

COMMONWEALTH OF MASSACHUSETTS  
SUPREME JUDICIAL COURT

ESSEX, ss.

Criminal Action  
No. SJC-11216

**COMMONWEALTH OF MASSACHUSETTS,**  
Appellee-Plaintiff,

v.

**ANTONIO L. PACHECO,**  
Appellant-Defendant.

**INTERLOCUTORY APPEAL ON DIRECT APPELLATE REVIEW,**  
OF A 2011 DENIAL OF A MOTION TO SUPPRESS EVIDENCE (BY  
FORTES-WHITE, J.) ON A 2011 CRIMINAL COMPLAINT, ISSUED  
BY THE LYNN DIVISION OF THE DISTRICT COURT DEPARTMENT

**BRIEF AND APPENDIX OF *AMICUS CURIAE*,**  
**IN SUPPORT OF THE APPELLANT-PACHECO**

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In support of the Appellant-Pacheco

Dated: November 15, 2012

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**AS THIS COURT CONSIDERS WHETHER TO EXPAND THE APPLICATION OF CRIMINAL PROSECUTION AND THE RISK OF ARREST AND INCARCERATION TO ADULTS SHARING NON-CRIMINAL QUANTITIES OF MARIJUANA, DATA WORTHY OF JUDICIAL NOTICE RAISES A SUBSTANTIAL QUESTION ABOUT WHETHER A RATIONAL BASIS FOR MARIJUANA PROHIBITION STILL EXISTS.**

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INTEREST OF *AMICUS CURIAE*

The National Organization for the Reform of Marijuana Laws, Inc. (NORML) is a nonprofit educational corporation organized in 1971 under the laws of the District of Columbia, with its primary office located in Washington, D.C. NORML has more than 13,000 dues paying members, 1.3 million internet-based supporters, and 154 state and local chapters from Hawaii to Maine, including the Massachusetts Cannabis Reform Coalition, Inc. (a non-profit educational corporation organized under Massachusetts law), its local state affiliate. NORML is a consumers' and law-reform advocacy organization which participates in the national debate over state and federal marijuana prohibition laws. By transforming strict criminal prohibition, to state-controlled licensing and taxation of cultivation and distribution of marijuana to adults (similarly to alcohol and tobacco), NORML advocates that legalization will reduce: Illegal distribution and its associated crime and violence; the cost of law enforcement; and youth access to marijuana. State and federal prohibition of adult use of this organic, nontoxic mood-adjusting

substance has been demonstrably far more damaging to public safety and health than abuse (rather than mere use\*) of the substance.

REASONS WHY AN *AMICUS* BRIEF IS DESIRABLE

On June 12, 2012, this Court issued a solicitation for *Amicus* Briefs or Memoranda on *inter alia* the following issue in this case:

Whether the sharing of a non-criminal quantity of marijuana for the purpose of smoking it constitutes unlawful distribution of the substance?

The appellee-defendant's brief argues (at page 13-18) that sharing (a non-criminal quantity of marijuana for the purpose of smoking it) cannot "ironic[ally]"

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\* Federally collected data in 2003 shows: 6% Americans and 8% of Massachusetts residents have used marijuana within the last thirty days; 70 million American citizens have used marijuana at some time in their lives. Use and access rates remain relatively unchanged despite more than 70 years of federal prohibition (and more than a century of Massachusetts prohibition), and despite the rate of national marijuana arrests of more than one person every minute of every day. Substance Abuse and Mental Health Services Administration Office of Applied Studies, Preliminary Estimates from the 1995-2003 National Household Survey on Drug Abuse [Note: The survey identifies all marijuana use, regardless of frequency or impact on the user, as "abuse"] (Washington, D.C.: U.S. Dept. of Health and Human Services, 1996-2004); FBI Uniform Crime Reports, Crime in the United States: 2009 (Washington, D.C.: U.S. Government Printing Office, 2010) (858,408 marijuana arrests nationally in 2009, one every 44.4 seconds).

transform noncriminal possession (protected by G.L. c. 94C, sec. 32L from criminal prosecution) into criminally-punishable "selling, manufacturing or trafficking" (explicitly excluded from conduct decriminalized by sec. 32L), nor criminal "distribution" under c. 94C, sec. 32C(a). The intent to share must be deemed "simple joint possession" protected by sec. 32L. The ACLU *Amicus* brief in support of the appellee-defendant argues that sec. 32L "by clear implication" compels the interpretation of sec. 32C(a) as being inapplicable to the sharing of a non-criminal quantity of marijuana for the purpose of smoking it.

