

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

FIRST JUDICIAL DISTRICT

Eric Rech, Patrick McClellan,
Edwin Engelmann, and Gregory Schiffler,

Court File No. _____
Judicial Officer: _____

COMPLAINT

Plaintiffs

v.

Charlene Briner, in her capacity as
Interim Director of the Minnesota
Office of Cannabis Management, and
Attorney General Keith Ellison,
in his official capacity,

Defendants.

INTRODUCTION

This is an action seeking a declaratory judgment from the Court finding that the actions of Minnesota Office of Cannabis Management (“OCM”) in restricting the right of Plaintiffs, each of whom are Minnesota residents who are growing up to eight cannabis plants at their private residences in accordance with Minnesota Statute Section 342.09, Subd. 2, is a violation of Plaintiffs’ rights under Article 13, Section 7 of the Minnesota Constitution.

PARTIES

1. Plaintiff Eric Rech is a resident of the State of Minnesota and domiciled in

the City of Minneapolis.

2. Plaintiff Patrick McClellan is a resident of the State of Minnesota and domiciled in the City of Bloomington.

3. Plaintiff Edwin Engelmann is a resident of the State of Minnesota and domiciled in the City of Franklin.

4. Plaintiff Gregory Schiffler is a resident of the State of Minnesota and domiciled in the City of Maplewood.

5. Defendant Charlene Briner is the Interim Director of OCM and is being sued in her official capacity. Interim Director Briner maintains her office at 601 N Robert Street, St. Paul, Minnesota 55164. OCM is the designated agency for making rules, establishing policy, and exercising its regulatory authority over the cannabis industry and hemp consumer industry.

6. Defendant Keith Ellison is the attorney general of the State of Minnesota and is being sued in his official capacity. Attorney General Ellison maintains his office at 445 Minnesota Street, Saint Paul, Minnesota. Attorney General Ellison is the chief law enforcement officer with supervision over the laws in the State of Minnesota, including the enforcement of rules and regulations promulgated by OCM and prosecution of enforcement actions relative thereto.

JURISDICTION AND VENUE

7. This action raises questions under the Minnesota Constitution, and thus, this

Court has jurisdiction over all of Plaintiffs' claims pursuant to Minn. Stat. 484.01, subd. 1(1), and pursuant to Minn. Const., Art. VI, §3.

8. This Court is authorized to grant declaratory relief pursuant to Minn. Stat. §555.01 and to grant injunctive relief pursuant to Rule 65 of the Minnesota Rules of Civil Procedure.

9. Venue is proper in this county and in this district because one or more of the named defendants presently reside in Ramsey County and because the cause of action, or some part thereof, arose in Ramsey County, pursuant to Minn. Stat § 542.03 and § 542.09.

FACTUAL BACKGROUND

10. Article 13, Section 7 of the Minnesota Constitution States that "any person may sell the products of the farm or garden occupied and cultivated by him without obtaining a license therefor."

11. In 1918, the Minnesota Attorney General issued Advisory Opinion No. 396 which states "that a producer is guaranteed the right to sell or peddle the products of the farm or garden occupied and cultivated by him without obtaining a license." *Advisory Opinion No. 396*.

12. The opinion goes on to state "[that any] distributor who buys product from the producer and then sells it to his customers is not within the protection of the constitutional provision and is required to have a license." *Advisory Opinion No. 396*.

13. The Minnesota Court of Appeals has previously held that because marijuana was classified as a Schedule I controlled substance it was within the proper police power of

the state to prevent a citizen from selling any cultivated marijuana from their home, irrespective of Article 13, Section 7 of the Minnesota Constitution. *See State v. Wright*, 588 N.W.2d 166 (1998).

14. On May 30, 2023, Minnesota Governor Tim Walz signed the bill enacting Minnesota Statutes Chapter 342, which legalized cannabis and codified licensing laws in Minnesota. Minn. Stat. § 342.09, subd. 2 states that “Up to eight cannabis plants, with no more than four being mature, flowering plants may be grown at a single residence, including the curtilage or yard, without a license to cultivate cannabis issued under this chapter provided that cultivation takes place at the primary residence of an individual 21 years of age or older and in an enclosed, locked space that is not open to public view.” Minn. Stat. § 342.09, Subd. 2.

15. Also, as part of the cannabis legalization bill, the Minnesota legislature rescheduled cannabis from Schedule I to Schedule III. Minn. Stat. § 152.01, Subd. 2 (2023).

