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6 IN THE SUPERIOR COURT OF THE STATE OF
WASHINGTON IN AND FOR THE COUNTY OF THURSTON

7 JOHN WORTHINGTON,
8 PLAINTIFF/PETITIONER,

Case No.

9 vs.

AMENDED COMPLAINT/PETITION

10
11 WASHINGTON STATE GOVERNOR JAY
12 INSLEE IN HIS OFFICIAL CAPACITY,
13 WASHINGTON STATE DEPARTMENT OF
14 HEALTH, WASHINGTON STATE
PHARMACY QUALITY ASSURANCE
COMMISSION,

15
16 RESPONDENT/DEFENDANT.

17 **INTRODUCTION**

18 Plaintiff/Petitioner John Worthington alleges as follows:

19 1. This is an action for declaratory relief from improper rule making and for other relief
20 under RCW Ch. 34.05, the Washington Administrative Procedure Act and for reasons of judicial
21 economy RCW 7.24, the Uniform Declaratory Judgment Act. Plaintiff/Petitioner is John
22 Worthington a medical marijuana patient who is affected by the placement of marijuana in
23 schedule I of the Washington State Controlled Substances Act. As far back to 1971, a division of
24 the Washington State Department of Health (the "Department") adopted WAC's 246-877-020,
25 WAC 246-945-040, -051, -053, -054, -055, and -056 by reference from federal 21 CFR sections
26 1300 through 1321. Worthington seeks an order declaring RCW 69.50.201, RCW 69.50.204,
27 RCW 69.50.206 RCW 69.50.208, RCW 69.50.210, RCW 69.50.212, WAC's 246-877-020,
WAC 246-945-040, WAC 246-945-051, WAC 246-945-053, WAC 246-945-054, WAC 246-945

28 AMENDED COMPLAINT/PETITION -1

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1 -055, and WAC 246-945 -056 are invalid and enjoining the state from enforcing them, because
2 they are unconstitutional.

3 **JURISDICTION AND VENUE**

4 2. The Court has jurisdiction to hear the petition because the rules, or its threatened
5 application, interferes with or impairs, or immediately threatens to interfere with or impair, the
6 legal rights or privileges of Worthington. RCW 34.05.570 (2). There is no requirement that
7 Worthington exhaust any administrative remedies or take any other action prior to bringing this
8 petition, and venue is proper in this Court under RCW 34.05.570 (2) or RCW 34.05.570 (4)¹.
9 This court also has jurisdiction to rule under RCW 7.24, that RCW 69.50.204, RCW 69.50.206
10 RCW 69.50.208, RCW 69.50.210, RCW 69.50.212 are unconstitutional, because they are not
11 subject to RCW 34.05, and there is no remedy to address those laws under the APA.

12 **PARTIES**

13 3. Plaintiff/Petitioner is John Worthington a Washington State medical marijuana patient,
14 affected by the unconstitutional drug scheduling by the Washington State Legislature and the
15 Washington State Department of Health (DOH) and the Pharmacy Quality Assurances
16 Commission (PQAC), and the placement of marijuana in schedule I of the Washington State
17 Controlled Substances Act, without period review and an opportunity to challenge the placement
18 of marijuana and other drugs into schedule I and other drug schedules.

19 4. Defendant Washington State Governor Jay Inslee is responsible for unconstitutional drug
20 laws in Washington State. The Office of the Governor is located at PO Box 40002 Olympia, WA
21 98504-0002. Respondent is the DOH/PQAC, is an agency of the State of Washington and is
22 responsible for promulgating rules under the Washington State Controlled Substances Act. The
23 mailing address for the Department is PO Box 47852, Olympia, WA. 98504-7852.

24 5. Worthington has filed 4 petitions for adoption, amendment repeal to DOH/BOP/PQAC,
25 including one which was denied on May 26, 2021.
26
27

28 ¹ Worthington has filed a petition for adoption amendment repeal which was denied May 26, 2021.
AMENDED COMPLAINT/PETITION -2

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1 **AGENCY RULE AT ISSUE**

2 6. The agency rules at issue are WAC’s 246-877-020², WAC 246-945-040, WAC 246-945-
3 051, WAC 246-945 -053, WAC 246-945-054, WAC 246-945-055, and WAC 246-945 -056.

4 **WASHINGTON STATE LAWS AT ISSUE**

5 7. Washington State laws at issue are RCW 69.50.201, RCW 69.50.204, RCW 69.50.206
6 RCW 69.50.208, RCW 69.50.210, and RCW 69.50.213.

