Defendant files this Supplemental *Daubert* Motion and Motion to Quash the Bindover and in support thereof respectfully shows as follows:

For the reasons raised in prior motions and herein, it is evident that expert's testimony and lab report is not "relevant to the task at hand" and that it does not rest "on a reliable foundation". *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 584-587. The forensic evidence presented does not qualify as scientific knowledge because it is not the product of sound scientific methodology derived from the scientific method. Indeed, it is the opposite. It is scientifically fraudulent and falsely sworn. The "evidence" is part of a prosecution that has charged the defendant with a felony that he has not committed. As a consequence, defendant faces two years in jail and has had his child taken from him.

Only synthetic THC is Schedule 1. There is no evidence to support the bindover.

A district court binds over a defendant when "it shall appear to the magistrate at the conclusion of the preliminary examination that a felony has been committed and there is probable cause for charging the defendant therewith . . . ." MCL 766.13. Defendant is charged with and has been boundover on the felony charge of possessing Delta 1 Tetrahydrocannabinol (THC), purportedly a schedule 1 controlled substance under the Michigan Controlled Substances Act ("MCSA"). The charge is based on a lab report from the Michigan State Police Forensic Science Division of an oil residue allegedly found in defendant's possession.

Only synthetic THC is categorized as a schedule 1 substance under the MCSA. *See* MCL 333.7212(1)(d) and (e). Plant-based THC is not. It is categorized as marihuana with greatly reduced penalties. *People v. Campbell*, 72 Mich. App. 411, 412 (1976)("natural THC to be punished only under the provisions dealing with marijuana"); *People v. Carruthers*, 301 Mich. App. 590, 597; 837. NW2d 16 (2013) ("Possession of THC extracted from marihuana is possession of marihuana" under the MCSA and MMMA, citing *Campbell*). Defendant here is not charged with possession of marihuana. Therefore, the State must show probable cause that defendant possessed synthetic THC. It has not and cannot.

The Michigan Forensic Science crime lab declared the sample to be Delta 9 Tetrahydrocannabinol Schedule 1 (Origin unknown). See exhibit "A". Origin unknown? This report offers no evidence whatsoever that defendant possessed synthetic THC. Further, expert Ruhf testified that he was "not able to tell which pathway (plant or synthetic) led to the THC (he) identified." Transcript P.52, lines 15-20. There is not a scintilla of evidence that the THC found was synthetic much less probable cause to believe defendant to be guilty of the crime charged. On this ground alone the charge must be dismissed.

The evidence shows that the THC found was plant-based.

Moreover, the expert's own lab report clearly indicates that the substance is plant-based. The gas spectrometry test showed the presence of numerous cannabinoids. Any reliable scientific conclusion is that the sample is plant-based and not synthetic. See attached expert report of Jethro from CSI Miami. The odds that the substance contained synthetic THC are, in layman's terms, astronomical. Indeed, expert Ruhf's in his own tortured testimony admits this. He testified

that maybe someone took synthetic THC and "put it in a solution and put the solution … on dried maple leaves out of somebody's yard, crunched it all up and asked us to analyze it." Id. P. 82. Even if a sample contained 25 different cannabinoids, expert Ruhf's opinion is that maybe someone synthesized all 25 cannabinoids and put them into a brownie (as opposed to for example throwing a marihuana bud into a pan of butter.) CITE. This is not science, it's *Alice in Wonderland.*

It is also illegal. The Court of Appeals addressed this precise issue in *People v. Campbell*:

"THC is most commonly found in its natural state, being the active ingredient in marijuana, but it can also be produced synthetically…. In the present case, it was uncontroverted that the substance sold by the defendant contained natural THC. Based on this fact, the defendant contended, both at trial and originally in this appeal, that he should have stood trial for sale of marijuana, a four-year felony, rather than the charged offense. He pointed to the language of the Controlled Substances Act… and argued that *the Act intended to include the sale of only synthetic THC in the category of narcotics carrying a seven-year penalty, while it intended sale of natural THC to be punished only under the provisions dealing with marijuana.* On appeal the prosecution has agreed that the defendant's interpretation of the relevant provisions of the Controlled Substances Act is the correct interpretation of those provisions. This Court agrees. The language of the Act supports this conclusion. *Unless the statute is so interpreted, any person selling marijuana could be charged with sale of THC and become subject to the greater penalty since all marijuana contains at least a trace of natural THC. In enacting the Controlled Substances Act, the Legislature did not intend such an anomalous result."*

Campbell, supra at 870-71 (emphasis added).

