

IN THE COURT OF COMMON PLEAS  
FRANKLIN COUNTY, OHIO

<b>PharmaCann Ohio, LLC,</b>	:	
c/o Cogency Global, Inc., Statutory Agent	:	Case No.
3958-D Brown Park Drive	:	
Hilliard, Ohio 43026	:	Judge
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
<b>Jacqueline T. Williams,</b>	:	
Director	:	
Ohio Department of Commerce	:	
77 South High Street	:	
23 <sup>rd</sup> Floor	:	
Columbus, Ohio 43215	:	
<i>In her official capacity</i>	:	
	:	
Defendant.	:	

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**VERIFIED COMPLAINT FOR TEMPORARY RESTRAINING ORDER AND  
DECLARATORY AND INJUNCTIVE RELIEF**

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**I. PRELIMINARY STATEMENT**

1. This civil rights case challenges the constitutionality of Ohio Revised Code Section 3796.09(C). This section requires Defendant to award a license based on the race of the applicant, without any justification, to the detriment of Plaintiff, who would have been awarded a license but for the impermissible, racially discriminatory practice. Plaintiff asks this Court to restrain Defendant, a state actor, from using race as the basis for awarding the license.

## II. PARTIES

2. Plaintiff PharmaCann Ohio, LLC is an Ohio corporation that conducts business in Ohio.
3. Defendant Jacqueline T. Williams, Director of the Ohio Department of Commerce, is responsible for enforcing the medical cannabis cultivator licensing provisions of R.C. 3796. Defendant Williams is sued in her official capacity only.

## III. FACTS

4. House Bill 523, which became effective on September 8, 2016, legalizes medical marijuana in Ohio.
5. The General Assembly delegated the task of establishing specific rules and guidelines for the cultivation, processing, testing, dispensing and medical use of marijuana to three different state agencies, including Defendant. Defendant is responsible for the licensure of cultivators.
6. Defendant Jacqueline T. Williams is the Director of the Ohio Department of Commerce and has final authority for any action ordered by the Department.
7. Under the regulations, Defendant may issue up to twelve Level I cultivator provisional licenses before September 8, 2018, in consideration of the ranking of the applicants in accordance with the criteria listed in R.C. 3796.09.
8. Level I cultivators are permitted to operate an initial marijuana cultivation area up to 25,000 square feet. Level I cultivator applications were accepted from June 19, 2017, thru June 30, 2017.

9. The Defendant received 109 Level I cultivator applications. Of the 109 applications received, 36 met the minimum requirements, and were considered for a provisional license.
10. The applications were scored based on points out of a total final weighted score of 200. Based upon the statutes and regulations establishing this process, the top twelve-scoring applicants were to be awarded provisional Level I cultivator licenses.
11. However, R.C. 3796.09(C) injects race into this process because it requires Defendant to “issue not less than fifteen per cent of cultivator, processor, or laboratory licenses to entities that are owned and controlled by United States citizens who are residents of this state and are members of one of the following economically disadvantaged groups: Blacks or African Americans, American Indians, Hispanics or Latinos, and Asians.” As used in this division, “owned and controlled” means that at least fifty-one per cent of the business, including corporate stock of a corporation, is owned by persons who belong to one or more of the groups set forth in this division, and that those owners have control over the management and day-to-day operations of the business and an interest in the capital, assets, and profits and losses of the business proportionate to their percentage of ownership.”
12. Defendant reviewed 36 applications that met the minimum requirements, scored the applicants, and awarded twelve provisional Level I cultivator licenses to the following entities:
  1. Buckeye Relief, LLC (Eastlake, Lake County) – Score: 179.28
  2. Grow Ohio Pharmaceuticals, LLC (Newton Township, Muskingum County) – Score: 173.44
  3. OPC Cultivation, LLC (Huron, Erie County) – Score: 173.28