This *Amicus* brief presents an additional reason for finding for the defendant and reversing the trial court: **With support for marijuana legalization growing beyond majority levels in the nation and Commonwealth (including 65% voter support for the 2008 marijuana decriminalization initiative, and 63% support for this month's 2012 medical initiative), and any benefits of marijuana prohibition beyond rational expectation after more than a century of prohibition enforcement, this Court should not expand criminal penalties to adults sharing non-criminal quantities of marijuana given the demonstrable irrationality of the state prohibition**

law.

This pleading is sourced as a "Brandeis brief,"\* relying primarily on government and professional sociological data and journals, and election returns, besides judicial precedent.

STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

After more than a century of prohibition enforcement's clear demonstration that any benefits of marijuana prohibition are beyond rational expectation, and with support for marijuana legalization growing beyond majority levels in the nation and Commonwealth, should this Court narrow the marijuana decriminalization law and expand criminal penalties to adults sharing non-criminal quantities of marijuana?

STATEMENT OF THE CASE

NORML adopts the Statement of the Case contained in the appellant-defendant's brief, adding only this Court's *Amicus* solicitation referred to above.

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\* Future U.S. Supreme Court Justice Louis D. Brandeis first filed such a pleading to support the constitutionality of state statutes protecting women and workers from unrestrained employer whim; the term refers to a briefing style that uses nonlegal supporting material, such as demographic data, and social policy and academic research and reports. *Muller v. Oregon*, 208 U.S. 412, 419 (1908) (referring to Brandeis' brief).

STATEMENT OF THE FACTS

NORML adopts the Statement of the Facts contained in the appellant-defendant's brief, adding only the survey report noted in the ACLU's *amicus* brief, that according to the 2010 National Survey on Drug Use and Health (compiled by the federal U.S. Department of Health and Human Services' Substance Abuse and Mental Health Services Administration - Center for Behavioral Health Statistics and Quality; 2010 SAMHSA drug survey):\* 63.4% of annual marijuana users gave away or shared some of the marijuana obtained in their most recent purpose. Additional facts appear in footnotes *infra*, regarding the 2010 SAMHSA drug survey, national and state polling data, and state initiative election returns; this Court may take judicial notice of this information on appeal, as data "capable of accurate and ready determination by resort to resources whose accuracy cannot reasonably be questioned." Mass. Ev. Guide, sec. 201(b)(2) and (c).

ARGUMENT

**AS THIS COURT CONSIDERS WHETHER TO EXPAND THE APPLICATION OF CRIMINAL PROSECUTION AND THE RISK OF**

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\* See [http:// www.samhsa.gov/data/NSDUH/2k10NSDUH/2k10Results.htm](http://www.samhsa.gov/data/NSDUH/2k10NSDUH/2k10Results.htm).

**ARREST AND INCARCERATION, TO ADULTS SHARING NON-CRIMINAL QUANTITIES OF MARIJUANA, DATA WORTHY OF JUDICIAL NOTICE RAISES A SUBSTANTIAL QUESTION ABOUT WHETHER A RATIONAL BASIS FOR MARIJUANA PROHIBITION STILL EXISTS.**

Marijuana has been prohibited by the Commonwealth for more than a century,<sup>\*</sup> predating federal prohibition in 1937. As marijuana use grew (at least among young people in the Commonwealth) during the late 1960's, however, the efficacy and rational basis for marijuana prohibition (enforced more strictly than Alcohol Prohibition,<sup>\*\*</sup> which unlike marijuana prohibition had medical-use and possession exceptions from its criminal provisions for manufacture and transport) became subject to scrutiny and challenge. Two cases in this Court (in 1969 and 1978), discussed below, upheld the state prohibition law.

