
	) AND MOTION TO DISMISS THE
vs.	) INDICTMENT; MEMORANDUM OF
	) POINTS AND AUTHORITIES;
CASEY WILLIAM HARDISON	) DEFENDANT'S DECLARATION
	)
Defendant	) Date: 17 November 2020
	) Time: 10:00 a.m.
	)

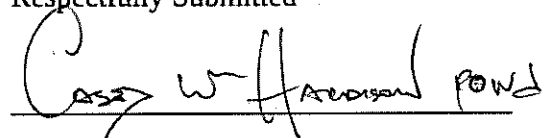
TO THE DISTRICT ATTORNEY AND TO THE ABOVE COURT

PLEASE TAKE NOTICE that on 17 November 2020 at 10:00 a.m. in the Criminal Division of the above-entitled court the Defendant, Casey William Hardison, will move to Dismiss the Indictment, claiming the Wyoming Controlled Substances Act, W.S. § 35-7-1001 *et seq.*, ("the Act") violates the Defendant's due process and equal protection rights guaranteed by the Wyoming Constitution and the Constitution for the United States of America.

This motion is based upon this notice, the attached memorandum of points and authorities, the attached declaration of Defendant, and on such oral and documentary evidence and arguments as may be presented at the hearing of this motion.

Dated: 12 October 2020

Respectfully Submitted



Casey William Hardison, POWd

Defendant

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Defendant claims the Wyoming Controlled Substances Act ("the Act") W.S. § 35-7-1001 *et seq.* operates in an arbitrary and unequal manner rendering enforcement of § 1031(a)(ii) of the Act an assault on the Defendant's Due Process and Equal Protection rights guaranteed by the Wyoming Constitution and the Constitution for the United States. The Defendant's restraint of liberty is therefore illegal and the indictment must be dismissed.

The Defendant asserts the Act arbitrarily burdens at least six "'fundamental' liberty interests":

1) his right to be free from arbitrary imprisonment;
2) his right to property;
3) his right to privacy;
4) his right to freedom of thought;
5) his right to pursue happiness; and
6) his right to be free from discrimination.

Where fundamental liberty interests are burdened by the State, the review standard is "strict scrutiny" *Skinner v Oklahoma ex rel Williamson*, 316 U.S. 535, 541 (1942).

II. STATEMENT OF FACTS

This case involves delivery by the Defendant of the controlled substance Marihuana in three separate controlled purchases between the 5th day of June 2017 and the 6th day of August 2018 by the State of Wyoming, Office of the Attorney General, Division of Criminal Investigation.

The Defendant has been charged by the State of Wyoming with three counts of Delivery of a Controlled Substance, contrary to § 1031(a)(ii) of the Act; and, two counts of Aggravated Assault and Battery, contrary to W.S. § 6-2-502(a)(ii), arising from the August 6th, 2018 attempt to arrest the Defendant in which the Defendant eluded capture.

III. Legal Arguments

1. The Defendant is denied Equal Protection because § 1011(e) leaves § 1031(a)(ii) operating contrary to Article 1 § 34 of the Wyoming Constitution.

Article 1 § 34 of the Constitution for the State of Wyoming declares:

> "All laws of a general nature shall have uniform operation."

The relevant portion of § 1031(a)(ii) states:

> (a) Except as authorized by this act, it is unlawful for any person [...] to deliver [...] a controlled substance. Any person who violates this subsection with respect to: [...]
> (ii) Any other controlled substance classified in Schedule I, II, III, is guilty of a crime and upon conviction may be imprisoned for not more than ten (10) years, fined not more than ten thousand dollars ($10,000.00), or both.

The relevant portion of § 1011(e) states:

> "Authority to control under [the Act] does not extend to distilled spirits, wine, malt beverages, or tobacco."

Though § 1031(a)(ii) appears capable of operating uniformly, § 1011(e) prevents its uniform operation without a rational and objective basis fairly related to the object of regulation.

The effect of § 1011(e) is to protect the liberties of alcohol and tobacco consumers, merchants and manufacturers while leaving the Defendant subject, via § 1031(a)(ii), to the Act's criminal sanctions for exercising indistinguishable liberties regarding an equally or less harmful drug.

This disparate treatment denies the Defendant equal protection and furthers no narrowly defined, necessary and compelling State interest. *Cf. Allhusen v State ex rel Wyo. Mental Health Professions Licensing Bd.*, 898 P.2d 878; *Mountain Fuel Supply Co v Emerson*, 578 P.2d 1351.

