

## Memorandum of Law Supporting

### Affidavit of Truth

We state our rights are God given and the Constitution offers a legitimate program to protect those rights which cannot be usurped by government. Government is the servant of the sovereign "We the People" and as sovereigns my son and I declare God and the Constitution protect our rights to freedom of religion, freedom of thought, the right to liberty. The marijuana statutes are a violation of God given inalienable rights and Constitutionally protected rights under the first, the fourth, fifth, sixth, ninth and tenth amendments. The legislature had no authority to pass a law that conflicts with the United States Constitution or the New York State Constitution. The marijuana law was based on lies and fraud and is void at its inception.

Article 6 paragraph 2 (the Supremacy Clause) of the US Constitution says the Constitution and the laws in pursuance thereof made under the authority of the United States shall be the supreme law of the land. The judges in every state shall be bound thereby. A thing in conflict or repugnancy is null and void of law.

All infringement is forbidden...We claim encroachment, infringement, impingement, usurpation, we claim the statute is violating our rights.

"The Constitution of these United States is the supreme law of the land, any law that is repugnant to the constitution is null and void of law. "

Marbury vs. Madison, 5 US 137 1803

The statutes prohibiting marijuana makes government violate the law of Title 18 US code section 2381 which says that in the presence of two witnesses to the same overt act or in an open court of law if you failed in a timely move to protect and defend the Constitution and honor your oath of office you are subject to the charge of capital felony - treason.

Everyone involved in the persecution of me and my son under these void statutes has been a trespasser. Our constitutional rights have been violated by this unconstitutional void statute.

When a statute goes against the Constitution it is null and void of law, it bears no power to enforce, no obligation to obey, purports to settle as if it never existed, unconstitutionality dates from the enactment of such law not from any dates so branded in an open court of law. The marijuana statutes are repugnant to the New York State Constitution and the Constitution of these United States.

We have a right to worship and exercise my religion unencumbered as we see fit according to the first amendment of the Constitution of the United States and my religious freedoms according to the New York State Constitution. A state may not impose a charge for the enjoyment of a right granted by the Federal and State Constitutions. We were initially charged with growing marijuana without a license. No state may convert a secured liberty into a privilege, issue a license and a fee for it and require you to have that otherwise you have committed a crime that is totally unconstitutional.

The statute prohibiting marijuana is unconstitutional and violates our rights to freedom of religion as marijuana is a sacrament and an entheogen without which our religious beliefs cannot be practiced because it is our connection to God. We raise our consciousness with the use of this sacrament to merge with the divine. Our connection to God cannot be regulated by statute.

This case also established the preferred position doctrine, which states that "[f]reedom of press, freedom of speech, [and] freedom of religion are in a preferred position," indicating that certain fundamental human rights have prerogative

"No state shall convert a liberty into a privilege, license it, and attach a fee to it."

Murdoch vs Penn. 319 US 105 1943 right to evangelize. 1st amendment right

The Constitution is the supreme law of the land and under the first amendment we have the right to raise our consciousness to merge with the divine, and we can engage in that right with impunity. It is a God given right secured by the Constitution and that right shall not be infringed and it is supposed to be enforced in favor of me and my son the clearly intended and expressly designated beneficiaries of the contract s (The Constitutions US and NY).

"If the state converts a liberty into a privilege the citizen can engage in the right with impunity,,"  
Shuttlesworth vs. Birmingham, 373 US Report 262

We have relied upon the United States Constitution and on prior decisions of the supreme Court, and the exercise of our religious practices cannot be construed to violate the law therefore we have a defense against willfulness. There was no evil motive or intent.  
Therefore the prosecutor cannot prove willfulness and has no case.

Defined willfulness as an evil motive or intent to avoid a known duty or tax under the law of moral certainty.

U.S. v. Bishop, 412 US 346

This court can't claim ignorance of the law because a citizen can't claim ignorance of the law. You are deemed to be officers of the law and you are to advise us of the law, you can hardly claim that you acted in good faith for willful deprivation of the law and you certainly can't claim ignorance of the law as you signed an after entry warrant in clear violation of our rights to due process and equal protection and the Constitutions of the US and NY as well as Title 18 sec 241 and 242 of the United States Code & Title 42 USC Section 1983, 1985 and 1986 clearly establishing our right to sue for willful deprivation of rights.

"Officers of the court have no immunity, when violating a Constitutional right, from liability. For they are deemed to know the law."

Owen v. Independence, 100 S.C.R. 1398, 445 US 622

"Jurisdiction, once challenged, cannot be assumed and must be decided." Maine v. Thiboutot, 100 S.C.R.. 2502

" Constitutional provisions for the security of person and property are to be liberally construed, and "it is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon."

Byars v. U.S., 273 U.S. 28

The police acting under color of law entered our home without a warrant, falsified sworn statements in order to obtain an after entry warrant. Statements on affidavit for search warrant conflict with statements on the charges which show clear malicious intent on the part of Dirk Budd to try to cover for James Mullins acting under color of law by an illegal entry of our home. This court is obligated to protect our rights against encroachment by police acting under color of law.