Apart from the statutory interpretation arguments in the parties' and other *amicus* briefs filed in this case, two generations of experience and government

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\* For a precursor of the current prohibition law, G.L. c. 94C, sec. 34, see St. 1911, c. 372, sec. 2.

\* \* Under Alcohol Prohibition, only the "manufacture, sale or transportation" of liquor were "prohibited." XVII Am. to the U.S. Constitution (1919), repealed by the XXI Am. (1933).

statistics render the rational basis of adult marijuana prohibition suspect. In the face of such strong evidence that prohibition lacks more than a random likelihood achieving its objectives, this Court ought not expand the application of this well-intended but anachronistic law. Moreover, clear and growing majorities of voters, in the Commonwealth and across the country, demonstrate that the policy of marijuana prohibition is obsolete and against the popular will.

**A. The Expanding Massachusetts and American Majorities for Marijuana Legalization.**

A century of enforcement, particularly during the forty years leading up to state voters' 65% support for the Commonwealth's decriminalization initiative in 2008,<sup>\*</sup> have brought us no closer to abstinence, nor deterred use or access by adults or adolescents.\*\*

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\* Return of Votes For Massachusetts State Election Certified by the Governor's Council; 62.8% of all ballots, 65.3% excluding blanks. The marijuana decriminalization initiative was approved by all the Commonwealth's 351 cities and towns, excepting only Lawrence and Clarksburg.

\* \* The 2010 SAMHSA drug survey cited *supra* found that marijuana, with 17.4 million regular users, is by far the most commonly used drug, and its popularity is growing: 6.9% of the population reported using marijuana regularly, up from 5.8% in 2007; among 12- to 17-year-olds, 7.4% reported having used marijuana

Marijuana prohibition no longer commands popular support: On October 17, 2011, the Gallup Poll (which began tracking legalization -- treating marijuana like alcohol and tobacco -- support in 1970, when it stood at 12-84%, opposing legalization) reported\* national support for legalization at 50-46%; on May 22, 2012, Rasmussen Reports found\*\* legalization support at 56-36%; on June 6, 2012, an AngusReid survey documented\*\*\* national support for marijuana legalization at 52-44%. Last year, Boston's DAPA Research Inc. reported legalization support among Massachusetts voters at 58-35% (Daparesearch.com).

Non-binding public policy questions (in compliance with G.L. c. 53, sec. 19; PPQs) proposing the legalization of marijuana (instructing the legislator to support a bill taxing and regulating marijuana like

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in the past month, about the same as 2007.

\* [Http:// www.gallup.com/poll/150149/Record-High-Americans-Favor-Legalizing-Marijuana.aspx](http://www.gallup.com/poll/150149/Record-High-Americans-Favor-Legalizing-Marijuana.aspx)

\* \* [Http:// www.rasmussenreports.com/public\\_content/lifestyle/general\\_lifestyle/may\\_2012/56\\_favor\\_legalizing\\_regulating\\_marijuana](http://www.rasmussenreports.com/public_content/lifestyle/general_lifestyle/may_2012/56_favor_legalizing_regulating_marijuana)

\*\* [Http:// www. angus-reid.com/polls/45091/americans-decry-war-on-drugs-support-legalizing-marijuana/](http://www.angus-reid.com/polls/45091/americans-decry-war-on-drugs-support-legalizing-marijuana/)

alcohol) appeared on the 2010 ballot in nine representative-districts located in Middlesex, Norfolk, Essex, Barnstable, Dukes, Franklin, and Hampshire Counties, winning in every district and garnering 59.44% of more than 180,000 yeas-and-nays.\* PPQs supporting marijuana legalization on the 2012 ballot this month, in three state senate and three state representative districts (located in Suffolk, Middlesex, Essex and Berkshire Counties), won approval each district and every (42 of the 44 municipalities reporting to date) city and town by more than 66%\*\* of nearly 230,000 voters.

Further evidence of the shrinking minority supporting prohibition as a national policy appears in the initiatives to repeal state prohibition laws (and replace them with controlled distribution-licensing and taxation) which passed in this month's election

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\* As reported by the Secretary of the Commonwealth's Election Division; <http://www.sec.state.ma.us/e/e/elepdf/rov10.pdf>, at pages 66 and 68.