2. The Defendant is denied Due Process because § 1011(e) leaves § 1031(a)(ii) operating contrary to Article 1 § 7 of the Wyoming Constitution.

Article 1 § 7 of the Constitution of the State of Wyoming declares:

> "Absolute, arbitrary power over the lives, liberty and property of freemen exists nowhere in a republic, not even in the largest majority."

The relevant portion of § 1011(e) states:

> "Authority to control under [the Act] does not extend to distilled spirits, wine, malt beverages, or tobacco."

Here in § 1011(e) the majority preserves liberties for alcohol and tobacco manufactures, merchants and consumers whilst denying the Defendant identical liberty in § 1031(a)(ii). This arbitrariness is *the* evil Justice Jackson condemned in *Railway Express Agency v New York*, 336 U.S. 106, 112 (1949):

> "[C]ities, states and the Federal Government must exercise their powers so as not to discriminate between their inhabitants except on some reasonable differentiation fairly related to the object of regulation. This equality is not merely abstract justice. The framers of the Constitution knew, and we should not forget today, that there is no more effective practical guarantee against arbitrary and unreasonable government than to require that the principles of law which officials would impose upon a minority must be imposed generally. Conversely, nothing opens the door to arbitrary action so effectively as to allow those officials to pick and choose only a few to whom they will apply legislation and thus to escape the political retribution that might be visited upon them if larger numbers were affected. Courts can take no better measure to assure that laws will be just than to require that laws be equal in operation."

By "picking and choosing, in § 1011(e), a few to protect from the Act "so as to escape the retribution that might be visited upon them if larger numbers were affected," the State arbitrarily denies the Defendant due process. *Cf.* Justice Harlan's dissent in *Poe v Ullman*, 367 U.S. 497, 543 (1961).

3. Were it not for § 1011(e), alcohol and tobacco would be subject to the Act's control and their consumers, merchants and manufacturers would be subject to criminal sanction. They are thus the appropriate comparators in this case.

The 'control' criteria in § 1011(a)-(b) suggest the Act's "object of regulation" is human action with respect to potentially harmful "drugs" or "substances" that may have dependence liability when used.

The Act's control considerations envision a coherent framework for science based risk-benefit analysis. Sections 1011(a)-(b) regarding "Control of substances" states:

> "(a) The commissioner **shall** administer this act and with the advice of the advisory board established in W.S. 35-7-1005 may add substances to or delete or reschedule all substances enumerated in the schedules in W.S. 35-7-1014, 35-7-1016, 35-7-1018, 35-7-1020 and 35-7-1022 pursuant to the procedures of the Wyoming Administrative Procedure Act. In making a determination regarding a substance, the commissioner **shall** consider the following:
>
> (i) The actual or relative potential for abuse;
> (ii) The scientific evidence of its pharmacological effect, if known;
> (iii) The state of current scientific knowledge regarding the substance;
> (iv) The history and current pattern of abuse;
> (v) The scope, duration, and significance of abuse;
> (vi) The risk to the public health;
> (vii) The potential of the substance to produce psychic or physiological dependence liability;
> (vii) Whether the substance is an immediate precursor of a substance already controlled under this article; and
> (ix) Its other uses, both medical and commercial.
>
> (b) After considering factors enumerated in subsection (a) of this section, the commissioner **shall make findings** with respect thereto and issue a rule controlling the substance if he finds the substance has a potential for abuse." [Emphasis added]

Section 1013(a)(i)-(ii) regarding "Findings requiring inclusion of substances in Schedule I" states:

> "(a) The commissioner **shall** place a substance in Schedule I if he finds that the substance:
>
> (i) Has a high potential for abuse; and
>
> (ii) Has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision." [Emphasis added]

Had one not read § 1011(e), the definition of "Drug" in § 1002(a)(xi)(C) as "[s]ubstances (other than food) intended to affect the structure or any function of the body of man or animals" suggests to any reasonable person that alcohol and tobacco would be subject under, § 1011(a)-(b), to the Act's control.

And it cannot have escaped the State's cognizance that both alcohol and tobacco rank highly in terms of harm: each have a "high potential for abuse" and "no accepted medical use". Thus, by the mandatory "shall make findings" in § 1011(b) and the mandatory "shall" in § 1013(a), alcohol and tobacco would be Schedule I controlled substances were it not for § 1011(e).