"The court is to protect against any encroachment of constitutionally secured liberty."

Boyd vs. US, 116 US 616

"Where rights secured by the constitution are involved, there can be no rule making or legislation which would abrogate them. "

Miranda vs Arizona, 384 US 436

"While acts of a de facto incumbent of an office lawfully created by law and existing are often held to be binding from reasons of public policy, the acts of a person assuming to fill and perform the duties of an office which does not exist de jure can have no validity whatever in law. An unconstitutional act is not law; it confers no rights; it imposes no duties; affords no protection; it creates no office; it is in legal contemplation, as inoperative as though it had never passed." Norton vs Shelby County, 118 US 425

#### Other Supporting Law

"If a law has no other purpose than to chill assertions of Constitutional rights by penalizing those who choose to exercise them it is patently unconstitutional."  
Shapiro vs Thompson 394 US 618

The rights to due process like in the fourth, fifth and sixth amendments.

The right of the people to be secure in their houses. The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated and no warrant shall issue but upon probable cause supported by oath or affirmation and particularly describing the place to be searched and the person to be seized.

#### 5th amendment

Provisions concerning prosecution

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

#### Title 5 USC section 556D

Title 5 of the US Code, Section 556(d) states "When jurisdiction is challenged, the burden of proof is on the government." If they deny you due process of the law all jurisdiction ceases automatically. Also Title 5 section 557 and section 706 apply. They lost jurisdiction when they denied us due process and violated our Constitutional rights.

#### Right to a speedy trial, witnesses, etc. (6th amendment)

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

#### Right to a trial by jury (7th amendment)

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.

The ninth amendment

Enumeration in this Constitution of certain rights shall not be construed to deny or disparage others retained by the states or respectively to the people.

The legislature has no authority to add on to the Constitution in such a way that would take away rights previously guaranteed. The legislature had no authority to prohibit our religious use of marijuana in the privacy of our homes. It clearly infringes on our Constitutional rights to freedom of religion, our right to liberty, our right to pursuit of happiness, and the right to be LET ALONE. Man since the dawn of time has taken entheogens (see definitions attached) seeking higher consciousness and to get in touch with the divine. This is a divine right, a gift from God which governments have no authority over.

Entheogens are psychoactive substances used in a spiritual context. Peyote has been used in ritual contexts for thousands of years.

An entheogen (Greek for "God inside us, "in, within," theo"god, divine," -gen "creates, generates"), in the strict sense, is a psychoactive substance used in a religious, shamanic, or spiritual context. Historically, entheogens were mostly derived from plant sources and have been used in a variety of traditional religious contexts. With the advent of organic chemistry, there now exist many synthetic substances with similar psychoactive properties, many derived from these plants. Entheogens can supplement many diverse practices for healing, transcendence, and revelation, including: meditation, communion with God.

Entheogens have been used in a ritualized context for thousands of years; their religious significance is well established in anthropological and modern evidences. Examples of traditional entheogens include: kykeon, ambrosia, iboga, soma, peyote, bufotenine, ayahuasca, and Datura. Other traditional entheogens include cannabis, ethanol, ergine, psilocybe mushrooms, and opium. Many pure active compounds with psychoactive properties have been isolated from organisms and chemically synthesized, including mescaline, psilocin/psilocybin, DMT, salvinorin A, ibogaine, and scopolamine. Semi-synthetic (e.g. LSD derived from LSA) and synthetic substances (e.g. DPT used by the Temple of the True Inner Light and 2C-B used by the Sangoma) have also been developed. Entheogens may be compounded through the work of a shaman or apothecary in a tea, admixture, or potion like ayahuasca or bhang.

More broadly, the term entheogen is used to refer to any psychoactive substances when used for their religious or spiritual effects, whether or not in a formal religious or traditional structure. This terminology is often chosen to contrast with recreational use of the same substances. Studies such as the Marsh Chapel Experiment have documented reports of spiritual experiences from participants who were administered psychoactive substances in controlled trials. Ongoing research is limited due to widespread drug prohibition, however some countries have legislation that allows for traditional entheogen use.

Rights of the States under Constitution(10th amendment)

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

The legislature does not have the power or the authority to take away rights previously guaranteed by the Constitution.

The Constitution is the supreme law of the land and is a contract between We the People and government and is enforceable in favor of We the People in an open court of law and We the People are the beneficiaries. The document should be enforced in favor of me. All power is inherent in the people.