\* <http://www.boston.com/news/special/politics/2012/general/mass-ballot-questions-election-results-2012.html>

cycle in Colorado and Washington state.\* As state law enforcement makes more than 99% (compared to federal arrests\*\*) of all marijuana arrests, any state's repeal of state prohibition enforcement dramatically challenges the effectiveness of federal prohibition enforcement.

Marijuana prohibition is an obsolete health policy, as measured by the effects of prohibition enforcement on the substance's ongoing popularity and accessibility. Prohibition enactment was based on fear of what used to be a novel inebriant used primarily (at least by popular perception) by ethnic minorities, singling out for criminal punishment (until 2008 in the Commonwealth, in a racially

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\* Colorado's Am. 64 ([http:// www.sos.state.co.us/pubs/elections/Initiatives/titleBoard/filings/2011-2012/30Final.pdf](http://www.sos.state.co.us/pubs/elections/Initiatives/titleBoard/filings/2011-2012/30Final.pdf)); 55-45% victory, <http://results.enr.clarityelections.com/CO/43032/111283/en/summary.html#>

Washington's Initiative Measure 502 ([https://wei.sos.wa.gov/agency/osos/en/press\\_and\\_research/PreviousElections/2012/General-Election/Documents/I-502\\_complete\\_text.pdf](https://wei.sos.wa.gov/agency/osos/en/press_and_research/PreviousElections/2012/General-Election/Documents/I-502_complete_text.pdf)); also winning 55-45%, <http://vote.wa.gov/results/current/Initiative-Measure-No-502-Concerns-marijuana.html>.

\* FBI's Uniform Crime Report for 2010 reported marijuana arrests by state law enforcement numbered 853,839, and 7,607 by federal authorities (0.89%) ([http:// bjs.ojp.usdoj.gov/fjsrc/](http://bjs.ojp.usdoj.gov/fjsrc/)).

discriminatory manner<sup>\*</sup>) a substance with no toxic human dose, unlike the regulated markets in popular toxics alcohol and tobacco.<sup>\*\*</sup> As this Court confronts the issue raised by the trial court and the prosecution, of whether to expand criminal prosecution of marijuana use for possession of decriminalized amounts of marijuana (based solely on the act of sharing noncriminal amounts), the rationality of marijuana prohibition (beyond its visible and accelerating erosion as a popular policy, supported by a shrinking minority of voters) is worthy of consideration.

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\* *"Decades of Disparity: Drug Arrests and Race in the United States,"* Human Rights Watch 2009 ([http://www.hrw.org/sites/default/files/reports/us0309web\\_1.pdf](http://www.hrw.org/sites/default/files/reports/us0309web_1.pdf)), found African-Americans were arrested on drug charges at rates that 2.8 to 5.5 times higher than white adults in every year from 1980 through 2007; between 2000 through 2007, the proportion of all drug arrests for marijuana possession ranged from 37.7 to 42.1%.

\* <sup>\*</sup> Hall, Room & Bondy, *"WHO Project on Health Implications of Cannabis Use: A Comparative Appraisal of the Health and Psychological Consequences of Alcohol, Cannabis, Nicotine and Opiate Use,"* Geneva, Switzerland: World Health Organization 1998.

B. When this Court examined constitutional challenges to Marijuana Prohibition in 1969 and 1978, it found sufficient evidence of minimum constitutional rationality in the possibility that its use by some persons may "create[] dangers both to users and to others justifying public control."

*Comm. v. Leis*, 355 Mass. 189, 191 (1969), examined *inter alia* whether marijuana prohibition was unconstitutionally irrational "without a showing that use of this substance poses a threat to the public health, safety, welfare or morals." Finding that experts reported marijuana "may contribute to the onset of a 'psychotic break' ... [w]hen used by persons who have personality disorders or who are predisposed to 'psychotic breaks,' ... magnified by the fact that persons having personality disorders and predispositions to 'psychotic breaks' are more likely to experiment with marihuana and to become psychologically dependent upon it," the Court deemed that risk a "sufficient basis of fact" to sustain any legislation's presumption of constitutionally-required minimum-rationality. *Id.* at 192-193. *Leis* also noted the correlation (without proof of causation) of marijuana use and the use of more dangerous drugs, and

the inability to reliably determine "whether the operator of a motor vehicle has recently smoked marihuana\*" (*id.* at 194) as additional "valid State interests" which enabled the prohibition law to pass constitutional muster.