To grok the harm caused by tobacco addiction, look no further than the "Tobacco Settlement Funds Act", W.S. § 9-4-1201 *et seq*. And, alcoholism led to our Nation's *first* failed prohibition.

A 2007 paper entitled *Development of a Rational Scale to assess the harm of drugs of potential misuse* in the medical journal *The Lancet* (Volume 369: 1047-1053) illuminated arbitrariness:

> "The current classification system has evolved in a unsystematic way from somewhat arbitrary foundations with seemingly little scientific basis.[…] Our findings raise questions about the validity of the current [Controlled Substances] Act classification, despite the fact that it is nominally based on an assessment of risk to users and society. [...] Our results emphasise that the exclusion of alcohol and tobacco from [the] Act is, from a scientific perspective, arbitrary. We saw no clear distinction between socially acceptable drugs and illicit substances. The fact that the most widely used legal drugs lie in the upper half of the ranking of harm is surely important information that should be taken into account in public debate on illegal drug use."

In 1994, the Executive Director of the United Nations International Drug Control Program said as much in his Opening Statement to the 37th Session of the Commission on Narcotic Drugs:

> "[It is] increasingly difficult to justify the continued distinction among substances solely according to their legal status and social acceptability. Insofar as nicotine-addiction, alcoholism, and the abuse of solvents and inhalants may represent greater threats to health than the abuse of some substances presently under international control, pragmatism would lead to the conclusion that pursuing disparate strategies to minimize their impact is ultimately artificial, irrational and uneconomical."

A. Comparator Facts

1. Tobacco and Marihuana are plants people have grown, traded and ingested for over 500 years for the psychoactive drugs they naturally contain, nicotine and cannabinoids respectively.
2. Nicotine in high doses is a lethal poison.
3. Nicotine has a high physiologic and psychic dependence liability and no medical use.
4. Tobacco smoking is the leading cause of lung cancer, a leading killer of American citizens.
5. Cannabinoids even in extremely high doses are non-lethal and produce nothing more serious than a catatonic stupor in human and animal studies.
6. Marihuana smoking is not known to cause lung cancer.
7. Cannabinoids have only a mild psychic dependence liability.
8. Facts which led to original scheduling of Marihuana did not exist then and do not exist now. "Marihuana" was a pejorative name, a sleight of hand, misleading doctors who knew the plant as *Cannabis* from the United States Pharmacopoeia.
9. The cannabinoids found within Marihuana are known to be involved in *all* pathophysiology in mammals and thus have recognized medical value and a margin of safety when used as such.
10. Thirty-three states recognize the medical value of Marihuana and the cannabinoids and have created regulatory structures enabling their citizens to grow, purchase and use the plant subject to reasonable regulations narrowly tailored for the protection of compelling state interests.
11. The United States holds patents on medical use of *Cannabis* and cannabinoids contradicting its scheduling findings at the Federal level and by proxy through §1011(d) of the Act.

4. The effect of § 1011(e) on § 1031(a)(ii) denies the Defendant Due Process contrary to the Fourteenth Amendment to the Constitution for the United States.

The Due Process Clause of the Fourteenth Amendment to the Constitution for the United States states:

> "No State shall … deprive any person of life, liberty, or property, without due process of law"

Three Supreme Court Justices, writing jointly the Opinion of the Court in *Planned Parenthood of Southeastern Pa. v Casey*, 505 U.S. 833, 846 (1997) described the Due Process Clause:

> "Although a literal reading of the [Due Process] Clause might suggest that it governs only the procedures by which a State may deprive persons of liberty, for at least [133] years, since *Mugler v Kansas*, 123 U.S. 623, 660-661 (1887), the Clause has been understood to contain a substantive component as well, one "barring certain government actions regardless of the fairness of the procedures use to implement them." *Daniels v Williams*, 474 U.S. 327, 331 (1986). As Justice Brandeis (joined by Justice Holmes) observed, "[d]espite arguments to the contrary which had seemed to me persuasive, it is settled that the due process clause of the Fourteenth Amendment applies to matters of substantive law as well as procedure. Thus all fundamental rights comprised within the term liberty are protected by the Federal Constitution from invasion by the States." *Whitney v California*, 274 U.S. 357, 373 (1927) (concurring opinion) "[T]he guaranties of due process, though having their roots in Magna Carta's *'per legum terrae'* and considered as procedural safeguards 'against executive usurpation and tyranny,' have in this country 'become bulwarks also against arbitrary legislation.'" *Poe v Ullman*, 367 U.S. 497, 541 (1961) (Harlan, J. dissenting from dismissal on jurisdictional grounds) (quoting *Hurtado v California*, 110 U.S. 516, 532 (1884))."