7 **BACKGROUND AND FACTS**

8 8. The Statutory authority for the Washington State Uniform Controlled Act WAC dates
9 back to October 26, 1971.³ At the time of the adoption of Washington State Uniform Controlled
10 Act in 1971 there could be a top down system of control by the federal government without
11 running afoul of the Anti –Commandeering Doctrine. However, in the year 1971, it was not
12 completely understood that the International Drug Treaty itself required the Controlled
13 Substances Act to be promulgated constitutionally by states such as Washington State in order
14 for the terms of the treaty to be enforced.⁴

15 9. Federal agencies like the FDA or DEA or private organizations like the Uniform Law
16 Commission⁵ could “adopt by reference” without concerns for constitutional requirements.

17
18
19 ² PQAC refers to this as the “old WAC.” The original Uniform Controlled Substances Act WAC appears to have
20 been filed 10/26/1971.

21 ³ [Statutory Authority: RCW 69.50.201. WSR 19-06-068, § 246-887-020, filed 3/5/19, effective 4/5/19. Statutory
22 Authority: RCW 18.64.005, 2013 c 276, and 2013 c 19. WSR 15-13-086, § 246-887-020, filed 6/15/15, effective
23 7/16/15. Statutory Authority: RCW 43.70.280. WSR 98-05-060, § 246-887-020, filed 2/13/98, effective 3/16/98.
24 Statutory Authority: RCW 18.64.005. WSR 92-04-029 (Order 239B), § 246-887-020, filed 1/28/92, effective
25 2/29/92. Statutory Authority: RCW 18.64.005 and chapter 18.64A RCW. WSR 91-18-057 (Order 191B), recodified
26 as § 246-887-020, filed 8/30/91, effective 9/30/91. Statutory Authority: RCW 69.50.201. WSR 89-17-023 (Order
27 226), § 360-36-010, filed 8/8/89, effective 9/8/89. Statutory Authority: RCW 69.50.301. WSR 87-10-029 (Order
28 206), § 360-36-010, filed 5/1/87. Statutory Authority: RCW 18.64.005(4). WSR 85-06-010 (Order 193), § 360-36-
010, filed 2/22/85. Statutory Authority: RCW 69.50.301. WSR 80-05-074 (Order 154, Resolution No. 4/80), § 360-
36-010, filed 4/28/80; WSR 79-10-007 (Order 151, Resolution No. 9/79), § 360-36-010, filed 9/6/79. Statutory
Authority: RCW 69.50.301 and chapter 69.50 RCW. WSR 78-02-070 (Order 140), § 360-36-010, filed 1/25/78;
Order 132, § 360-36-010, filed 5/4/77; Order 108, § 360-36-010, filed 10/26/71.]

⁴ See Dec. of Worthington Exhibit 1.

[https://www.unodc.org/documents/commissions/CND/Int_Drug_Control_Conventions/Commentaries-
OfficialRecords/1971Convention/1971 OFFICIAL RECORDS Volumne I en.pdf](https://www.unodc.org/documents/commissions/CND/Int_Drug_Control_Conventions/Commentaries-OfficialRecords/1971Convention/1971_OFFICIAL_RECORDS_Volumne_I_en.pdf) “Having due regard to their
constitutional, legal and administrative systems, the Parties shall.”

⁵ <http://uniformlaws.org/home>

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1 10. Washington State does have a constitution and has limits imposed upon the creation of
2 laws in our state and has limits on the delegation of law making authority. Those limits are
3 clearly defined in Article II Section 1, and Article II Section 18.

4 11. It should be noted that the drug schedules were created by the legislature, by bill, in 1971,
5 but neither the International Drug Treaty nor any information used by the Uniform Law
6 Commission to determine the drug schedules were published publically in that legislation. It is
7 also true that public comments on that information⁶ were not taken and rebuttal scientific and
8 medical findings were never considered by the legislature. Furthermore, the legislature did not
9 sunset the Act in 1973 to allow for a proper promulgation of the drug schedules on a state level
10 to avoid delegating law making authority to an International Treaty or Uniform Law
11 Commission.

12 12. Washington State did legislatively authorize a division of the Washington State
13 Department of Health to promulgate agency rules like WAC's 246-877-020. But rather than
14 purchase the International Drug Treaties or any other information used by the Uniform Law
15 Commission, publish it for public inspection with references and finding guides, allow for public
16 comment, and then develop those rules after consideration of those comments, the BOP just
17 adopted federal CFR codes by reference.