For all these reasons this bind-over must be quashed. However, there is more.

<u>Defendant was charged and bound-over on falsely sworn material facts.</u>

Expert Ruhf testified that 1) the sample tested positive for schedule 1 THC and 2) the origin is unknown. Both of these statements cannot be true. If the sample tested positive for schedule 1 THC, then its synthetic origin is known. If its origin is unknown, it cannot have tested positive for schedule 1 THC. The answer to this self-inflicted conundrum is that both sworn statements are false. And material. Expert Ruhf went so far as to say that there is no scientific test that can determine if the sample was plant-based. CITE This, too is false. The substance did not test positive for synthetic THC and its plant origin was knowable and known. *See* defendant's expert's report.

Expert Ruhf also testified that no one in the lab ever suggested a profile for telling if THC is plant-based. Internal Forensic Science Division crime lab documents recently obtained via a FOIA request show this to be both false and material. The documents revealed below show a concerted action by Forensic Science Division leadership, the Prosecuting Attorneys Association of Michigan and law enforcement including WEMET to ignore the law and bend the science so as to report all marihuana oils and solids that do not contain visible plant matter as schedule 1 synthetic THC regardless of what the tests showed regarding the origin of the sample. The

Forensic Science Division changed its lab manual to require this result from its scientists. It did this in an attempt to strip medical marijuana patients of their immunities, to charge citizens with greater crimes than they might have committed, and to increase proceeds from drug forfeiture.

Expert Ruhr testified the way he did because he was ordered to bear false witness.

The Michigan State Police Forensic Science Division knew that only synthetic THC is a Schedule 1 felony and that the oils and edibles they were analyzing were plant-based.

As recently as 2013, the Prosecuting Attorneys Association of Michigan pressured the crime lab to uniformly report medical marijuana edibles and oils as THC Schedule 1 when plant material wasn't visible. However, the Forensic Science Division had long known, as one of its scientists wrote, that *"it is highly doubtful that any of these Med. Mar. products we are seeing have THC that was synthesized. This would be completely impractical. We are most likely seeing naturally occurring THC extracted from the plant!"* Penabaker to Chirackle, 5/30/13 email. It has also long been aware that while "the Fed statute covers THC that is natural as well as synthetic equivalents… Michigan law does not. In order to place the actual compound THC in Schedule 1, the criteria of 'synthetic equivalent' should be met…. (W)e can't do this…. Also, by going out on that limb and calling it THC, you now jump from a misdemeanor to a felony charge." The lab recognized that the legislature would have to act "to make those wording changes in the PHC (Public Health Code)." In other words, to report a marijuana sample as THC Schedule 1 is scientifically false and legally wrong.

As Mr. Penabaker put it: "Once you identify THC and place it in Schedule 1 on your report, it automatically becomes the felony. The only place the prosecutor will find 'THC' in the law is under the section which by law is a felony punishable by up to two years and $2000. The prosecutor cannot charge this as a misdemeanor Marihuana offense because that's not what was confirmed."