It is undeniable that § 1011(e) renders the Act "arbitrary legislation". Without justification, persons interested in alcohol and tobacco are immune from the Act's criminal sanctions. This protects not just their property rights in alcohol and tobacco from State encroachment but their right to alter their mental functioning with these drugs. On what rational and objective basis are persons protected under § 1011(e) entitled to keep their fundamental liberties and the Defendant is not?

A possible breakdown of the elements of the Defendant's Due Process claim looks like this:

1. Drugs are tangible property.
2. Marihuana is a plant of the genus *Cannabis.*
3. Tobacco is a plant of the genus *Nicotiana.*
4. Tobacco ingestion and Marihuana ingestion both alter mental and physical functioning.
5. The Wyoming Controlled Substances Act regulates property rights in drugs, i.e. "[s]ubstances (other than food) intended to affect the structure or any function of the body of man or animals", particularly drugs which *may* cause harm and/or dependence liability to the end user.
6. Tobacco and Marihuana fit squarely within this definition of drugs and thus the Act's purview.
7. Property rights burdened by the Act include: use, possession, delivery, manufacture, etc.
8. The subject of this indictment is "delivery" as controlled by § 1031(a)(ii).
9. Marihuana delivery is "arguably indistinguishable" from tobacco delivery.
10. Thus the Defendant is "similarly situated" to the tobacco merchant.
11. Protecting the tobacco merchant from the Act's criminal sanctions via § 1011(e) is from a scientific perspective arbitrary and irrational.
12. Protecting the fundamental liberty interests of the tobacco merchant whilst unfairly denying that same liberty to the Defendant under threat of criminal sanction denies due process.
13. This denial of due process infringing the Defendant's fundamental liberties is neither rationally connected to, necessary, nor furthers any state interest allegedly protected by the Act.

"[H]istory and tradition is the starting point but not in all cases the ending point of the substantive due process inquiry," *County of Sacramento v Lewis,* 523 U.S. 833, 857 (1998), which holds that the Due Process Clause "forbids the government to infringe … 'fundamental' liberty interests *at all,* no matter what process is provided" *Reno v Flores,* 507 U.S. 292, 302 (1993)(original emphasis) unless that infringement "is both necessary and narrowly tailored to serve a compelling state interest." *Planned Parenthood of Southeastern Pa. v Casey,* 505 U.S. 833, 929 (1993)(Blackmun, J., concurring).

While several fundamental liberty interests are involved, at core, the exemption in § 1011(e) protects freedom of thought, one aspect of which is that longstanding, deeply embedded, historical tradition and tolerance of the consumption of a number of substances that alter mental functioning.

5. The Wyoming Controlled Substances Act heavily burdens Freedom of Thought, a fundamental liberty protected by the First, Ninth and Fourteenth Amendments to the Constitution for the United States of America.

In *Lawrence v Texas*, 539 U.S. 558 (2003), Justice Kennedy, delivering the Court's opinion said:

> "Liberty presumes an autonomy of self that includes freedom of thought".

In *Stanley v* Georgia, 344 U.S. 557 (1969), the Court struck down a law prohibiting obscene media as "wholly inconsistent with the First Amendment". In so doing, Justice Marshall declared:

> "Our whole constitutional heritage rebels at the thought of giving the government the power to control man's mind", at 565.

In *Palko v Connecticut*, 302 U.S. 319, 326-327 (1937), Justice Cardozo said:

> "Freedom of thought [...] is the matrix, the indispensable condition, of nearly every other form of freedom. With rare aberrations a pervasive recognition of that truth can be traced in our history, political and legal. So it has come about that the domain of liberty, withdrawn by the Fourteenth Amendment from encroachment by the states, has been enlarged by latter-day judgments to include ***liberty of the mind*** as well as liberty of action. The extension became, indeed, a logical imperative when once it was recognized, as long ago it was, that liberty is something more than exemption from physical restraint, and that even in the field of substantive rights and duties the legislative judgment, if oppressive and arbitrary, may be overridden by the courts." [Emphasis added]

The *only* right antecedent to the Defendant's right to "freedom of thought" is his "right to life". *Cf. Cruzan v Dir. Missouri Dept. of Health*, 497 U.S. 261 (1997). "Freedom of thought" gives birth to "freedom of speech" as protected by the *First* Amendment. That freedom of thought is "the matrix" of free speech is so obvious it went unenumerated in the Amendments to the Federal Constitution. This is self-evident – without free thought, free speech is impossible.