16. Generally, Schedule III drugs are considered to be controlled substances that have a moderate or low potential for physical and psychological dependence.¹

17. Under the Minnesota Constitution, and applying the reasoning from Advisory Opinion No. 396, an individual grower of cannabis under Minn. Stat. § 342.09, Subd. 2 should not have to obtain a license to sell plant products that have been produced on their own real property to a consumer.²

¹ <https://www.campusdrugprevention.gov/content/drug-scheduling-and-penalties#:~:text=Schedule%20III%20drugs%2C%20substances%2C%20or,for%20physical%20and%20psychological%20dependence.>

² The Minnesota Office of Cannabis Management stated in an email to counsel for Plaintiffs dated November

18. Plaintiffs Eric Rech, Patrick McClellan, Edwin Engelmann, and Gregory Schiffler are residents of Minnesota who cultivate marijuana in their homes pursuant to Minn. Stat. § 342.09, subd. 2.

19. Pursuant to Minn. Stat. § 342.09, subd. 2 none of the Plaintiffs have obtained a license to cultivate marijuana in their homes nor are they required to do so.

20. Plaintiffs Patrick McClellan, Edwin Engelmann, and Gregory Schiffler have prescriptions to use medical cannabis.

21. Based on Minn. Const. Art. 13, Sec. 7, and Minn. Stat. § 342.09, subd. 2, Plaintiffs have the constitutional right to sell the product of their home cultivation without a license.

22. The Minnesota Medical Cannabis Program allows for patients with a qualifying medical condition to have a care provider certify their condition that would be better managed using medical marijuana. Once a patient has a provider certifying they have a qualifying condition under the program, they must complete an enrollment application and provide a photo ID to the Medical Cannabis Program within 90 days of certification. The patient must then be approved by the Office of Medical Cannabis prior to being allowed to obtain medical cannabis at a Medical Cannabis Dispensary in Minnesota.³

23. Plaintiff Patrick McClellan suffers from a rare form of muscular dystrophy. According to the Mayo Clinic, muscular dystrophy is a group of diseases that causes

7, 2023, that licensure falls under the metric of statutory compliance. The metric of statutory compliance when determining who a cultivator may sell to only applies to sales to a distributor. (CITE?)

³ <https://www.health.state.mn.us/people/cannabis/materials/docs/patientprocess.pdf>

progressive weakness and a loss of muscle mass because abnormal gene mutations interfere with the production of proteins needed to form healthy muscle.⁴

24. There is no cure for muscular dystrophy, it is merely managed with medications and therapy to slow the disease progression.⁵

25. Plaintiff McClellan manages his muscular dystrophy by using medical marijuana.

26. Minn. Stat. § 342.09, subd. 2 has allowed Plaintiff McClellan to grow his medicine at home and has made effective treatment much more accessible to him.

27. Plaintiff McClellan is exercising his right under Minn. Stat. § 342.09, subd. 2 to grow marijuana in his home.

28. Plaintiff McClellan is compliant with the grow-at-home laws in Minnesota. He produces cannabis from eight plants in his home, with no more than four flowering plants. The plants he has in his home are located in a contained space not visible from plain view.

29. Plaintiff McClellan's plants produce more product than he can reasonably consume for recreational or medicinal purposes.

30. The costs of growing at home are significant. The costs include equipment for proper cultivation as well as additional expenses in order to be statutorily compliant and cultivate his medicine within his home.

⁴ <https://www.mayoclinic.org/diseases-conditions/muscular-dystrophy/symptoms-causes/syc-20375388>

⁵ *Id.*

31. Plaintiff McClellan cannot reasonably consume all cannabis that he has cultivated in his home for his medicinal purposes. As a patient who has endured the struggle of gaining access to affordable and safe medical marijuana, Plaintiff McClellan would like to offset the costs of growing cannabis by selling the excess crop to other similarly situated individuals.

32. Plaintiff McClellan would like to exercise his constitutional right to sell the surplus of his medicinal cannabis crop, grown at his residence, to individuals 21 years of age or older without a license.

33. Plaintiff Eric Rech is an individual residing in Minneapolis, Minnesota.

34. Plaintiff Rech is exercising his right under Minn. Stat. § 342.09, subd. 2 to grow marijuana in his home.

35. Plaintiff Rech is compliant with the grow-at-home laws in Minnesota. He produces cannabis from the eight cannabis plants in his home, with no more than four flowering plants. The plants he has in his home are located in a contained space not visible from plain view.

36. Plaintiff Rech's plants produce more product than he can reasonably consume for recreational or medicinal purposes.

37. Plaintiff Rech would like to exercise his constitutional right to sell the surplus of his cannabis crop, grown at his residence, to individuals 21 years of age or older without a license.

38. Plaintiff Edwin Engelmann uses medical marijuana to manage chronic pain.

39. Plaintiff Engelmann lives in a remote area of Minnesota, on land that is not easily accessible.

40. Plaintiff Engelmann would like to purchase marijuana from a more accessible source than a dispensary.

41. Plaintiff Engelmann is an individual at least 21 years of age, eligible to purchase cannabis, and under the Minnesota Constitution has the right to purchase the crop of an individual's home.