PAAM and the Attorney General's Office did not relent. On July 25, 2013, Ken Stecker with the AG's office and the Traffic Safety Resource Prosecutor for PAAM met with the director of the lab, Gregoire Michaud. Mr. Stecker provided Mr. Michaud with a copy of the *Carruthers* case, discussed above. Email Stecker (AG) to Michaud (MSP), July 25, 2013. Mr. Stecker advised that the case changed the way that marihuana edibles and oils should be reported by the lab because THC extracted from marihuana resin is not usable marihuana under the MMMA. He either did not read the case or intentionally represented its results because as discussed above it says precisely the opposite. "Possession of THC extracted from Marihuana is possession of Marihuana" under the Michigan Controlled Substances Act, not synthetic schedule 1 THC. *Carruthers, supra.* Nonetheless, Mr. Michaud, the crime lab's director, decided that for "any questions regarding law interpretation" the lab leaders would "reach out to Mr. Ken Stecker for a proper interpretation" and for "PAAM's response." Email, Michaud, July 25, 2013.

Scientists voiced concern over the lab's "responsibility to determine whether the THC found is natural or synthetic" and the fact that "the charge changes to a felony with the identification of THC." Email, Hoskins, December 13, 2013. The response by Mr. Stecker: "That is my opinion, THC is a schedule 1 drug regardless of where it comes from. I hope that helps. Ken." *Id.* It did

not. Primarily because it ignored the Controlled Substances Act and the case law and misrepresented *Carruthers*. Nonetheless, the Forensic Science Division issued a directive requiring the scientists to report marihuana oils and solids as THC "when no visible plant material was found" noting that section 7217 [sic] of the Controlled Substances Act "has been clarified by Ken Stecker." Email, Hoskins, February 6, 2014.

The lab then set out to change the "procedure manual for guidelines of marihuana" to report THC schedule 1 for all "oils, food products and other substances" where plant material could not be visualized. Email, Hoskins, February 11, 2014. However, scientists typically are smart. Bradley Choate, the Controlled Substance Unit Supervisor at the Lansing laboratory of the Forensic Science Division strongly objected to the change. Noting that "the Controlled Substances Procedure Manual specifically states that Marihuana is a special case" and that oils and solids extracted from the Marihuana plant are controlled as Marihuana by statute, he correctly laid out the science and the law: "When THC is identified in a case, the analysts has two choices: 1) identify it as Marihuana which for possession is a Schedule 1 misdemeanor, 2) Identify it as a synthetic equivalent which for possession is a Schedule 1 felony. There is not a third choice. The question then becomes is the THC from a natural source i.e., Marihuana or a synthetic source. *The presence of other cannabinoids indicates that the substance is from a natural source.*" Email, Choate to Hoskins, February 14, 2014.

Mr. Choate went on: "Prosecutors rely on our reports to determine what to charge a person with. A report that states delta 1 THC without any other statement would lead a prosecutor to the synthetic portion of the law.... This could lead to the wrong charge of possession of synthetic THC and the ultimate wrongful conviction of an individual. For the laboratory to contribute to this possible miscarriage of justice would be a huge black eye for the division and the department.... We don't leave it up to the prosecutor to figure this out." Id. He also identified another serious defect in the procedure manual's prohibiting the scientists from stating the conclusion of Marihuana in their reports. "It would follow that we could not state on the stand that it is marihuana which would make it hard if not impossible for the prosecutor to prove possession of Marihuana." *Id.*

<u>The Crime Lab perverted science and broke the law. It reported bogus crimes.</u>

In the understatement of the year, one scientist dryly noted that "apparently Stecker's interpretation doesn't encompass all our concerns." Email, Hoskins, February 21, 2014. For a moment it seemed that rational heads would prevail. One scientist proposed that "the identification of at least three cannabinoids one of which shall be THC" was a sufficient profile to determine a sample to be plant-based." Email Gormley, February 24, 2014. Then the lab threw all science out the window. One "concern" of the scientists was that by reporting THC schedule 1, they would be falsely swearing the substance to be synthetic. Another was that "by reporting THC we are possibly influencing the sentencing severity, as THC has a significantly higher penalty than marihuana." Email, Gooden, February 26, 2014. The directive to report THC schedule 1 put the scientists in an ethical quandary. And in an epic twist of logic, the crime lab sought to cover up this scientific fraud by perpetuating another one. It changed its Laboratory

Guidelines section 2.1 to *require* analysts in their lab reports to "clarify that the source of the identified cannabinoid(s) cannot be established."