The Defendant asserts that he has a fundamental liberty interest in freedom of thought, which must mean, at minimum, his "decisional autonomy", *Casey*, at 916, to direct and control his own consciousness, in particular, his right to experience and engage in diverse mindstates occasioned by the ingestion of psychoactive plants or substances. This fundamental liberty interest – protected by the First and Ninth Amendments of the United States Constitution, each on their own, and through the Fourteenth Amendment's substantive Due Process command to the State – is a most basic and intimate exercise of "self-sovereignty." *Washington v Glucksberg*, 521 U.S. 702, 724 (1997). That the Act arbitrarily preserves this liberty for some and unequally denies it to others is *the* ultimate issue.

Concurring in *Griswold v Connecticut*, 381 U.S. 479 (1965), Justice Goldberg said:

> "A judicial construction that this fundamental right [to freedom of thought] is not protected by the Constitution because it is not mentioned in explicit terms by one of the first eight amendments or elsewhere in the Constitution would violate the Ninth Amendment, which explicitly states: "[t]he enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people," at 491-492. (*Mutatis mutandis*)

Justice Goldberg continued, *Griswold*, at 493-494:

> "In determining which rights are fundamental, judges are not left at large to decide cases in light of their personal and private notions. Rather, they must look to the "traditions and [collective] conscience of our people" to determine whether a principle is "so rooted [there] … as to be ranked fundamental." *Snyder v Massachusetts*, 291 U.S. 97, 105. The inquiry is whether [freedom of thought] "is of such a character that it cannot be denied without violating those 'fundamental principles of liberty and justice which lie at the base of our civil and political institutions' …" *Powell v Alabama*, 287 U.S. 45, 67. "Liberty" also "gains content from the emanations of … specific [constitutional] guarantees" and "from experience with the requirements of a free society". *Poe v Ullman*, 367 U.S. 497, 517." [*Mutatis mutandis*]

Fundamental rights "are protected not only against heavy-handed frontal attack, but also from being stifled by more subtle government interference." *Bates v Little Rock*, 361 U.S. 516, 523 (1960).

In *Griswold*, at 482, Justice Douglass, delivering the Opinion of the Court, said:

> "the State may not, consistent with the spirit of the First Amendment, contract the spectrum of available knowledge."

The Wyoming Controlled Substances Act subtly enshrines a *State-sanctioned Mind-Kontrol Program*, a *Checkpoint Consciousness*, which dictates permissible cognitive states and thereby "contract[s] the spectrum of available knowledge." The Act's prohibitions, in effect, place off limits the information or ideas available only in mindstates occasioned by the use of various psychedelic drugs the Act allegedly "controls". But what is actually being controlled is us. This is not liberty! This is tyranny: a severe deprivation of our natural right to experience the full spectrum of our consciousness.

"Experience should teach us to be most on our guard to protect liberty when the government's purposes are beneficent. ... The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well meaning but without understanding." *Olmstead v United States*, 277 U.S. 438, 479 (1928).

In *Griswold v Connecticut*, 381 U.S. 479 (1965), it was established that a woman had a *right to drugs* to alter the function of her reproductive system. *Griswold* was predicated on the fundamental "right to privacy", which includes "the right to be let alone", particularly in regards to interior spaces the State had no right to search or intrude. There, the Court thought it "repulsive" we would "allow the police to search the sacred precincts of marital bedrooms for telltale signs of the use of contraceptives", *id.* at 485-486, but since the Federal Controlled Substances Act, and its adoption as the Wyoming Controlled Substances Act, we search the bloodstreams, urine, vaginas, and rectums, the sacred precincts of our fellow man, for the telltale signs of "controlled drug" use and think it perfectly just. This rape of human dignity and bodily integrity is not the liberty the Framers had in mind.

As early as 1891, the Supreme Court said, "[n]o right is held more sacred, or is more carefully guarded by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others." *Union Pacific R. Co. v Botsford*, 141 U.S. 250, 251 (1891). The Wyoming Controlled Substances Act is an arbitrary and unequal restraint on the Defendant's right to "control his own person", indeed, his right to "control his own [mind]."

