

**IN THE SUPREME COURT OF MISSOURI
NO. SC96008**

**STATE OF MISSOURI,
RESPONDENT**

v.

**MARK SHANKLIN,
APPELLANT**

**APPEAL TO THE SUPREME COURT OF MISSOURI,
FROM THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
STATE OF MISSOURI
TWENTY-SECOND JUDICIAL CIRCUIT, DIVISION 18
THE HONORABLE ROBERT H. DIERKER, JUDGE**

APPELLANT'S BRIEF

Respectfully Submitted,

ANTHONY MUHLENKAMP #55029
8008 Carondelet Ave., Suite #102
Clayton, Missouri 63105
Telephone (314) 499-7255
Facsimile (314) 499-7132
amuhlenkamp@mbstlcriminaldefense.com

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF AUTHORITIES	2
JURISDICTIONAL STATEMENT	4
STATEMENT OF FACTS	6
POINT RELIED ON - I	15
ARGUMENT - I	16
CONCLUSION.....	29
CERTIFICATE OF SERVICE AND COMPLIANCE	30
APPENDIX.....	separate cover

TABLE OF AUTHORITIES

Cases

<i>Akin v. Missouri Gaming Commission</i> , 956 S.W.2d 261, 263 (Mo. banc 1997)...	19
<i>American Federation of Teachers v. Ledbetter</i> , 387 S.W.3d 360 (Mo. banc 2012).....	18
<i>Bd. Of Educ. Of City of St. Louis v. State</i> , 47 S.W.3d 366, 368-69 (Mo. banc 2001).....	18
<i>Boone County Court v. State</i> , 631 S.W.2d 321, 324 (Mo. banc 1982).....	19
<i>Buechner v. Bond</i> , 650 S.W.2d 611, 613 (Mo. banc 1983).....	19
<i>Franklin County ex rel. Parks v. Franklin County Comm’n</i> , 269 S.W.3d 26, 29 (Mo. banc 2008).....	18
<i>Keller v. Marion County Ambulance Dist.</i> , 820 S.W.2d 301, 302 (Mo. banc 1991).....	18
<i>Mo. Prosecuting Attorneys and Circuit Attorneys Ret. Sys. V. Pemiscot County</i> , 256 S.W.3d 98, 102 (Mo. banc 2008).....	18
<i>Neske v. City of St. Louis</i> , 218 S.W.3d 417, 421 (Mo. banc 2007).....	19
<i>School District of Kansas City v. State</i> , 317 S.W.3d 599, 604 (Mo. banc 2010).....	18, 22, 25, 26
<i>State ex rel. Randolph County v. Walden</i> , 357 Mo. 167, (1947).....	19, 27
<i>State Hwy. Comm’n v. Spainhower</i> , 504 S.W.2d 121, 125 (Mo. 1973).....	18

<i>State v. Biggs</i> , 333 S.W.3d 472, 477 (2011).....	17
<i>St. Louis Rose Company v. Unemployment Comp. Comm’n</i> , 159 S.W.2d 249 (Mo. banc 1941).....	13, 20, 21, 25
<i>Trout v. State</i> , 231 S.W.3d 140, 144 (Mo. banc 2007).....	18
<i>Wright-Jones v. Nasheed</i> , 368 S.W.3d 157, 159 (Mo. banc 2012).	19, 20, 25, 26, 27
<i>Zahner v. City of Perryville</i> , 813 S.W.2d 855, 858 (Mo. banc 1991).....	19

Constitutional Provisions

Mo. Const., Art. I, Section 35 (Right to Farm Amendment).....	passim
Mo. Const., Art. V, Section 3.....	5

Statutes

Mo. Rev. Stat. Section 137.010.1.....	14, 26
Mo. Rev. Stat. Section 195.211.....	4, 6, 7, 28
Mo. Rev. Stat. Section 195.233.....	4
Mo. Rev. Stat. Section 537.295.2	14, 26

Other Authorities

House Bill 2238.....	8, 10, 12, 13, 23, 24
----------------------	-----------------------

JURISDICTIONAL STATEMENT

In the Circuit Court of St. Louis City, Cause No. 1422-CR02695-01, the State of Missouri charged Appellant, Mark Shanklin, with one count of the class B felony producing a controlled substance (marijuana) in violation of Section 195.211, RSMo, one count of the class B felony possession of a controlled substance (marijuana) with intent to distribute in violation of Section 195.211, RSMo, and one count of the class A misdemeanor possession of drug paraphernalia with intent to use in violation of Section 195.233, RSMo.