The Michigan State Police Forensic Science Division realized that a crime lab report stating that oils and edibles contained Schedule 1 THC was scientifically, forensically and legally false and would result in citizens being charged with felonies they did not commit. It knew that it would result in the State being unable to prosecute for Marihuana because the analyst would not be able to get on the stand and testify that the sample was Marihuana. It knew that it was highly doubtful that *any* of the medical marijuana oils and edibles it was seeing were synthetic. It knew that a sample containing THC plus two or three other cannabinoids was plant-based with high scientific certainty. Yet it caved to political pressure from the Attorney General's office and the Prosecuting Attorneys Association of Michigan and WEMET and reported "THC Schedule 1" anyway! In a contortionistic attempt to cover its ass, it added the additional language "origin unknown," compounding scientific fraud with scientific fraud.

The "science" behind this disclaimer is summed up by John Bowen, Assistant Director of the Forensic Science Division: "Other cannabinoids 'can' be manufactured synthetically, just as THC can be. Is it likely that someone went to the trouble to manufacture THC and two other cannabinoids, mix them up, and bake them into a pan of brownies? Of course not. That doesn't mean that we should change the results to show we found marijuana. We didn't, because Marijuana is a plant, and we didn't find plant parts. We need to make sure our report are accurate. To me that means reporting 'exactly' what we found." (emphasis in original) Email, Bowen, March 15 2004. Nudge, nudge. Wink, wink. Then, Mr. Bowen declared that he would talk to "Ken Stecker myself and make sure he's ok with this direction." *Id.* The "direction" was rampant illegality.

This is the opposite of science. This is ignorance. Willful, deliberate ignorance. This is turning a blind eye to the truth *as a matter of crime lab policy*. "No one can avoid responsibility for a crime by deliberately ignoring the obvious." US 6th Circuit pattern jury instruction 2.09. A person cannot deliberately ignore a high probability of fact at issue. One cannot be "aware of a high probability that something is true" and "deliberately close (one's) eyes to what was obvious." *Id.*

In mandating this policy, the crime lab is stating that in all cases where plant material is not visible, the origin of the THC is unknown and unknowable scientifically. This is false. The emails show otherwise. The lab results in defendant's case show otherwise. The GS test in this case show at least five other natural cannabinoids in the sample proving its plant origin. See expert report. And in fact, the crime lab can test for known synthetic cannabinoids. It purchases "reference standards" of synthetic marijuana, small purified samples of synthetic cannabinoids that it uses to determine if a substance is illegal, from Cayman Chemicals in Ann Arbor. "If we couldn't purchase standards, we wouldn't be able to make the (synthetic) identification," said State Police Crime Lab forensic scientist Kyle Ann Hoskins. "That is a necessity." Detroit Free Press, December 20, 2012. The disclaimer that the lab cannot identify the source of the cannabinoids is a lie.

The Ottawa County Sheriff's drug task force is complicit in targeting patients with this perversion of justice.

It is difficult to overstate the gravity of what the crime lab did. It divorced science from the law and abandoned forensic science. It began to ask prosecutors what crime they wanted to charge, effectively asking what the prosecutor wanted the lab report to say. See Email, Knoll, October 9, 2014 (discussing conversation with Melissa Keys of St. Clair County). Still law enforcement wasn't satisfied. The Western Michigan Enforcement Team (WEMET) that is headed by the Ottawa County Sheriff contacted the crime lab complaining that THC wax and oil was still sometimes being reported as Marihuana rather than THC. *"If we were to seize the wax/oil from a card carrying patient or caregiver, we will not have PC (probable cause) for the arrests….* Is there a way to get this changed? Our prosecutors are willing to argue that one speck of marijuana does not turn the larger quantity of oil/wax into marijuana." Email, Pierson, January 27, 2015. (Forwarding a message from Andy Fias of WEMET)(emphasis added).