In *Marcoux v. Attorney General*, 375 Mass. 63, 64 (1978), this Court reaffirmed its *Leis* ruling, that criminalizing personal-use possession amounts did not infringe on privacy rights, and thus was sustainable constitutionally if prohibition "bore a reasonable relation to any permissible object of legislation such as the protection of public health or safety." *Marcoux* cited *Leis*' observation of "the scientific evidence," as the constitutionally necessary "reason that the use of marihuana created dangers both to users and to others[,] justifying public control." *Ibid.* To reconsider this conclusion, this Court searched in vain for a "showing that, since *Leis*, doubts about the drug had been resolved in its favor

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\* *Leis* also noted that "alcohol is susceptible to a less restrictive alternative [than prohibition] means of control[; t]here are recognized, accurate means of determining its use and its abuse[; and that] the effects of alcohol upon the user are known." *Comm. v. Leis*, 355 Mass. 189, 198 (1969).

beyond reasonable scientific dispute ... ." *Id.* at 65.

Thus, the constitutionality of Marijuana Prohibition stands on the law's "reasonable relation to any permissible object of legislation such as the protection of public health or safety," with *Leis'* and *Marcoux'* particular reference to the harms of "contribut[ing] to the onset of a 'psychotic break[;]'" the correlation (without proof of causation) of marijuana use and the use of more dangerous drugs; and, the inability to reliably determine "whether the operator of a motor vehicle has recently smoked marihuana." More than forty years of data shows, however, that prohibition has no "reasonable relation" to the achievement of these objectives.

**C. Little more than a random relationship exists (much less a "reasonable relation") between the enforcement of Marijuana Prohibition and its intended objectives.**

The laudable goals of marijuana prohibition identified by *Leis* and *Marcoux* (detering psychotic mental illness, hard drug use and dangerous driving) find no evidence of achievement or protection, in the 34 years of prohibition enforcement since *Marcoux*

upheld prohibition.

### 1. Psychosis Prevention.

As a matter of common sense, use of psychoactive substances like marijuana by people with mental illness (particularly schizophrenia and other psychotic -- delusional -- disorders, DSM-IV/TR 293, 295, 297, 298) is risky behavior. But like another vulnerable group (adolescents) whose use of such substances is unhealthy, state prohibition law is no obstacle to access. To the contrary, such laws increase access by insisting that the undiminished demand be supplied by criminals, without licensing or business investment concerns to deter them from distributing to such problematic users. While the goal of prohibition is worthy, its impact fails to protect these sensitive groups; as any parent with an adolescent child knows, prohibited psychoactive drugs are easier to obtain than regulated alcohol.

Marijuana's impact on psychosis has been studied without a clear finding of causation. As reported in the Canadian Journal of Psychiatry:

The observational evidence and biological plausibility of the hypothesis that cannabis is a contributory cause of psychosis is at least as

strong as evidence for causal relations between heavy alcohol and amphetamine use and psychosis. ... The contentious issue of whether cannabis use can cause serious psychotic disorders that would not otherwise have occurred cannot be answered based on the existing data.

Hall and Degenhardt, "What Are the Policy Implications of the Evidence on Cannabis and Psychosis?" (2006, v. 51:566).

Despite the growth of marijuana use in the past fifty years (and its fluctuation during that time and within nations), "schizophrenia has a 'flat' epidemiological profile across space and time." McGrath, "Variations in the Incidence of Schizophrenia: Data Versus Dogma," Schizophrenia Bulletin (Oxford Journals, v. 32:197, 2006). Accordingly, mere use of marijuana appears to bear little relationship to the incidence of psychotic disorders.