18 13. RCW 69.50.201 allows the "Commission" to enforce the chapter but section d of RCW
19 69.50.201 allows the "Commission" to perpetually avoid any challenges to the drug schedules.

20 (d) If a substance is designated, rescheduled, or deleted as a controlled substance under
21 federal law, the commission shall similarly control the substance under this chapter after
22 the expiration of thirty days from the date of publication in the federal register of a final
23 order designating the substance as a controlled substance or rescheduling or deleting the
24 substance or from the date of issuance of an order of temporary scheduling under Section
25 508 of the federal Dangerous Drug Diversion Control Act of 1984, 21 U.S.C.
26 Sec. 811(h), unless within that thirty-day period, the commission or an interested party
27 objects to inclusion, rescheduling, temporary scheduling, or deletion. If no objection is
28 made, the commission shall adopt and cause to be published, without the necessity of
making determinations or findings as required by subsection (a) of this section or
RCW 69.50.203, 69.50.205, 69.50.207, 69.50.209, and 69.50.211, a final rule, for which

⁶ The International Drug Treaties were copy written and never purchased for public review and the Uniform Law Commission did not use any other materials to develop the uniform Controlled Substances Act, other than the same International Drug Treaties..

1 notice of proposed rule making is omitted, designating, rescheduling, temporarily
2 scheduling, or deleting the substance. If an objection is made, the commission shall make
3 a determination with respect to the designation, rescheduling, or deletion of the substance
4 as provided by subsection (a) of this section. Upon receipt of an objection to inclusion,
5 rescheduling, or deletion under this chapter by the commission, the commission shall
6 publish notice of the receipt of the objection, and control under this chapter is stayed
7 until the commission adopts a rule as provided by subsection (a) of this section.

8 14. As shown above affected party like Worthington is unable to challenge a marijuana drug
9 scheduling under RCW 69.50.201,⁷ because the “Commission” has never re-scheduled marijuana
10 even though Washington Statute RCW 69.50.213 requires an annual re-publication. Worthington
11 would need a time machine to go back to 1971 to invoke RCW 69.50.201. RCW 69.50.213
12 reads:

13 **RCW 69.50.213**

14 **Republishing of schedules.**

15 The commission shall publish updated schedules annually. Failure to publish updated
16 schedules is not a defense in any administrative or judicial proceeding under this chapter.
17 [2013 c 19 § 95; 1993 c 187 § 13; 1971 ex.s. c 308 § 69.50.213.]

18 Worthington has never witnessed a “republishing” of drug schedules in all his years of
19 marijuana activism.

20 15. Over the years the BOP/PQAC has added drugs to the Washington State Controlled
21 Substances Act, but they have never publically published any materials used by the International
22 Drug Treaty,⁸ or any Uniform Law Commission materials or any federal agency with references
23 and finding guides, accepting public comment on those materials, and develop laws and rules, by
24 accounting for adversarial binding scientific and medical findings.

25 16. Because DOH/BOP/PQAC never re-scheduled drugs periodically Worthington was also
26 never able to invoke RCW 34.05.328. (Except in an estimated 4 or 5 instances, Marinol and

27 ⁷ Worthington can file a petition for adoption amendment repeal under RCW 34.05.330. Worthington has filed at
28 least 4 such petitions including in 2021.

⁸ The DOH, BOP/PQAC has consistently stated they are “coordinating” with federal agencies. (See RCW
69.50.203) However, BOP/PQAC has never published any of the materials used to make those federal laws or any
laws developed by the Uniform Law Commission.

1 K2 spice being two of those occasions)

2 17. From 2007-2010, Worthington petitioned the BOP multiple times to remove marijuana
3 from schedule I. The BOP relied upon RCW 69.50.203 3 (b) to deny the petition. RCW
4 69.50.203 reads.

5 **Schedule I tests.**

6 (a) The commission shall place a substance in Schedule I upon finding that the
7 (b) substance:

8 (1) has high potential for abuse;

9 (2) has no currently accepted medical use in treatment in the United States; and

10 (3) lacks accepted safety for use in treatment under medical supervision.

11 (b) The commission may place a substance in Schedule I without making the findings
12 required by subsection (a) of this section if the substance is controlled under Schedule I
13 of the federal Controlled Substances Act by a federal agency as the result of an
14 international treaty, convention, or protocol.