This is outrageous. WEMET is asking the lab to alter evidence in order to create probable cause to arrest a patient. Why was WEMET so keen to go after medical marijuana patients with enhanced schedule 1 penalties? Its most recent financial report tells the story: "Economic Factors and Next Year's Budgets and Rates. WEMET activity is difficult to project, both near and long-term. **Financially, the agency is dependent on forfeiture revenue which depends on the arrests, the assets of those arrested, the amount allocated to WEMET, and the speed of the adjudication process."**
https://www.michigan.gov/documents/treasury/707531WestMIEnforcementTeam20130326_415584_7.pdf

That's why.

A response by Mr. Choate cited the Guiding Principles of the American Society of Crime Lab Directors, the very association that accredits the Michigan State Police Crime Lab: "'Conclusions are based on the evidence and reference materials relevant to the evidence, not on extraneous information, political pressure, or other outside influences.' *Whether or not an individual has a medical marihuana card is immaterial to how we report out results.*" Email, Choate, January 28, 2015. Then he posed a question to the analysts as to how they would answer on the stand under oath when asked whether "the THC identified was synthetic or natural?" *Id.* The lab had painted itself and its scientists into a box. If an analyst said it was natural, he would be contradicting his own lab report. If he said it was synthetic, he would be testifying falsely. And worse, he was commanded to state that the origin of the THC could not be determined, also untrue.

In this light, Expert Ruhf's testimony makes sense. In his imaginary examples and mental gyrations regarding the remote possibility that the sample tested contained synthetic THC, he was not trying to convict defendant of a crime under the controlled substances act. He was postulating statistically insignificant, alternative quantum universes where the sample "might" contain synthetic THC in an attempt to keep from perjuring himself. He was trying to maintain some sliver of plausible deniability. He was engaging in deliberate ignorance, intentionally

ignoring the obvious. He was "aware of a high probability that something is true" and "deliberately closing (his) eyes to what was obvious." *US 6th Circuit pattern jury instruction 2.09, supra.* He was willfully blind.

Whether he succeeded in avoiding perjury is a question for this or another court. What is beyond cavil is that in mandating that the samples be reported as Schedule 1 THC of unknown origin, the crime lab, acting in concert with the office of the Attorney General and the Prosecuting Attorneys Association of Michigan and law enforcement including WEMET, fixed the science around the policy and issued false lab reports. This empowered prosecutors to charge citizens with felonies that they didn't commit, as is the case with defendant here. The lab violated many of the core guiding ethical principles of forensic science. It obstructed justice and tampered with evidence. And it suborned perjury. It did this as part of the Attorney General's ongoing campaign to strip immunities from medical marijuana patients and law enforcement's continuous quest for more forfeiture proceeds. In defendant's case, they also took away his child and placed him with a Christian adoption agency.

For all the reasons stated above, the case against him must be dismissed. However, that does not end this matter.

<u>The actions described herein are unethical and criminal.</u>

The crime lab's conduct violates the guiding principles of forensic evidence. Among the standards that the lab and its forensic scientists were bound to uphold and did not, these stand out:

The ethical and professionally responsible forensic scientists and laboratory managers . . .

1. Are independent, impartial, detached, and objective, approaching all examinations with due diligence and an open mind.

2. Conduct full and fair examinations. Conclusions are based on the evidence and reference material relevant to the evidence, *not on extraneous information, political pressure, or other outside influences.*

14. Present accurate and *complete* data in reports, testimony, publications and oral presentations

16. Do not alter reports or other records, or *withhold information from reports for strategic or tactical litigation advantage.*

18. Testify to results obtained and conclusions reached only when they have confidence that the opinions are based on good scientific principles and methods. Opinions are to be stated so as to be clear in their meaning. *Wording should not be such that inferences may be drawn which are not valid, or that slant the opinion to a particular direction.* http://www.ascld-lab.org/guiding-principles/

The crime lab, and expert Ruhf, failed to do all of these things. These are the very guiding principles promulgated by the organization that gives the lab its accreditation. In presenting the

false lab reports the Forensic Science Division has, at a minimum, violated its ethical code and put its accreditation at risk. However, it did much more. It evolved from being a crime lab into being a crime factory. In concert with the prosecutors union and Attorney General Schuette's office and WEMET it tampered with evidence.