Mr. Shanklin filed a Motion to Dismiss counts one and two of the indictment on the grounds that those charges violated his right to farm as set forth in Article I, Section 35 of the Missouri Constitution. The motion was originally argued to the Honorable Michael Mullen, Division 16, of the St. Louis City Circuit Court on December 17, 2015. Judge Mullen denied Defendant's motion on March 1, 2016. The cause was then sent out to trial to the Honorable Robert Dierker, Division 18, of the St. Louis City Circuit Court.

Defendant's Motion to Dismiss counts one and two of the indictment was again taken up in Division 18 on July 5, 2016. Defendant waived his right to a jury trial and elected to proceed with a bench trial. The trial court took Defendant's Motion to Dismiss with the case, denied Defendant's Motion to Dismiss, and found him guilty of all three charges. On October 7, 2016, the trial court sentenced Defendant to a term of five years in the Missouri Department of Corrections on counts one and two, pursuant to Section 559.115 RSMo., and one

year in the Medium Security Institution on count three. All three sentences were ordered to be served concurrently.

On October 14, 2016, Mr. Shanklin filed a timely notice of appeal. This appeal involves the validity of a provision of the Missouri Constitution, Article I, Section 35 as set forth in Defendant's Motion to Dismiss, and therefore is reserved for the exclusive jurisdiction of the Supreme Court of Missouri. Mo. Const., Art. V, Section 3.

STATEMENT OF FACTS¹

At trial, Defendant did not contest any of the factual allegations made in the indictment. Defendant presented his Motion to Dismiss counts one and two of the indictment, as violations of Defendant's "Right to Farm," (herein after referred to as Right to Farm) as guaranteed by Article I, Section 35 of the Missouri Constitution. A31. In addition to his written motion, Defendant offered witness Timothy Gilio in support of his Motion to Dismiss. Mr. Gilio testified to his knowledge of the benefits of marijuana as they pertain to the four factors set forth in Article I, Section 35. A31. The State then called the lead detective that investigated this case.

Motion to Dismiss, Right to Farm

Defendant filed his Motion to Dismiss and Suggestions in Support of Defendant's Motion to Dismiss on November 18, 2015. L.F. 28; L.F. 33. Defendant argued that Sections 195.211 RSMo and 195.017 RSMo were unconstitutional on their face and as applied to him. He also argued that the statutes were overbroad in that they criminalized activity that was protected by the Missouri Constitution's Right to Farm. Furthermore, Defendant asserted that the Indictment failed to allege an offense since the Defendant's activity was protected

¹ Appellant will cite to the record as follows: "L.F." for the legal file; "Tr." for the trial transcript; and "A." for the appendix.

by the Missouri Constitutional Right to Farm as set out in Article I, Section 35 of the Missouri Constitution. L.F. 28-29; A31.

The Right to Farm Amendment states:

That agriculture which provides food, energy, health benefits, and security is the foundation and force of Missouri's economy. To protect this vital sector of Missouri's economy, the right of farmers and ranchers to engage in farming and ranching practices shall be forever guaranteed in this state, subject to duly authorized powers, if any, conferred by article VI of the Constitution of Missouri.

Article 1, Section 35 of the Missouri Constitution. L.F. 29; A31.

Defendant argued that the plain language of the right to farm amendment made clear that the right of farmers and ranchers to engage in farming and ranching practices is subject only to those authorized powers in article VI of the Missouri Constitution (article VI relates to county and local government). The language does not differentiate between the small sustenance farmer and the large farming corporation. L.F. 29. The Right to Farm amendment prohibits the legislature from declaring what can and cannot be grown in Missouri, provided that the substance meets the four tiers set forth in the amendment: food, energy, health benefits, and security. L.F. 29; A31.

As sections 195.211 RSMo and 195.017 RSMo prohibit the growing of cannabis/marijuana, they are unconstitutional on their face as they violate Defendant's Right to Farm as guaranteed by Article I, Section 35. L.F. 30; A31.

In support of his Motion to Dismiss, Defendant noted the many beneficial uses of marijuana/cannabis throughout history. The crop has been and is still used as a source of food, medicine, and commercial products throughout the world. L.F. 33. Specifically, he noted the long history of hemp being grown here in Missouri as an agricultural crop. L.F. 35.

Defendant also argued that the Missouri Legislature itself, through the passage of House Bill 2238, has recognized that hemp has medicinal value. L.F. 37. That house bill, signed into law in July, 2014, allows persons with intractable epilepsy to apply for hemp extract registration cards from the Missouri Department of Health and Senior Services. L.F. 37. House Bill 2238 was signed into law prior to the passage of the Right to Farm Amendment. L.F. 38; A31.