42. Plaintiff Gregory Schiffler resides in Minnesota.

43. Plaintiff Schiffler suffers from several medical conditions that cause chronic pain.

44. Plaintiff Schiffler manages his chronic pain through the use of medicinal marijuana.

45. Plaintiff Schiffler is an individual at least 21 years of age eligible to purchase cannabis under the Minnesota Constitution.

46. Plaintiff Schiffler intends to exercise his constitutional right to purchase the crop of an individual's home for his personal use.

47. Minn. Stat. §342.09, Subd. 6 provides for criminal penalties for individuals who engage in the sale of cannabis without a license.

48. Plaintiffs reasonably believe that exercising their rights under Minn. Const. Art. 13, Sec. 7 could subject them to criminal liability if Defendants do not accept their interpretation of Minnesota law, and have sought the position of Defendant's on the legality

of their position.

49. The Office of Cannabis Management, by and through Defendant Briner, has refused to endorse the application of Minn. Const. Art. 13, Sec. 7 reasonably construed by Plaintiffs. Specifically, in a communication to Plaintiffs' counsel on January 2, 2024, OCM stated that "the Office of Cannabis Management does not issue Advisory Opinions. We are aware of the discussion surrounding the product of the farm exemption and cannabis and are monitoring it closely."⁶

50. Defendant's inaction has chilled the exercise of Plaintiffs' constitutional rights, forcing them to risk criminal prosecution in the exercise of their constitutional right to sell the product of their cultivation.

51. Plaintiffs therefore now seek a declaratory judgment to define the relationship between Plaintiffs and Defendants as pertains to Minn. Const. Art. 13, Sec. 7 and Minn. Stat. § 342.09, subd. 2.

COUNT I – DECLARATORY RELIEF PURSUANT TO MINN. STAT. § 555.01

52. Plaintiffs restate and re-allege all matters in paragraphs 1-51 as if fully set form herein.

53. This Court has jurisdiction and power to determine the legal rights and status of Plaintiffs as they are affected by the limitations on their ability to exercise their constitutional rights.

54. Plaintiffs are persons "whose rights, status, or other legal relations are affected

⁶ See Declaration of Jeffrey C. O'Brien attached hereto.

by a statute” and who seek a determination of a “question of construction [] arising under the [] statute.” Minn. Stat. § 555.02.

55. Minn. Stat. § 342.09, Subd. 4 requires a license to sell cannabis flower, cannabis products, lower-potency hemp edibles, or hemp-derived consumer products without a license issued under Minnesota Statutes Chapter 342 which authorizes the sale.

56. Minn. Const. Art. 13, Sec. 7 eliminates the need for a license to sell where the product sold is cultivated on the property of the grower and sold by the grower.

57. Minn. Stat. § 342.09, Subd. 2 does not require individuals who grow cannabis at home to obtain a license to grow and is silent as to whether individuals may sell the product that is produced in their home to consumers without a license.

58. Defendants have informed Plaintiffs that they are susceptible to criminal liability if they act under Minn. Const. Art. 13, Sec. 7, chilling the exercise of Plaintiffs’ constitutional rights.

59. The Court, therefore, must clarify the application of Minn. Const. Art. 13, Sec. 7 to Minn. Stat. § 342.09.

60. The Court should Order that Plaintiffs and all other similarly situated shall be allowed to sell the product cultivated in their home to consumers without a license as long as they are otherwise in compliance with Minnesota law.

WHEREFORE, Plaintiffs respectfully request the following declaratory judgment from the Court under Minn. Stat. § 555.01:

- a. That under the Minnesota Constitution individuals who cultivate cannabis in their homes under the Grow at Home Provision of Minn. Stat. § 342.09, Subd. 2 do not need to obtain a license to sell their product.
- b. That the Court issue an injunction barring any criminal enforcement of the sale of cannabis produced from home cultivation pursuant to Minn. Stat. § 342.09, Subd. 2 based on the absence of a license to do so.
- c. Such other and further relief as the Court may deem just and equitable.

Dated: May 7, 2024

CHESTNUT CAMBRONNE PA

By: /s/ Jeffrey C. O'Brien

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ATTORNEYS FOR PLAINTIFFS

ACKNOWLEDGMENT REGARDING SANCTIONS

Pursuant to MINN. STAT. §549.211, Subd. 1, the undersigned acknowledge that non-monetary sanctions and monetary sanctions, such as costs, disbursements, and reasonable attorney and witness fees, may be imposed under MINN. STAT. §549.211, Subd. 3.

Dated: May 7, 2024

CHESTNUT CAMBRONNE PA

By: /s/ Jeffrey C. O'Brien
Jeffrey C. O'Brien (#304852)