The Crime Lab engaged in systematic evidence tampering.

Tampering with evidence is a four year felony. Michigan Penal Code Sec. 483(a)(5) provides that: "A person shall not do any of the following: (a) Knowingly and intentionally remove, alter, conceal, destroy, or otherwise tamper with evidence to be offered in a present or future official proceeding. (b) Offer evidence at an official proceeding that he or she recklessly disregards as false." "Tamper" means "to exert a secret or corrupt influence upon." Synonyms are: influence, get at, rig, manipulate, bribe, corrupt, bias; informal: fix. "The defendant tampered with the jury." *See* Google Online Dictionary. By any definition, the crime lab's conduct amounts to tampering. It rigged and fixed the evidence around the scientifically corrupt department policy. It, and expert Ruhf, recklessly disregarded the falsity of the evidence it presented in an official proceeding.

The crime lab, in concert with the AG's office and the prosecutors union and WEMET obstructed justice under both State and federal law.

Under Michigan law, obstruction of justice is a common-law charge that can be prosecuted under MCL 750.505 and "is generally understood as an interference with the orderly administration of justice." People v. Thomas, 438 Mich. 448, 455, 475 N.W.2d 288 (1991). "Like breach of the peace, at common law obstruction of justice was not a single offense but a category of offenses that interfered with public justice. Blackstone discusses twenty-two separate offenses under the heading "Offences against Public Justice."...To warrant the charge of common-law obstruction of justice, defendant's conduct must have been recognized as one of the offenses falling within the category "obstruction of justice." Id at 458.

Of Blackstone's 22 offenses, this crime lab has 1) falsified proceedings, 2) obstructed lawful process, 3) compounded informations upon penal statutes, and 4) conspired (with the AG, WEMET and prosecutors' union) to indict an innocent man. This constitutes the common law crime of obstruction of justice.

The lab violate federal law as well: To sustain its burden of proof for conviction for crime of corruptly endeavoring to influence, obstruct or impede due administration of justice, government must prove that there was a pending judicial proceeding, that defendant knew this proceeding was pending, and that defendant then corruptly endeavored to influence, obstruct, or impede due administration of justice. 18 U.S.C.A. § 1503. This is an instance where a federal court may assess the quantum of evidence (fraudulently non-existent) underlying a threatened state prosecution. *See Brady v. United States,* 397 U.S. 742, 751 n. 8, 90 S.Ct. 1463, 25 L.Ed.2d 747 (1970) (a prosecutor's broad authority is properly questioned where "the prosecutor threatened prosecution on a charge not justified by the evidence"). Federal courts have the authority to affect state prosecutorial actions when those actions are taken, as here, in violation of the Constitution, *United States v. Santtini,* 963 F.2d 585, 596 (3d Cir.1992).

The Crime Lab committed and suborned perjury.

Perjury is an ugly word. There is no nice way to say it. In ancient times, the punishment was death. Then it evolved to merely cutting out the offender's tongue and forfeiting his goods. By Blackstone's time the relatively light punishment was "perpetual infamy", prison and a fine followed by standing "with both ears nailed to the pillory" for non-payment. In Michigan the crime is defined as follows:

"(1) Any person authorized by a statute of this state to take an oath, or any person of whom an oath is required by law, who willfully swears falsely in regard to any matter or thing respecting which the oath is authorized or required is guilty of perjury, a felony punishable by imprisonment for not more than 15 years. (2) Subsection (1) applies to a person who willfully makes a false declaration in a record that is signed by the person and given under penalty of perjury. MCL 750.423.