My rights have been infringed therefore I demand that all charges be dropped and this fraudulent case against me be dismissed with prejudice. The Constitution is an iron clad document endorsable in a court of law pursuant to the statutes of fraud. I am demanding my right on the contract to life, liberty and the pursuit of happiness as well as the right to freedom of religion and the right to be let alone. All these rights have been violated by the police acting under color of law, being protected by the prosecutor and the Saugerities Court all acting under color of law and lacking jurisdiction. Once due process is violated jurisdiction is lost and can never be regained. A warrantless search cannot be made legal by an after entry warrant based on false statements. According to the Constitution I am the clearly intended and expressly designated beneficiary of the contract, I want the Constitutional protection in favor of my rights as I am one of The People and the court swore an oath to protect and defend the Constitution. This court has a legal obligation to protect my rights and dismiss this case in the interests of justice.  
Supported by:

Section 114 of Am Ju 16TH vol.

Sec 117 of Am Jur 16th vol

section 155 Am Jur 16th vol

Legislative Fiat as unconstitutional

section 177 of Am Jur 16th vol

declaratory judgments to test constitutionality Federal Declaratory Act

section 255 am jur 16th 256 am jur 16th

The general rule is that an unconstitutional statute whether federal or state though having the form and name of law is in reality no law but is wholly void and ineffective for any purpose since unconstitutionality dates from the time of the enactment and not merely from the date of the decision so branding it. (Check footnote for cite State Exeral vs. Greer) An unconstitutional law in legal contemplation is as inoperative as if it never had been passed. Such a statute leaves the question that it purports to settle just as it would be had the statute not ever been enacted. No repeal of an enactment is necessary since an unconstitutional law is void. The general principles follows that it imposes no duties, confers no rights, creates no office, bestows no power or authority on anyone, affords no protection and justifies no acts performs under it. A contract which rests on an unconstitutional statute creates no obligation to be impaired by subsequent legislation No one is bound to obey an unconstitutional law and no courts are bound to enforce it. Persons convicted and fined under a statute subsequently held unconstitutional may recover the fines paid. A void act cannot be legally inconsistent with a valid one and an unconstitutional law cannot operate to supercede an existing valid law. Indeed insofar as the statute runs counter to the fundamental law of the land it is superceded thereby since an unconstitutional statute cannot repeal or in any way affect an existing one if a repealed statute is unconstitutional the statute which it intends to repeal remains in full force and effect and where a clause repealing a prior law is inserted in the act which act is unconstitutional and void the provision of the repeal of the prior law will usually fall with it and will not be permitted to operate as repealing such prior law. The general principle stated above applies to the Constitutions as well as to the laws of several states insofar as they are repugnant to the Constitution and the laws of the United States. Moreover a construction of a statute which brings in conflict with a constitution will nullify it as effectively as if it had in its expressed terms been enacted in conflict therewith.

Sec 257 am jur 16th

Protection of Rights

The actual existence of a statute prior to determination that it is unconstitutional is an inoperative fact and may have consequences which cannot justify being ignored when a statute which has been in effect for some time is declared unconstitutional questions of rights claim to have become vested of status of prior determinations deemed to have finality and enacted upon accordingly of prior determinations and of public policy in light of the nature both of the statute and of its previous application demand examination. It has been said that in all inclusive statement of the principle of absolute retroactive invalidity cannot be justified. An unconstitutional statute is not necessarily a nullity it may have indeterminate consequences binding upon the people.

Sec 258 am jur 2nd 16th vol

On the other hand it is clear Congress cannot by authorization or ratification give the slightest effect to a state law or constitution which is in conflict with the Constitution of the United States.

Sec 260 Am Jur 16th

Although it is manifest that an unconstitutional provision in the statute is not cured because included in the same act with valid provisions and that there are no degrees of Constitutionality.

Conclusion and Relief Sought

1) Dismiss all charges with prejudice to keep from further violating our rights.

2) We want a hearing on the Constitutionality of the statutes prohibiting marijuana as relating to our fundamental and God given rights to freedom of religion, the right of liberty, freedom of thought, and pursuit of happiness. Even after dismissal of all charges we want the Constitutionality cleared up once and for all. Our rights have been violated by these statutes and we want it to stop. We have a right to be let alone and not harassed by government intrusion.

SUI JURIS, SOVEREIGN MAN THAT IS A LIVING HUMAN BEING WITH ALLEGIANCE TO GOD AND GOD ONLY, SPEAKING IN HIS OWN RIGHT, WITHOUT PREJUDICE, ALL RIGHTS RESERVED, UNDER THREAT OF SLAVERY, UCC 1-308, UCC 1-103.

Joseph Barton \_\_\_\_\_ DATED: \_\_\_\_\_, 2011

Adopted by  
Jay Debberman \_\_\_\_\_ DATED \_\_\_\_\_ 2011

Sworn on this day, July 27, 2011, to be true  
Under penalty of perjury,

Notary:

Paula Gloria Tsaconas Barton, 26 GRAMERCY PARK 7H, NY 10003 212.982.0021  
THE CONCORDIA FOUNDATION IS A REGISTERED 501C3 (NY reg. no. 40-93-11)  
We are in desperate need of funds and whatever you can come up with will  
be put to good use, in what seems a never ending fight for truth, justice  
and the American way! Postal Money Orders please to Paula Gloria Tsaconas  
(address above)

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