## 2. Marijuana as a "Gateway" to Harder Drugs.

In 1999, the national Institute of Medicine (IOM, within the federal Department of Health and Human Services) issued a report (at the request of President Clinton's Director of the White House Office of National Drug Control, a/k/a "The Drug Czar") on various aspects of marijuana, including the so-called "Gateway Theory" (the hypothesis that using marijuana motivates people to use harder drugs like cocaine and

heroin). The IOM concluded: "There is no conclusive evidence that the drug effects of marijuana are causally linked to the subsequent abuse of other illicit drugs." Joy, Watson and Benson, "Marijuana and Medicine: Assessing the Science Base," Division of Neuroscience and Behavioral Research (IOM 1999). The IOM report also noted:

Because it is the most widely used illicit drug, marijuana is predictably the first illicit drug most people encounter. Not surprisingly, most users of other illicit drugs have used marijuana first. In fact, most drug users begin with alcohol and nicotine before marijuana, usually before they are of legal age. *Ibid.*

Accordingly, prohibition bears a far greater relationship to the incidence of harder drug use, than mere use of marijuana.

### 3. Dangerous Driving.

Whatever may be the problems in proving impairment between alcohol-using and marijuana-using drivers, the data clearly shows increased marijuana use has not caused highway mayhem nor any detectable increase in the accident rate. According to a research report commissioned by the federal National Highway Traffic Safety Administration (within the U.S. Department of Transportation), Robbe and O'Hanlon, "Marijuana and

Actual Driving Performance" (1993): Marijuana-using drivers (compared to alcohol-users) "were not only [more] aware of their intoxicated condition but were also attempting to compensate for it. ... [A]lcohol encourages risky driving whereas [marijuana] encourages greater caution ... ." Experimentation with drivers found marijuana "is not a profoundly impairing drug. It does affect automatic information processing, even after low doses, but not to any great extent after high doses." Thus, the relationship between marijuana use and increased driving risks (passing prohibition's negligible if any impact on marijuana use) appears dubious.

**D. With support for Marijuana Legalization growing beyond majority levels in the nation and Commonwealth, and any benefits of Marijuana Prohibition beyond rational expectation after more than a century of prohibition enforcement, this Court should not expand the criminal penalties of an irrational prohibition law to adults sharing non-criminal quantities of marijuana.**

Whether law enforcement and prosecutors should be spending considerable time and energy on otherwise decriminalized adult marijuana-sharers, diverting their vital yet limited resources from the prevention and detection of violence and property crime, are questions for police chiefs and their municipal

employers and for voters when county prosecutors face reelection. As a matter of law, whether marijuana prohibition has any rational tendency to achieve its intended objectives appears questionable on the available evidence.

This case raises the issue of whether this Court should expand the scope of the evaporating policy of criminal marijuana prohibition, in the face of that policy's consistent rejection by a growing majority of state voters (not to mention the legal doctrines expressed in the briefs of the criminal defendants and their supporting amici), to threaten criminal prosecution for sharing a marijuana joint. Apart from the fine points of statutory construction presented in the other briefs, this *Amicus* brief urges the Court to reject the prosecution's position as a matter of rationality, history and voting public's unambiguous rejection of prohibition.

CONCLUSION: RELIEF REQUESTED

For the foregoing reasons, this Court should answer the *Amicus* brief solicitation question ("whether the sharing of a non-criminal quantity of marijuana for the purpose of smoking it constitutes

unlawful distribution of the substance?") "No;" or,  
this Court should grant such other relief deemed  
appropriate.

Respectfully Submitted,

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Mass. R.App.P. 16(k) CERTIFICATION: I hereby certify  
that the brief complies with the rules of court that  
pertain to the filing of briefs, including, but not  
limited to: Mass. R.A.P. 16(a)(6) ("Any written or  
oral findings or memorandum of decision by the court  
pertinent to an issue on appeal included as an  
addendum to the brief"); Rule 16(e) (references to the  
record); Rule 16(f) ("If determination of the issues  
presented requires consideration of constitutional  
provisions, statutes, rules, regulations, etc. or  
relevant parts thereof, they shall be reproduced in  
the brief or in an addendum at the end"); Rule 16(h)  
(length of briefs); Rule 18 (appendix to the briefs);  
and Rule 20 (form of briefs, appendices, and other  
papers).