"Any person who shall be guilty of subornation of perjury, by procuring another person to commit the crime of perjury, shall be punished as provided in the next preceding section." MCL 750.424. To "procure" is to initiate a proceeding; to cause a thing to be done; to instigate; to contrive, bring about, effect, or cause. *See U. S. v. Wilson*, 28 Fed. Cas. 710 "Subornation of perjury" can generally be defined as procuring or inducing an improper or unlawful act. *People v. Sesi*, 300 N.W.2d 535, 101 Mich.App. 256 (1980).

In stating in the lab report that the sample contained schedule 1 THC, Expert Ruhf made a false and material declaration in a judicial proceeding in a record signed under oath. When he stated in his lab report that the origin was unknown and in his testimony that the origin was unknowable, he again swore falsely to a material fact. Whether he did so willingly is a question for this or another court to determine. His excuse on the stand was that it was an "administrative decision," he was just following orders. This defense went out at Nuremberg.

The far more disturbing fact is that there is another witness here… the Michigan State Police Forensic Science Division itself. The report was submitted as scientific evidence by the Crime Lab with its accreditation guaranteeing conformity with the highest code of professional forensic evidence. Both statements in the report cannot be true ("it is schedule 1 THC " and "its origin is unknown") and in fact as shown above, both are false as to a material fact and the central question in this prosecution: *What is my client charged with possessing?* The report is perjury on its face.

It is a fundamental principle of criminal law that a man accused of a crime is entitled to be informed of the nature of the charge against him and have of all the elements of the offense that he or she is required to defend against. *People v. Wilder*, Supreme Court of Michigan, 485 Mich. 35780 N.W.2d 265. (2010). An accused is entitled to be proceeded against under an information which, with a fair degree of certainty, specifies the particular charge made against him and which fixes the scope of the prosecution. *People v. Putnam*, Supreme Court of Michigan, 323 Mich. 374 (1948).

In rigging its lab reports, the Crime Lab in concert with WEMET, and PAAM violated the fundamental constitutional Due Process rights underlying our criminal justice system. They took away defendant's very right to defend himself. And they took away his kid. These actors, in their rush to demonize and strip immunities away from disabled Michiganders and in their voracious appetite for forfeiture funds, went way too far. Not only did the crime lab violate the code of forensic evidence, tamper with evidence and obstruct justice. It suborned perjury.

Each and every forensic lab report that was issued showing "THC Schedule 1 (origin unknown)" is perjury on its face. These reports are "witness after witness," testifying falsely in courts across the state as in this description of the trial of Al Capone:

"We had here the spectacle of witness after witness testifying in a way which was psychologically impossible, pretending to remember things which, in the very nature of the human mind, the witness could not have remembered if he had forgotten the things which he pretends to have forgotten. It was perjury on its face."

http://www.irs.gov/pub/irs-utl/file-5-intelligence-unit-narrative-of-period-1919-1936-by-guy-helvering.pdf

Every single search, seizure, arrest, charge, plea bargain, conviction, sentence, revocation, forfeiture, or loss of immunity that resulted from one of these reports is based on the perjured testimony of the Michigan State Police Forensic Science Division.

<u>The Crime Lab's actions in concert with the prosecutors was a gross violation of defendant's fundamental constitutional rights and the rights of hundreds or thousands of other Michigan citizens.</u>

In defendant's case the results have been horrifying. Originally charged with possession of heroin, he was coerced to plead guilty until counsel could be found to show that there was no competent evidence of the charge. When defendant refused to plead guilty to possessing Marijuhana, the prosecutor retaliated by charging him with Schedule 1 THC, a bogus charge based on a bogus lab report. The prosecutor in the bind-over proffered the report and the expert's testimony knowing that it was false or with reckless disregard to its veracity. This is illegal and unconstitutional. Prosecutorial discretion does not mean that a prosecutor can decide what to charge and then ask the crime lab to provide the evidence, rigged or not, to support it.