6. The effect of § 1011(e) on § 1031(a)(ii) denies the Defendant Equal Protection contrary to the Fourteenth Amendment to the Constitution for the United States.

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution states:

> "No State shall … deny to any person within its jurisdiction the equal protection of the laws."

The Equal Protection Clause guarantees all people receive equal treatment under the law. It is "a direction that all persons similarly situated should be treated alike." *Cleburn v Cleburn Living Center Inc*, 473 U.S. 432, 439 (1985). It prohibits "disparity in treatment by a State between classes of individuals whose situations are arguably indistinguishable." *Ross v Moffitt*, 417 U.S. 600, 609 (1974).

One possible breakdown of the elements of the Defendant's Equal Protection claim looks like this:

1. Drugs are tangible property.
2. Marihuana is a plant of the genus *Cannabis.*
3. Tobacco is a plant of the genus *Nicotiana.*
4. Tobacco and Marihuana ingestion both alter mental and physical functioning.
5. The Wyoming Controlled Substances Act regulates property rights in drugs, i.e. "[s]ubstances (other than food) intended to affect the structure or any function of the body of man or animals", particularly drugs which may cause harm and/or dependence liability to the end user.
6. Tobacco and Marihuana fit squarely within this definition of drugs and thus the Act's purview.
7. Property rights burdened by the Act include: use, possession, delivery, manufacture, etc.
8. The subject of this indictment is "delivery" as controlled by § 1031(a)(ii).
9. Marihuana delivery is "arguably indistinguishable" from tobacco delivery.
10. The Defendant is "similarly situated" to the tobacco merchant protected, via § 1011(e), from the Act's criminal sanctions.
11. Compared with those protected via § 1011(e), the Act disparately burdens the Defendant's physical liberty, rights to property and privacy, freedom of thought and pursuit of happiness.
12. The Defendant's disparate treatment is neither rationally connected to, necessary, nor furthers any state interest allegedly protected by the Act.

"[The Defendant's] salvation is the Equal Protection Clause, which requires the democratic majority accept for themselves and their loved ones what they impose on you and me." *Cruzan v Dir. Missouri Dept. of Health*, 497 U.S. 261, 300 (1990). And yet § 1011(e) shows, on its face, the democratic majority have failed to "accept for themselves", have failed to "impose generally", "the principles of law" that they "impose on a minority" such as the Defendant. *Railroad Express Agency*, at 112.

In ceasing to be a neutral law of general applicability, by making an exemption in § 1011(e) for persons interested in alcohol and tobacco, the Act has failed to "unquestionably comply" with the Equal Protection Clause. *New York City Transit Authority v Beazer*, 440 U.S. 568, 587 (1979). As a result, the Act fails to provide the Defendant "equal protection of the law."

7. No Compelling State Interest can justify the Defendant's differential treatment.

"Where there is a significant encroachment on personal liberty, the State may prevail only upon showing a subordinating interest which is compelling", *Bates v Little Rock*, 361 U.S. 516, 524 (1960), "necessary and narrowly tailored," *Casey*, at 929.

And, "[it is] established in strict scrutiny jurisprudence that 'a law cannot be regarded as protecting an interest "of the highest order" ... when it leaves appreciable damage to that supposedly vital interest unprohibited.'" *Church of Lukumi Babalu Aye, Inc. v Hialeah*, 508 U.S. 520, 547, (1993) (quoting *Florida Star v B.J.F.*, 491 U.S. 524, 541 (1989)). Thus, whatever subordinating interest Wyoming asserts the Controlled Substances Act protects, it cannot be necessary, compelling, nor subordinating if it excludes alcohol and tobacco – two of the most addictive, harmful psychoactive drugs – from its purview. In so doing, the State "leaves appreciable damage to [the Act's] supposedly vital interest".

It took a Constitutional Amendment to prohibit alcohol and yet another to reverse course when that prohibition failed. That's the nature of the competition between the State's interest in attenuating harms from substance use – known at least since Plato's *Pharmakon* – and the fundamental liberties of persons so regulated. If it is unacceptable to prohibit alcohol and tobacco use and commerce, because of the liberties asserted, it cannot be acceptable to prohibit Marijuana use and commerce. In so prohibiting, the Act discriminates against the Defendant because of his "drug orientation".