Dated: November 15, 2012

Michael D. Cutler

CERTIFICATE OF SERVICE: I hereby certify under the penalties of perjury, and pursuant to Mass. R.App.P. 13 and 19, that on this date I delivered to a delivery service: Two copies of this brief, for delivery to appellee's counsel, ADA Ronald DeRosa, Office of the District Attorney for the Eastern District, Ten Federal Street, Salem MA 01970; to appellant's counsel, CPCS Attorney Tracy Walts, One Salem Green, Suite 403, Salem MA 01970; to ACLU Amicus counsel, Alex G. Philipson, 97 Montvale Road, Newton Centre MA 02459; and (18 copies) to this Court, this date being within the time fixed for filing ( November 16, 2012).

Dated: November 15, 2012

Michael D. Cutler

## APPENDIX

### **G.L. c. 53, sec. 19.**

On an application signed by twelve hundred voters in any senatorial district, or by two hundred voters in any representative district, asking for the submission to the voters of that senatorial or representative district of any question of instructions to the senator or representatives from that district, and stating the substance thereof, the attorney general shall upon request of the state secretary determine whether or not such question is one of public policy, and if such question is determined to be one of public policy, the state secretary and the attorney general shall draft it in such simple, unequivocal and adequate form as shall be deemed best suited for presentation upon the ballot. Upon the fulfilment of the requirements of this and the two following sections the state secretary shall place such question on the official ballot to be used in that senatorial or representative district at the next state election.

### **G.L. c. 94C, sec. 32C(a).**

Any person who knowingly or intentionally manufactures, distributes, dispenses or cultivates, or possesses with intent to manufacture, distribute, dispense or cultivate a controlled substance in Class D of section thirty-one shall be imprisoned in a jail or house of correction for not more than two years or by a fine of not less than five hundred nor more than five thousand dollars, or both such fine and imprisonment.

### **G.L. c. 94C, sec. 32L.**

Notwithstanding any general or special law to the contrary, possession of one ounce or less of marihuana shall only be a civil offense, subjecting an offender who is eighteen years of age or older to a civil penalty of one hundred dollars and forfeiture of the marihuana, but not to any other form of criminal or civil punishment or disqualification. An offender under the age of eighteen shall be subject to the same forfeiture and civil penalty provisions, provided he or she completes a drug awareness program which meets the criteria set forth in Section 32M of this Chapter. The parents or legal guardian of any offender under the age of eighteen shall be

notified in accordance with Section 32N of this Chapter of the offense and the availability of a drug awareness program and community service option. If an offender under the age of eighteen fails within one year of the offense to complete both a drug awareness program and the required community service, the civil penalty may be increased pursuant to Section 32N of this Chapter to one thousand dollars and the offender and his or her parents shall be jointly and severally liable to pay that amount.

Except as specifically provided in "An Act Establishing A Sensible State Marihuana Policy," neither the Commonwealth nor any of its political subdivisions or their respective agencies, authorities or instrumentalities may impose any form of penalty, sanction or disqualification on an offender for possessing an ounce or less of marihuana. By way of illustration rather than limitation, possession of one ounce or less of marihuana shall not provide a basis to deny an offender student financial aid, public housing or any form of public financial assistance including unemployment benefits, to deny the right to operate a motor vehicle or to disqualify an offender from serving as a foster parent or adoptive parent. Information concerning the offense of possession of one ounce or less of marihuana shall not be deemed "criminal offender record information," "evaluative information," or "intelligence information" as those terms are defined in Section 167 of Chapter 6 of the General Laws and shall not be recorded in the Criminal Offender Record Information system.