15 [2013 c 19 § 88; 1993 c 187 § 3; 1971 ex.s. c 308 § 69.50.203.]

16 As shown above, the statute RCW 69.50.203 is only applicable when the commission
17 wants to “place” a substance in schedule I. DOH/BOP/PQAC has continually misapplied the
18 statute to avoid repealing marijuana from schedule I. In doing so, they have caused
19 Constitutional violations by not ever purchasing the International treaty, convention or protocol ,
20 purchasing any materials used by the Uniform Law Commission, publishing them for public
21 inspection with references and finding guides, take public comment on those materials, and
22 promulgated rules pursuant to RCW 34.05.328.

23 17. In early 2021, Worthington requested that PQAC, follow the process established by the
24 Washington State Building Code process, by repealing their drug schedules, purchasing the
25 International Treaty, purchase the materials used by the Uniform Law Commission or any
26 federal agency, publically publish those materials with references and finding guides, take public
27 comment on those materials, and promulgated rules pursuant to RCW 34.05.328, and sunset
28 those rules within two years so they do not delegate law making authority to an International
treaty or uniform law Commission. PQAC refused. Worthington re-incorporates those arguments
into this complaint. (Dec. of Worthington Exhibit 1)

18. Worthington has standing because is aggrieved or is adversely affected by the Laws and
Rules above because (i) the DOH/BOP/PQAC action has prejudiced or is likely to prejudice

1 Worthington ; (ii) Worthington’s asserted interests are among those the DOH/BOP/PQAC was
2 required to consider; and (iii) the judicial relief sought would substantially eliminate the
3 prejudice caused by the DOH/BOP/PQAC action.

4
5 **CAUSES OF ACTION**

6 **RCW 7.24**

7 **DECLARATORY JUDGMENT ACT**

8 19. The allegations set forth above in paragraphs 1 through 18 are hereby
9 incorporated by reference.

10 20. Pursuant to the Washington State Constitution in Article II section 1 and 18, RCW
11 69.50.204, RCW 69.50.206 RCW 69.50.208, RCW 69.50.210, and RCW 69.50.212, should be
12 declared invalid and their enforcement enjoined, because they are unconstitutional, because
13 they were not properly promulgated by the legislature. The legislature failed to purchase the
14 international treaty, convention or protocol materials or the materials used by the Uniform Law
15 Commission, publically publish those materials with references and finding guides, take public
16 comments including rebuttal information such as binding medical and scientific findings in
17 opposition to said published materials, and promulgating those laws after consideration of public
18 comment addressing said publically published materials. The legislature also failed to sunset
19 those laws and illegally delegated Washington State law making authority to an international
20 body or Uniform Law Commission.

21 21. Worthington requests this court declare under seal of this court that RCW 69.50.204,
22 RCW 69.50.206 RCW 69.50.208, RCW 69.50.210, and RCW 69.50.212, are unconstitutional.

23 22. Worthington requests an injunction preventing the enforcement of RCW 69.50.204,
24 RCW 69.50.206 RCW 69.50.208, RCW 69.50.210, and RCW 69.50.212, until they are properly
25 promulgated under the Washington State Constitution.

26 23. Worthington requests an injunction requiring the annual republishing of the
27 Washington State drug schedules as required by RCW 69.50.213.

28 24. Worthington requests an order under seal of this court that the International drug codes

1 are to be promulgated by Washington State in the same manner as International building codes
2 are promulgated.⁹

3 **RCW 34.05**

4 **ADMINISTRATIVE PROCEEDURE ACT**

5 25. The allegations set forth above in paragraphs 1 through 18 are hereby
6 incorporated by reference.

7 26. Pursuant to RCW 34.05.570 (2) (b) (ii) (c)¹⁰ and the Washington State Constitution in
8 Article II section 1 and 18, WAC's 246-945-040, WAC 246-945-051, WAC 246-945 -053,
9 WAC 246-945-054, WAC 246-945-055, and WAC 246-945 -056, should be declared invalid and
10 their enforcement enjoined because they are unconstitutional, because they were not properly
11 promulgated by the DOH/BOP/PQAC. The DOH/BOP/PQAC failed to purchase the
12 international treaty, convention or protocol materials or the materials used by the Uniform Law
13 Commission, publically publish those materials with references and finding guides, take public
14 comments including rebuttal information such as binding medical and scientific findings in
15 opposition to said published materials, and promulgating rules after consideration of public
16 comment addressing said publically published materials. DOH/BOP/PQAC also failed to sunset
17 those rules and illegally delegated Washington State rule making authority to an international
18 body or Uniform Law Commission.