8. § 1011(e) creates a suspect classification, discrimination because of "drug orientation".

The Defendant asserts the time has come to recognize "drug orientation" as a suspect classification under the Due Process and Equal Protection Clauses of the Fourteenth Amendment with all the attendant "strict scrutiny" that demands where fundamental rights are involved. *Skinner*, at 541.

Plessy v Ferguson, 163 U.S. 537 (1896) held that laws mandating racial segregation in public transportation did not deny equal protection, rejecting the argument that enforced racial separation treats the black race as inferior. *Brown v Board of Education*, 347 U.S. 483 (1954) overruled *Plessy's* holding. The Court in *Brown* observed that whatever might have been the understanding in *Plessy's* time of the power of segregation to stigmatize those who were segregated with the "badge of inferiority," it was clear by 1954 that legally sanctioned segregation had just such an effect, to the point that racially separate public education facilities were deemed inherently unequal.

When a State declares the Defendant's conduct criminal but not the identical conduct committed by persons with respect to alcohol and tobacco, "that declaration in and of itself is an invitation to subject [the Defendant] to discrimination both in public and private spheres". *Lawrence*, at 568.

By drawing a distinction in § 1011(e), the State is, in effect, saying these drugs are "good" drugs; and, everything prohibited under the Act used for pleasure or even to drown sorrows, are "bad" drugs. This pharmacochauvinism has a deeply stigmatizing effect, branding some "drug users" with *Plessy's* "badge of inferiority". As a drug user, the Defendant is tired of being stigmatized for his "drug orientation," hunted by an arbitrary law criminalizing his inherently innocent activity and branding him with that "badge of inferiority". "There can hardly be a more palpable discrimination against a class than making conduct that defines that class criminal." *Romer v Evans*, 517 U.S. 620, 641 (1996).

A law which uses the State's police power to discriminate against a person for a "drug orientation" of which the majority morally disapproves cannot be reconciled with the fundamental guarantees of liberty protected by the Constitution for the United States. *Cf. Bostock v Clayton County*, 590 U.S. ___ (2020); *Obergefell v Hodges*, 576 U.S. 644 (2015); *United States v Windsor*, 570 U.S. 744 (2013); *Lawrence v Texas*, 539 U.S. 558 (2003).

IV. Conclusion

All courts have an inherent, constitutional duty to ensure that its process is not abused by an unchecked executive or legislature infringing the rights of the people. This is a fundamental principle of the Rule of Law.

The Defendant has given six grounds on which to declare the Wyoming Controlled Substances Act unconstitutional and thus any attempts to enforce its measures an abuse of this Court's process.

1. The Act is not a neutral law of general applicability.
2. The Act is arbitrary in who it exempts from its criminal sanctions.
3. The Act violates the Due Process Clause.
4. The Act infringes Freedom of Thought.
5. The Act violates the Equal Protection Clause.
6. The Act creates a Suspect Classification.

The issue at the heart of this matter is whether the majority may use the power of the State to enforce its arbitrary view on the whole of society through operation of the criminal law regarding which drugs are acceptable to use to alter ones mental functioning and which drugs are not. In giving a hall pass to alcohol and tobacco manufacturers, merchants and users under § 1011(e), the Wyoming Controlled Substances Act effectively enshrines a state-sponsored mind control program.

If this law regulated coat wearing and it protected those who wore a black or white coat yet held anyone who wore a coat of color, especially a coat of many colors, as contravening the Coat Law's police power this Court would have no qualms in striking down the Coat Law as arbitrary and irrational and declaring the unequal treatment of some but not all coat wearers as unconstitutional.

The Defendant has demonstrated that the Wyoming Controlled Substances Act is repugnant to State and Federal Constitutions. This Court has a duty to protect the Defendant from an arbitrary and unreasonable law. This Court must dismiss all counts against the Defendant and Order his immediate release as all counts arise from the State's attempt to enforce an unconstitutional law.

This Motion to Dismiss the Indictment seeking Constitutional protection by the Court, dated this 12th day of October in the year Two Thousand and Twenty is respectfully submitted.

The Defendant prays for this Court's protection.

– fiat justitia, ruat caelum!

Casey William HARDISON, POWd

Defendant

ACKNOWLEDGEMENT

STATE OF WYOMING)
) SS.
COUNTY OF TETON)

Subscribed and sworn to before me by _____

this _____ day of _____ 2020.

_____

Notary Public

My Commission Expires: _____