The Right to Farm Amendment does not define the terms “agriculture,” “farming,” or “ranching”. Defendant cited case law in support of a broad and expansive definition of “agriculture.” L.F. 44; A31. He also noted that the Right to Farm Amendment also did not differentiate between small farmers or large corporate farms. L.F. 45. The Right to Farm Amendment also does not identify whether specific crops are not covered or protected. If the amendment intended to exclude certain crops, like cannabis, then it would have so excluded those crops. It did not, provided they meet the four requirements set forth by the amendment. L.F. 45-46.

Testimony of Witness Timothy Gilio

Mr. Gilio testified that he founded the Missouri Marijuana Legalization Movement and helped to file an initiative with the State of Missouri to legalize cannabis in the state. Tr. 10. His main goal throughout these efforts was to educate the public about the benefits of marijuana. Tr. 12-13.

The Department of Health in Oregon and Michigan issued Mr. Gilio patient and caregiver licenses. Tr. 19. Mr. Gilio is a licensed grower of marijuana in Oregon and Michigan. Tr. 15. He worked at a medical marijuana dispensary in 2012. He distributed cannabis to patients and educated them about the different types of cannabis that would help their particular situation. Tr. 14. Mr. Giglio also educated himself about the positive effects of marijuana through books and other reading material. Tr. 13.

Mr. Gilio testified that he was familiar with the Missouri Right to Farm Amendment and knew that it became law in Missouri in 2014. Tr. 15. He had studied the positive effects of marijuana since 1987. Tr. 19. Mr. Gilio testified in regards to the positive effects of marijuana as they relate to the four tenets of the Right to Farm Amendment (food, energy, health benefits, and security).

He testified that marijuana, as a food, is beneficial because humans have an endocannabinoid system that was made to intake cannabinoids for health reasons. Tr. 21. People have been eating cannabis as a food since as early as the year 400. *Id.* As source of energy, Mr. Gilio testified that marijuana can be used as a biodiesel or an ethanol. Using hemp extract and seed extract could end our

nation's dependency on foreign oil. These processes are actively being used in approximately twenty-five states right now. Tr. 22.

As a health benefit, he testified that raw cannabis juice alone provides humans with all of the vitamins, proteins and carbohydrates that the human body requires. Tr. 23. It is also beneficial in treating seizures in children. In the states where marijuana is legal, it is primarily used for medicinal reasons. Tr. 23. Mr. Gilio was familiar with House Bill 2238 and that it was signed into law prior to the Right to Farm Amendment becoming law. Its primary purpose was to treat those that suffered from intractable epilepsy. Tr. 24. At the time of his testimony, the dispensaries created by House Bill 2238 were just up and running and about to start handing out hemp oils to those afflicted with intractable epilepsy. Tr. 25.

With reference to the security tenet, Mr. Gilio testified that anything made out of plastic could also be made out of hemp. Tr. 25. Hemp is a biodegradable product. Hempcrete is a substitute for concrete that is ten times stronger. It is also mildew, mold and crack resistant. Tr. 26. Hemp could be used to replace many common every day products. Tr. 26.

The defense presented no further evidence in support of its Motion to Dismiss. The Court agreed to take the motion to dismiss with the case. Tr. 49. Prior to the State's opening statement, the defense again objected to the constitutionality of the charges on the same basis of its written motion to dismiss. Tr. 49.

Testimony of Officer Gregory Klipsch

The State called one witness, Officer Gregory Klipsch. Officer Klipsch is a detective with the St. Louis Metropolitan Police Department. Tr. 51. He testified that he received information about a grower operation occurring at 617 Haven Street in the City of St. Louis. Tr. 52.

Detective Klipsch conducted a utility inquiry that revealed the utilities at 617 Haven St. were registered to the Defendant and that the average monthly usage was 3,000 to 5,000 kilowatts. In his opinion, it seemed excessive and is usually conducive with grower operations. Tr. 53.

Detective Klipsch conducted a knock and talk at the Defendant's residence on June 2, 2016. Defendant answered the door and exited the residence, closing the door behind him. He was covered in soil or dirt. Tr. 55. The detective presented Defendant with a consent to search form to which the Defendant initially declined, however eventually signed after speaking briefly to his wife. Tr. 56. The signed consent to search form was entered into evidence as State's Exhibit 1 without objection. Tr. 56-57.