As used herein, "possession of one ounce or less of marihuana" includes possession of one ounce or less of marihuana or tetrahydrocannabinol and having cannabinoids or cannabinoid metabolites in the urine, blood, saliva, sweat, hair, fingernails, toe nails or other tissue or fluid of the human body. Nothing contained herein shall be construed to repeal or modify existing laws, ordinances or bylaws, regulations, personnel practices or policies concerning the operation of motor vehicles or other actions taken while under the influence of marihuana or tetrahydrocannabinol, laws concerning the unlawful possession of prescription forms of marihuana or tetrahydrocannabinol such as Marinol, possession of more than one ounce of marihuana or tetrahydrocannabinol, or selling, manufacturing or trafficking in marihuana or tetrahydrocannabinol. Nothing contained herein shall prohibit a political subdivision of the Commonwealth from enacting

ordinances or bylaws regulating or prohibiting the consumption of marihuana or tetrahydrocannabinol in public places and providing for additional penalties for the public use of marihuana or tetrahydrocannabinol.

**G.L. c. 94C, sec. 34.**

No person knowingly or intentionally shall possess a controlled substance unless such substance was obtained directly, or pursuant to a valid prescription or order, from a practitioner while acting in the course of his professional practice, or except as otherwise authorized by the provisions of this chapter. Except as provided in Section 32L of this Chapter or as hereinafter provided, any person who violates this section shall be punished by imprisonment for not more than one year or by a fine of not more than one thousand dollars, or by both such fine and imprisonment. Any person who violates this section by possessing heroin shall for the first offense be punished by imprisonment in a house of correction for not more than two years or by a fine of not more than two thousand dollars, or both, and for a second or subsequent offense shall be punished by imprisonment in the state prison for not less than two and one-half years nor more than five years or by a fine of not more than five thousand dollars and imprisonment in a jail or house of correction for not more than two and one-half years. Any person who violates this section by possession of more than one ounce of marihuana or a controlled substance in Class E of section thirty-one shall be punished by imprisonment in a house of correction for not more than six months or a fine of five hundred dollars, or both. Except for an offense involving a controlled substance in Class E of section thirty-one, whoever violates the provisions of this section after one or more convictions of a violation of this section or of a felony under any other provisions of this chapter, or of a corresponding provision of earlier law relating to the sale or manufacture of a narcotic drug as defined in said earlier law, shall be punished by imprisonment in a house of correction for not more than two years or by a fine of not more than two thousand dollars, or both.

If any person who is charged with a violation of this section has not previously been convicted of a violation of any provision of this chapter or other provision of prior law relative to narcotic drugs or harmful drugs as defined in said prior law, or of a felony under the laws of any state or of the

United States relating to such drugs, has had his case continued without a finding to a certain date, or has been convicted and placed on probation, and if, during the period of said continuance or of said probation, such person does not violate any of the conditions of said continuance or said probation, then upon the expiration of such period the court may dismiss the proceedings against him, and may order sealed all official records relating to his arrest, indictment, conviction, probation, continuance or discharge pursuant to this section; provided, however, that departmental records which are not public records, maintained by police and other law enforcement agencies, shall not be sealed; and provided further, that such a record shall be maintained in a separate file by the department of probation solely for the purpose of use by the courts in determining whether or not in subsequent proceedings such person qualifies under this section. The record maintained by the department of probation shall contain only identifying information concerning the person and a statement that he has had his record sealed pursuant to the provisions of this section. Any conviction, the record of which has been sealed under this section, shall not be deemed a conviction for purposes of any disqualification or for any other purpose. No person as to whom such sealing has been ordered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failure to recite or acknowledge such arrest, indictment, conviction, dismissal, continuance, sealing, or any other related court proceeding, in response to any inquiry made of him for any purpose.

Notwithstanding any other penalty provision of this section, any person who is convicted for the first time under this section for the possession of marihuana or a controlled substance in Class E and who has not previously been convicted of any offense pursuant to the provisions of this chapter, or any provision of prior law relating to narcotic drugs or harmful drugs as defined in said prior law shall be placed on probation unless such person does not consent thereto, or unless the court files a written memorandum stating the reasons for not so doing. Upon successful completion of said probation, the case shall be dismissed and records shall be sealed.

It shall be a prima facie defense to a charge of possession of marihuana under this section that the defendant is a patient

certified to participate in a therapeutic research program described in chapter ninety-four D, and possessed the marihuana for personal use pursuant to such program.

**U.S. Constitution, Amendment XVIII**

1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

2. The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.

3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

**U.S. Constitution, Amendment XXI**

1. The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

2. The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

3. The article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.