4. Riviera Creek Holdings, LLC (Youngstown, Mahoning County) – Score: 172.72
  5. Pure Ohio Wellness, LLC (Springfield, Clark County) – Score: 167.64
  6. Columbia Care OH, LLC (Mt. Orab, Brown County) – Score: 167.08
  7. Terradiol Ohio, LLC (Canton, Stark County) – Score: 165.48
  8. Standard Wellness Company, LLC (Gibsonburg, Sandusky County) – Score: 161.28
  9. AT-CPC of Ohio, LLC (Akron, Summit County) – Score: 161.28
  10. Cresco Labs Ohio, LLC (Yellow Springs, Greene County) – Score: 159.80
  11. Parma Wellness Center, LLC (Parma, Cuyahoga County) – Score: 153.08
  - T-12. Harvest Grows, LLC (Hamilton Township, Lawrence County) – Score: 142.04
  - T-12. Harvest Grows, LLC (Cleveland, Cuyahoga County) – Score: 142.04
13. Parma Wellness Center, LLC and Harvest Grows, LLC scored lower than Plaintiff, who scored 158.56. Parma Wellness Center, LLC and Harvest Grows, LLC received final scores that should have placed them 14<sup>th</sup> and 23<sup>rd</sup> (respectively) on the list of applicants.
14. Only because of R.C. 3796.09(C), the lower-scoring Harvest Grows and Parma Wellness Center were announced as being awarded provisional Level I cultivator licenses, and Plaintiff was denied one.
15. Medical marijuana cultivation is an expensive business. In addition to the non-refundable application fee and the mandatory minimum assets and bonding, there are large costs associated with entity-creation, real estate acquisition, zoning compliance, architectural and engineering fees, and facility buildout costs. Once the facility is built, it must have a sophisticated security system, and of course it must be staffed. All in, from application to operator license, a Level I cultivator will invest about \$15 million dollars into its facility.

16. Despite being formally mislabeled “economically advantaged” by Defendant, Harvest Grows and Parma Wellness Center are sufficiently financially solvent to pay the \$20,000.00 non-fundable application fee and the \$180,000.00 certificate of operation fee (annual renewal fee of \$200,000.00), as well as comply with O.A.C. 3796:2-1-05, which requires them to either maintain an “escrow account in a chartered financial institution in Ohio in the amount of seven hundred fifty thousand dollars,” or provide a surety bond naming the cultivator as principal on the bond, of the same amount of money. Both companies also must have the millions in capital necessary to develop a cultivation facility.
17. R.C. 3796.09(C) denies certain citizens the opportunity to compete for a fixed percentage of public licenses based solely upon their race, and accordingly, must be narrowly tailored to accomplish a compelling governmental purpose or interest.
18. When the medical marijuana bill was debated on the floor, Representative Ramos noted the bill would need votes from members who are minorities. As an explicit *quid pro quo* for votes from the minority caucus, Ramos demanded a racial quota of 15% for licenses. Despite the floor speech of Representative Sietz informing the body that such a quota would be unconstitutional and unenforceable, the quota was inserted into the Revised Code as R.C. 3796.09(C).
19. The General Assembly made no effort to evaluate whether there was a compelling governmental purpose or interest sufficient to justify R.C. 3796.09(C).
20. The General Assembly did not analyze whether there was pervasive, systematic, and obstinate discriminatory conduct in the medical marijuana industry or in any other state

or private policy or practice that would justify the race-based preference in R.C. 3796.09(C). No explicit findings of constitutional or statutory violations were made.