Upon police entry into Defendant's home, Defendant directed the police to where he had been growing marijuana. Tr. 57. The police observed numerous potted plants of marijuana scattered throughout the residence along with lights and a pulley system. Headlights were affixed to the ceiling in some rooms and there was a table with lights and red Solo Cups with smaller marijuana plants. There was also cultivating equipment throughout the residence. Tr. 57-58.

After this brief search of the residence Detective Klipsch placed the Defendant under arrest and read him his Miranda Rights. Tr. 59. Throughout his encounter with the police Mr. Shanklin was cooperative and respectful. He answered their questions and voluntarily showed them all of the marijuana in his home. Tr. 64.

Along with the many marijuana plants in various stages of growth, the police also located books on how to grow marijuana and a scale in the basement with numerous Tupperware containers with marijuana. All of the material was seized and sent to the crime lab, where it tested positive for marijuana. The lab report was admitted as State's Exhibit 2 without objection. Tr. 61-63.

The State closed its case. The Defendant waived evidence and stood on his previously filed Motion to Dismiss. Both sides then presented closing arguments that encompassed their written pretrial memorandums regarding the Defendant's Motion to Dismiss. Tr. 64-74.

Court's Ruling

On August 26, 2016 the trial court denied Defendant's Motion to Dismiss and found him guilty of all three counts. Tr. 78. The trial court prepared a ten page order that outlined its reasoning for denying Defendant's Motion to Suppress. L.F. 75. The trial court held that all of the marijuana plants were being grown inside of the Defendant's residence and that there was no evidence of any farm equipment such as "harrows, cultivators, tractors, and the like at the premises, although apparently there were some gardening tools." L.F. 76.

The trial court distinguished House Bill 2238 from the Right to Farm because House Bill 2238 included instructions and guidelines on how to obtain hemp extract. The trial court found that it also includes numerous criteria that specify in what circumstances registration cards are to be issued and how patients can obtain cards. The trial court further held that the bill also specifies who is allowed to cultivate cannabis and rules regarding the manufacture, transportation and storage of hemp extract. L.F. 77.

House Bill 2238 was declared an emergency act when passed and was meant specifically to apply to patients with intractable epilepsy. L.F. 77. The house bill, the trial court reasoned, provided for a very narrow exception to the production and use of marijuana. The trial court found that it did not provide for a broad, sweeping recognition of marijuana's health benefits as Defendant argued in his Motion to Dismiss. L.F. 77. Thus, the trial court found that marijuana is not distinguishable from the production of other controlled substances such as cocaine or heroin. L.F. 77.

The trial court further explained that marijuana production did not qualify as "agriculture" within the meaning of the Right to Farm Amendment. L.F. 78; A31. The trial court also doubted whether Defendant could be considered a "farmer" within the meaning of the Right to Farm Amendment. L.F. 81; A31.

The trial court found that Defendant's witness, Timothy Gilio, was nothing more than "an activist in support of efforts to legalize marijuana production and use." L.F. 78. The witness had no specific qualifications as a scientific expert and

was not an agronomist, horticulturalist, or a botanist. L.F. 78. The trial court dismissed his testimony in its entirety.

When interpreting the proper meaning and application of the Right to Farm Amendment, the trial court noted that Defendant cited *St. Louis Rose Company v. Unemployment Comp. Comm'n*, for the proposition that cultivating marijuana did qualify as “agriculture” and a “farming practice.” 159 S.W.2d 249 (Mo. banc 1941); L.F. 79. However, the trial court referred to Section 537.295.2, RSMo. and Section 137.010.1, RSMo. which both include a limited definition of the term “agriculture.” Specifically, the term in those statutes refers to more traditional farming crops. L.F. 79. The trial court found that because marijuana was not included in the list, cultivating it could not be considered “agriculture” or “farming.” L.F. 80.

The trial court found that the plain language of the Right to Farm Amendment was dispositive of Defendant’s arguments. L.F. 80; A31. It further found that the amendment does not state a “broad, sweeping right that applies to every citizen of the State to be able to cultivate and grow whatever his heart fancies.” *Id.* Instead, the trial court reasoned, the amendment was “specifically tailored to apply to farmers and ranchers engaged in agriculture that provides food, energy, health benefits, and security as such agriculture is a foundation and stabilizing force in the State’s economy.” L.F. 80-81.