And yet this is precisely what is happening. As one scientist relayed: "Prosecutors reportedly can charge "marihuana" even with a lab report that says "THC," and have done so at their discretion." Email, Gormley, January 28, 2015. What?? How can a lab report that says THC, necessarily a schedule one synthetic, support a charge, much less a search, arrest, plea or conviction for a substance that was not confirmed? This is the dilemma recognized by the lab in the early days of this fiasco. ""Once you identify THC and place it in Schedule 1 on your report, it automatically becomes the felony.... The prosecutor cannot charge this as a misdemeanor Marihuana offense because that's not what was confirmed." Email, Penabaker, May 30, 2013. "We could not state on the stand that this is Marihuana which would make it hard if not impossible to prove possession of marihuana." Email Choate, February 14, 2014.

This is true whether or not the marihuana charge is a misdemeanor or a felony. Where a crime lab report says that a sample contains schedule 1 and therefore synthetic THC, there can be no competent forensic evidence to support a charge for Marihuana. When the lab report takes the additional step to declare the origin unknown, it obviates the State's ability to prove *either* Schedule 1 THC *or* Marihuana beyond a reasonable doubt. The lab has put itself in the "identical twin paternity case" situation. The forensic evidence (DNA) cannot establish that either twin is the father.

More importantly it obviates probable cause that either a THC or a marihuana offense has been committed, as Officer Fias of WEMET noted in his email, *supra*, asking the crime lab's help in stripping away the immunities and possessions of disabled citizens. Possession of THC is not a lesser included offense of possession of Marihuana. *Campbell, supra.*

"When the government obtains a conviction through the knowing use of false testimony, it violates a defendant's due process rights," *Napue v. Illinois,* 360 U.S. 264, 269 (1959). Furthermore, pleas are unconstitutional where "the prosecutor or judge, or both, deliberately employ their charging and sentencing powers to induce a particular defendant to tender a plea of guilty or where the prosecutor threatened prosecution on *a charge not justified by the evidence....*" Such pleas that are so coercive as to overrule defendants' abilities to act freely, or used in a manner giving rise to a significant number of innocent people pleading guilty, raise constitutional issues. *Brady v. United States*, 397 U.S. 742 (1970).

Here's what inevitably falls out of the above:

1. There is no credible evidence to charge or convict the defendant for the crime charged, THC Schedule 1;
2. There is no credible evidence to convict defendant of any crime not charged, i.e., a Marihuana offense;
3. The lab report and expert testimony in this case is willfully and materially false;
4. All charges against defendant must be dismissed;
5. The prosecutor violated defendants fundamental rights by threatening to charge (and charging) defendant with a crime not justified by the evidence in retaliation for him refusing to plead guilty;
6. The State of Michigan is taking away Defendant's parental rights based on false testimony;
7. This lab report is one of hundreds or thousands of perjured lab reports issued by the Forensic Science Division in support of criminal investigations, searches, seizures, arrests, charges, forfeitures, convictions, revocations and pleas. Each of these actions was procured by false evidence in a massive violation of Due Process.
8. Each of these matters must be reviewed. All cases where marihuana solids and oils are reported as Schedule 1 THC must be reopened and the reporting practice enjoined. The

same is true for all cases relying on the testimony of Expert Ruhf. All cases where defendants pled guilty to a Marihuana offense based on a lab report stating "THC schedule 1" must be overturned;

9. This intentional miscarriage, this abortion of justice was implemented by the Crime Lab in concert with the Prosecuting Attorneys Association of Michigan and law enforcement to strip defendant, and all medical marijuana patients, of their immunities and their assets.

Finally, this evidence creates a reasonable presumption that perjury has been committed in this court. Under such circumstances, Defendant asks the court to exercise its power under MCL sections 750.426-7 and retain the documents and transcripts produced here for use in an investigation and prosecution of the compromised witnesses and to exercise its power to bind-over those witnesses, and those that suborned their perjury, to the proper court.

Respectfully submitted.