19 27. Worthington requests this court declare under seal of this court pursuant to RCW 34-
20 05.570 (4) (c) (i) that WAC's 246-945-040, WAC 246-945-051, WAC 246-945 -053, WAC
21 246-945-054, WAC 246-945-055, and WAC 246-945 -056, that DOH/BOP/PQAC actions are
22 arbitrary and capricious and are unconstitutional.

23 28. Worthington requests an injunction preventing the enforcement of WAC's
24 246-945-040, WAC 246-945-051, WAC 246-945 -053, WAC 246-945-054,

25
26 ⁹ International building codes are purchased, (they have to be purchased because it is copy written material that must
27 first be paid for before it can be published.) publically and prominently published, The rule making agency
28 Washington State building code council takes public comments on the materials, promulgates rules with a two year
sunset clause so they do not delegate rule making authority to an International body.

¹⁰ In the event that this court does not rule under RCW 34.05.570 (2) (b) (i) (c), Worthington seeks relief under
RCW 34.05.570 (4) (c) (i) and (iii).

1 WAC 246-945-055, and WAC 246-945 -056, because they are unconstitutional.

2 29. Worthington respectfully requests an order from this court directing the legislature
3 And DOH/BOP/PQAC to promulgate international drug codes in the exact same manner as
4 International building codes. The agency decision to deny the petition was arbitrary and
5 capricious, violated state laws, and was unconstitutional.

6 **REQUEST FOR RELIEF**

7 30. Plaintiff/Petitioner Worthington requests that the Court enter a judgment and order
8 under RCW 7.24 declaring RCW 69.50.204, RCW 69.50.206 RCW 69.50.208, RCW 69.50.210,
9 and RCW 69.50.212 are invalid and enjoining their enforcement, and that Worthington be
10 awarded his costs and disbursements as permitted by law.

11 31 Plaintiff/Petitioner Worthington requests that the Court enter a judgment and order
12 under RCW 7.24 that DOH/BOP/PQAC immediately comply with RCW 69.50.213.

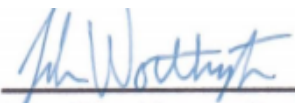
13 32. Plaintiff/Petitioner Worthington requests that the Court enter a judgment and order
14 under RCW 34.05 that WAC's 246-945-040, WAC 246-945-051, WAC 246-945 -053, WAC
15 246-945-054, WAC 246-945-055, and WAC 246-945 -056 are invalid and enjoining their
16 enforcement, and that Worthington be awarded his costs and disbursements as permitted by law.

17 33. Plaintiff/Petitioner Worthington requests that the Court enter a judgment and order
18 RCW 7.24 directing the legislature and DOH/BOP/PQAC to promulgate International drug
19 codes in the exact same manner as International building codes

20 34. Plaintiff/Petitioner respectfully requests any other relief deems appropriate including a
21 right to amend this complaint.

22 Respectfully submitted on this 16th day of June, 2021.

23 BY://


24 John Worthington Pro Se
25 90 S.RHODEFER RD. E-101
26 SEQUIM WA.98382

1 **Certificate of Service**

2 I declare that on the date and time indicated below, I caused to be served via certified mail
3 and email, a true and complete copy of the following:

- 4 1. Summons and Amended Complaint/Petition.

5 To Respondent/Defendant listed below.

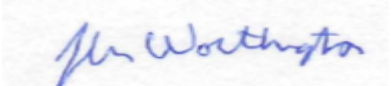
6
7 WASHINGTON STATE DEPARTMENT OF HEALTH
8 State of Washington Secretary of Health
9 101 Israel Road SE
10 Tumwater, WA 98501

11 Jay Inslee
12 Office of the Governor
13 PO Box 40002
14 Olympia, WA 98504-0002

15 Robert W. Ferguson
16 Attorney General State of Washington
17 1125 Washington St SE
18 Olympia, WA 98504-0100

19 I declare under penalty of perjury under the laws of the United States that
20 the foregoing is True and correct.

21 **Executed this 16th day of June, 2021.**

22 By: 

23 -----
24 JOHN WORTHINGTON
25 90 S. RHODEFER RD E-101
26 SEQUIM WA.98382

JOHN WORTHINGTON
90 S. RHODEFER RD.E-101
SEQUIM WA.98382