POINT RELIED ON - I

The trial court erred by denying the Defendant’s Motion to Dismiss because Section 195.211, RSMo. violates Defendant’s Right to Farm, as guaranteed by Article I, Section 35 of the Missouri Constitution, in that Defendant was, within the broad, all-encompassing, and unambiguous language of the Right to Farm Amendment, a “farmer” engaged in “agriculture” and thus is protected by the Right to Farm Amendment. Defendant respectfully requests that this Court reverse the judgment of the trial court and discharge Defendant or, in the alternative, remand his case for further proceedings.

Article I, Section 35 of the Missouri Constitution.

School District of Kansas City v. State, 317 S.W.3d 599, 605 (Mo. banc 2010)

St. Louis Rose Company v. Unemployment Comp. Comm’n, 159 S.W.2d 249
(Mo. banc 1941)

Wright-Jones v. Nasheed, 368 S.W.3d 157, 159 (Mo. banc 2012).

ARGUMENT – I

The trial court erred by denying the Defendant’s Motion to Dismiss because Section 195.211, RSMo. violates Defendant’s Right to Farm, as guaranteed by Article I, Section 35 of the Missouri Constitution, in that Defendant was, within the broad, all-encompassing, and unambiguous language of the Right to Farm Amendment, a “farmer” engaged in “agriculture” and thus is protected by the Right to Farm Amendment. Defendant respectfully requests that this Court reverse the judgment of the trial court and discharge Defendant or, in the alternative, remand his case for further proceedings.

Preservation

Prior to trial, on November 18, 2015, Defendant filed his Motion to Dismiss Counts One and Two of the Indictment. L.F. 28. This initial motion was argued in Division 16 of the St. Louis City Circuit Court before the Honorable Judge Michael Mullen. Defendant’s motion was denied by Division 16 on March 1, 2016. L.F. 53. Defendant then raised the motion again with the trial court. Specifically, Defendant objected to the constitutionality of the statute prior to the State making its opening statement. The trial court took Defendant’s motion with the case. Tr. 49. Defendant believes that this issue is preserved for appellate

review; however, should this Court conclude otherwise, he respectfully requests plain error review under Rule 30.20.

Standard of Review & Relevant Law

The standard of review for a trial court's interpretation of the Missouri Constitution is de novo. *State v. Biggs*, 333 S.W.3d 472, 477 (2011).

The Right to Farm amendment states:

That agriculture which provides food, energy, health benefits, and security is the foundation and stabilizing force of Missouri's economy. To protect this vital sector of Missouri's economy, the right of farmers and ranchers to engage in farming and ranching practices shall be forever guaranteed in this state, subject to duly authorized powers, if any, conferred by article VI of the Constitution of Missouri.

Article I, Section 35 of the Missouri Constitution; A31.

"A statute is presumed to be constitutional and will not be invalidated unless it 'clearly and undoubtedly' violates some constitutional provision and 'palpably affronts fundamental law embodied in the constitution.'" *School District of Kansas City v. State*, 317 S.W.3d 599, 604 (Mo. banc 2010), citing, *Bd. Of Educ. Of City of St. Louis v. State*, 47 S.W.3d 366, 368-69 (Mo. banc 2001). "Doubts will be resolved in favor of the constitutionality of the statute." *Id.* citing, *Mo. Prosecuting Attorneys and Circuit Attorneys Ret. Sys. v. Pemiscot County*,

256 S.W.3d 98, 102 (Mo. banc 2008). “The person challenging the validity of the statute has the burden of proving the act clearly and undoubtedly violates the constitutional limitations.” *Id. citing, Franklin County ex rel. Parks v. Franklin County Comm’n*, 269 S.W.3d 26, 29 (Mo. banc 2008), *citing, Trout v. State*, 231 S.W.3d 140, 144 (Mo. banc 2007).

“[T]he fundamental purpose of constitutional construction is to give effect to the intent of the voters who adopted the Amendment.” *School District of Kansas City v. State*, 317 S.W.3d 599, 605 (Mo. banc 2010), *citing, Keller v. Marion County Ambulance Dist.*, 820 S.W.2d 301, 302 (Mo. banc 1991). “In arriving at the intent and purpose the construction should be broad and liberal rather than technical, and the constitutional provision should receive a broader and more liberal construction than statutes.” *Id., citing State Hwy. Comm’n v. Spainhower*, 504 S.W.2d 121, 125 (Mo. 1973). “Constitutional provisions are subject to the same rules of construction as other laws, except that constitutional provisions are given a broader construction due to their more permanent character.” *American Federation of Teachers v. Ledbetter*, 387 S.W.3d 360 (Mo. banc 2012), *citing Neske v. City of St. Louis*, 218 S.W.3d 417, 421 (Mo. banc 2007).