21. The General Assembly did not study how many “economically disadvantaged” businesses were qualified, willing, and able to perform the work, or examine any other factors that might drive an alleged racial disparity.
22. The General Assembly did not make a separate finding of discrimination for each individual group granted racial preference by R.C. 3796.09(C).
23. The General Assembly did not include other individuals who may be considered “economically disadvantaged,” such as disabled Vietnam veterans, Appalachian whites, or Hasidic Jews.
24. The General Assembly made no effort to ensure R.C. 3796.09(C) was narrowly tailored to accomplish a governmental purpose.
25. Because the General Assembly did not identify discrimination in any way prior to enacting R.C. 3796.09(C), it cannot demonstrate a need for a race-based remedy.
26. The General Assembly did not explore whether other, race-neutral remedies, might address any legitimate concerns regarding discrimination, such as waiving the financial requirements for individuals who could prove they were economically disadvantaged or directly addressing disparities in criminal drug enforcement.
27. The General Assembly did not put any durational limit on R.C. 3796.09(C), did not attempt to determine whether the length of the race-based preference was properly attuned to disparity caused by any alleged discrimination, and did not implement any mechanism to monitor the efficacy of R.C. 3796.09(C) in reducing or eliminating discrimination.

28. Accordingly, R.C. 3796.09(C) is unconstitutional. It violates Section 1 of the Fourteenth Amendment, which guarantees equal protection of law to all persons.

29. But for the application of this unconstitutional provision, Plaintiff would have been granted a provisional Level I cultivator license.

#### **IV. NEED FOR INJUNCTION**

30. Plaintiff will suffer irreparable harm if the injunction is not granted, because its Fourteenth Amendment rights have been violated.

31. No third parties would be harmed by an injunction—the only affected parties will be Parma Wellness and Harvest Grows, which did not lawfully qualify for a provisional Level I cultivator license in the first instance.

32. The public interest is served by ensuring that only the highest scoring cultivators enter this new industry, and by ensuring Ohio’s laws are constitutional, and by avoiding reinforcement of common stereotypes that certain groups are unable to achieve success without special protection based on a factor having no relation to individual merit, and by ensuring the integrity of the licensing process.

#### **V. CLAIM FOR RELIEF**

##### **First Claim – 42 U.S.C. §1983 – United States Constitution**

33. Defendant, acting under color of law, has violated rights secured to the Plaintiff by the Fourteenth Amendment to the United States Constitution, including the right to equal protection under the law.

**VI. PRAYER FOR RELIEF**

**WHEREFORE**, PLAINTIFF PHARMACANN, OHIO, LLC requests this Court:

- A. Issue a declaratory judgment that R.C. Section 3796.09(C), as applied to Plaintiff, violates the constitutional rights of Plaintiff;
- B. Issue a temporary restraining order prohibiting Defendant from using the racial quota in R.C. 3796.09(C);
- C. Issue a preliminary and permanent injunction against Defendant and all those acting in concert prohibiting enforcement of the law, as applied, at issue in this action;
- D. Issue a preliminary and permanent injunction requiring Defendant to proceed to award licenses without the use of the unconstitutional racial quota, but based on objective scoring, which will result in Defendant awarding a Level I cultivator license to Plaintiff; and
- E. Award such other and further relief as this Court shall deem just and reasonable.

Respectfully submitted,

**ISAAC WILES BURKHOLDER  
& TEETOR, LLC**

*/s/Mark Landes*

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VERIFICATION

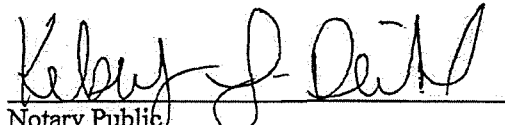
STATE OF ILLINOIS )  
 ) ss:  
COUNTY OF COOK )

Teddy Scott, being first duly cautioned and sworn, deposes and states: he is Chief Executive Officer of PharmaCann Ohio, LLC; this verification is made upon his own knowledge, information, and belief; he has read the foregoing Complaint; and the averments contained in the Complaint are true and accurate to the best of his knowledge, information, and belief.

  
Teddy Scott, Ph.D.  
~~Chief Executive Officer~~ **Manager**   
PharmaCann Ohio, LLC

Sworn to before me and subscribed in my presence this 12 day of December of 2017.

SEAL

  
Notary Public  
My Commission Expires 5/12/19