When interpreting portions of a constitution, “[w]ords used in constitutional provisions are interpreted to give effect to their plain, ordinary, and natural meaning.” *Wright-Jones v. Nasheed*, 368 S.W.3d 157, 159 (Mo. banc 2012), *citing Buechner v. Bond*, 650 S.W.2d 611, 613 (Mo. banc 1983). “In determining

the meaning of a constitutional provision the court must first undertake to ascribe to the words the meaning which the people understood them to have when the provision was adopted.” *Akin v. Missouri Gaming Commission*, 956 S.W.2d 261, 263 (Mo. banc 1997), *citing Boone County Court v. State*, 631 S.W.2d 321, 324 (Mo. banc 1982). “This ordinary and usual meaning normally appears in the dictionary.” *Id.*, *citing Zahner v. City of Perryville*, 813 S.W.2d 855, 858 (Mo. banc 1991).

“If the meaning of the Constitution is clear, “no act of the General Assembly could in any wise add to it, detract from it, transfer it, infringe upon it or vary it.” *State ex rel. Randolph County v. Walden*, 357 Mo. 167, (1947). When words of a constitutional provision are “clear and unambiguous” the interpretation should be based only on the “plain and ordinary” meaning of the words. *Wright-Jones v. Nasheed*, 368 S.W.3d 157, 159 (Mo. banc 2012). When general words within the Missouri Constitution is not defined, the meaning of those words “must be construed broadly and in accordance with their plain and ordinary meaning, unless some good reason, consistent with the purpose of the constitutional provision, otherwise appears.” *School District of Kansas City*, 607, *citing Rathjen v. Reorganized Sch. Dist. R-II*, 365 Mo. 518 (1955).

Argument

The trial court erred when it ruled that cultivating marijuana is not considered “agriculture” or “farming” as stated in the Right to Farm Amendment. Although the trial court cited the appropriate objective when ascertaining the intent of the people in adopting a constitutional provision, to give the words of the constitution their plain and ordinary meaning, it failed to correctly do so in this case.

The Right to Farm Amendment itself does not define the terms “agriculture” or “farming.” A31. These terms are generic ones that should be given their “plain and ordinary meaning” when construing a constitutional provision. *Wright-Jones v. Nasheed*, 368 S.W.3d at 159. *St. Louis Rose Co. v. Unemployment Comp. Comm’n* supports a broad and liberal definition of “agriculture.”

The term agricultural labor is inexact. Webster defines agriculture as ‘The art or science of cultivating the ground, and raising and harvesting of crops,...in a broader sense, the science and art of production of plants and animals useful to man.... In this broad use it includes farming, horticulture, forestry, dairying, sugar making, etc.’ He defines horticulture as ‘The cultivation of a garden or orchard; the science and art of growing fruits, vegetables, and flowers or ornamental plants. Horticulture is one of the main divisions of agriculture.’...it is interesting to note that horticulture is also

included in a definition of agriculture which stresses the meaning that agriculture is applied to cultivating the soil and its fruits especially in large fields and areas. It is true that the word agriculture usually covers all things done by a farmer or on a farm. But the agriculture is more comprehensive than farming. In its broader sense it applies as well to horticulture in a garden or nursery. The Supreme Court of North Dakota in an earlier case than the one cited above said: ‘One may be employed in agriculture and yet not be a ‘farmer’ in the ordinary sense of the term, nor even a ‘farm laborer’ as the term is used in our lien laws. They are not synonymous terms. The term ‘agriculture’ is broader than either of the others.’ This statement is supported by the accepted definitions of agriculture as the term is commonly understood. The New Jersey Supreme Court in a late case held that greenhouse men were engaged in agricultural labor.

348 Mo. 1153, 1156-57 (internal citations omitted).

The court made it clear that agriculture consists of more than farms or farming and found that agriculture includes horticulture in greenhouses, gardens, and nurseries. *Id.* Any contention that cultivating cannabis is not considered agriculture because cannabis is a controlled substance, and because cannabis purportedly has no health or food value is flawed. The court in *St. Louis Rose Co.* found that growing roses constitutes agricultural labor – even though roses are not commonly used for food or medicinal purposes. *Id.*

The plain and ordinary definition of “agriculture” as defined by the *Rose* case and the dictionary would include the activity Defendant was engaging in in the instant case with marijuana. Thus the issue still to be determined is whether marijuana fits within the four tenets of the Right to Farm Amendment. Defendant concedes that the burden rests on him, the one challenging the statute as unconstitutional, of “proving the act clearly and undoubtedly violates the constitutional limitations.” *School District of Kansas City* 317 S.W.3d at 604. Defendant met this burden in his Suggestions of Support of his Motion to Dismiss and through the evidence that was adduced by his witness, Timothy Gilio.

Mr. Gilio testified in regards to the positive effects of marijuana as they relate to the four tenets of the Right to Farm Amendment (food, energy, health benefits, and security)². Tr. 19.

He testified that marijuana, as a food, is beneficial because humans have an endocannabinoid system that was made to intake cannabinoids for health reasons. Tr. 21. People have been eating cannabis as a food since as early as the year 400. *Id.* As source of energy, Mr. Gilio testified that marijuana can be used as a

² Although the trial court did not seem convinced by his testimony, upon cross examination the State was unable to contradict any of the factual assertions made by Mr. Gilio. The only thing established by the State’s cross examination of him was that he did not have any advanced degrees.

biodiesel or an ethanol. Using hemp extract and seed extract could end our nation's dependency on foreign oil. These processes are actively being used in approximately twenty-five states right now. Tr. 22.

As a health benefit, he testified that raw cannabis juice alone provides humans with all of the vitamins, proteins and carbohydrates that the human body requires. Tr. 23. It is also beneficial in treating seizures in children. In the states where marijuana is legal, it is primarily used for medicinal reasons. Tr. 23. Mr. Gilio was familiar with House Bill 2238 and that it was signed into law prior to the Right to Farm Amendment becoming law. Its primary purpose was to treat those that suffered from intractable epilepsy. Tr. 24. At the time of his testimony, the dispensaries created by House Bill 2238 were just up and running and about to start handing out hemp oils to those afflicted with intractable epilepsy. Tr. 25.

With reference to the security tenet, Mr. Gilio testified that anything made out of plastic could also be made out of hemp. Tr. 25. Hemp is a biodegradable product. Hempcrete is a substitute for concrete that is ten times stronger. It is also mildew, mold and crack resistant. Tr. 26. Hemp could be used to replace many common every day products. Tr. 26.

The Missouri Legislature itself provided further evidence that the cultivation of marijuana is protected by the Right to Farm Amendment through the passage of House Bill 2238 (which was passed into law *prior to* the Right to Farm Amendment) to treat patients with intractable epilepsy, has admitted that marijuana does in fact have health benefits. The trial court found that House Bill

2238 only created a “narrow exception” for the use of marijuana in a highly regulated environment applicable to an emergency situation. However, when viewed in connection with the extremely broad and all-inclusive language of the Right to Farm Amendment itself, that interpretation is strenuous and against the clear intention of the Right to Farm Amendment. A31. Again, the legislature could have easily excluded certain controlled substances from the amendment and it chose not to do so. Rather, it included tenets that must be met to qualify as agriculture under the Right to Farm Amendment. *Id.* Defendant presented evidence that marijuana is such a qualifying crop, and thus cultivating marijuana should be protected under the Right to Farm Amendment³.

Merriam-Webster defines agriculture as “the science, art, or practice of cultivating the soil, producing the crops, and raising livestock and in varying degrees the preparation and marketing of the resulting products.” If the definition of agriculture depends on whether the plant has food or medicinal value, cannabis, then, is indeed agriculture. Merriam-Webster further defines crop (in pertinent part) as “a plant or animal or plan or animal product that can be grown and

³ Defendant respectfully requests that this Court consider that half of the country has legalized some form of marijuana. To say that marijuana does not qualify as a crop that has the qualifications of agriculture as set forth in the Right to Farm Amendment is illogical.

harvested extensively for profit or subsistence...” In applying these “common” definitions and the analysis of the court in *St. Louis Rose Co.*, it is clear that the actions of Defendant, in growing marijuana in his home, constitute “agriculture.” 348 Mo. at 1156-57.

It is also important to note that the text of the Right to Farm Amendment does not specify what type of “farms” or what type of “crops” shall be included or excluded. A31. This was intentional – the drafters of the Amendment left the language intentionally open and intentionally vague so that the scope of the protection would be more inclusive – for the drafters did not want it to be exclusive.

In *School District of Kansas City v. State*, this Court, when interpreting Article Ten, Section 11(g) in reference to the distribution of public school funds, recognized the broad language of the section that authorized use of funds raised by the levy “for school purposes of the district.” 317 S.W.3d 599, 607 (Mo. banc 2010). Had the legislature intended that all funds were to go to the Kansas City Metropolitan School District, as opposed “for school purposes of the district,” (including charter schools), then the section would have been more specific. Instead, it used broad and all-inclusive language.

Similarly, in *Wright-Jones v. Nasheed*, when interpreting the provisions of Article Three, Section Six in reference to residency requirements of a state senator after reapportionment of a state senate district, this Court stated:

Had the drafters of the constitution wished to limit eligibility to candidates residing only in those parts of the old districts that were absorbed into the new one, they could have crafted narrowing language to that effect. They did not, and, given the clear and unambiguous language of the clause this Court need not speculate as to their intent.

368 S.W.3d 157, 159 (Mo. banc 2012).

The reasoning from *School District of Kansas City* and *Wright-Jones* are both directly applicable to the case at bar. The Right to Farm Amendment uses broad and all- inclusive language. It does not name specific types of crops because the intent of the legislature was to include all crops that met the four tenets set forth in the amendment. The terms of the amendment are clear and unambiguous and should include the cultivation of marijuana since it possesses the four tenets set forth in the Right to Farm.

In its order denying Defendant's Motion to Dismiss, the trial court referenced two statutes, Section 537.295.2 and Section 137.010.1, in an attempt to explain the meaning of the term "agriculture." Each statute references more traditional farm crops such as livestock, swine, poultry, grains, feeds, soybeans, et cetera. The trial court then reasoned that since marijuana is not included in those definitions of "agriculture," that marijuana must not have been included in the true intent behind the Right to Farm Amendment.

Defendant respectfully disagrees with the trial court's analysis with respect to those two statutes. First, the statutes referenced by the trial court have nothing

to do with the Right to Farm. They involve different areas of the law. Section 537.295.2 RSMo is a nuisance statute and Section 137.010.1 RSMo is a taxing statute. Furthermore, the language of the Right to Farm Amendment is clear and unambiguous. As such, there is no need to refer to other statutes or outside sources for further meaning.

While it is true that weight should be given to official legislative and executive acts, and while it has been written that such official acts are ‘very persuasive on the courts,’ yet such weight is accorded and such practical construction held persuasive only when the section in question is *ambiguous* and its meaning doubtful. If the meaning of the Constitution is clear, “no act of the General Assembly could in any wise add to it, detract from it, transfer it, infringe upon it or vary it.

State ex rel. Randolph County v. Walden, 357 Mo. 167 (1947).

When the words of a constitutional provision are clear and unambiguous, there is no need to refer to outside sources such as state statutes. Instead, the words are to be given their “plain and ordinary” meaning. *Wright-Jones*, 368 S.W.3d at 159.

When analyzing which crops fall under the Right to Farm, the broad and all-inclusive language within the amendment along with the plain and ordinary meanings of its terms include marijuana. As such, the cultivation of marijuana is protected by Missouri’s Right to Farm Amendment and the Defendant’s actions in

this case are also so protected by this all-encompassing amendment set forth by the legislature and voted upon by the citizens of this State.

CONCLUSION

The trial court erred when it denied Defendant's Motion to Dismiss Count One and Two of the Indictment as Section 195.211, RSMo violates the Defendant's Right to Farm as guaranteed by Article I, Section 35 of the Missouri Constitution.

WHEREFORE, Defendant, requests this Court to reverse the judgment of the trial court and discharge Defendant, or in the alternative, remand his case for further proceedings.

Respectfully submitted,

/s/ Anthony J. Muhlenkamp

Anthony J. Muhlenkamp #55029

8008 Carondelet Ave., Suite #102

Clayton, Missouri 63105

Telephone (314) 499-7255

Facsimile (314) 499-7132

amuhlenkamp@mbstlcriminaldefense.com

ATTORNEY FOR APPELLANT

CERTIFICATE OF SERVICE AND COMPLIANCE

Pursuant to Missouri Supreme Court Rule 84.06(g), I hereby certify that on April 17, 2017 the foregoing brief was electronically filed via the electronic filing system and sent via the case.net e-filing system to the Office of the Attorney General, using the email registered with the electronic filing system. In addition, I hereby certify that this brief includes the information required by Rule 55.03 and that it complies with the page limitations of Rule 84.06(b). This brief was prepared with Microsoft Word for Windows, uses Times New Roman 13 point font, and contains 6,202 words.

Respectfully submitted,

/s/ Anthony J. Muhlenkamp

Anthony J. Muhlenkamp #55029

8008 Carondelet Ave., Suite #102

Clayton, Missouri 63105

Telephone (314) 499-7255

Facsimile (314) 499-7132

amuhlenkamp@mbstlcriminaldefense.com

ATTORNEY FOR APPELLANT