Jennifer N. Murphey
Soul to Soul Services, LLC
1846 E. Innovation Park Dr., Ste. 100
Oro Valley, AZ 85755
AZ State Bar No.: 034166
jennifer@soultosoulservices.com
(480) 573-1377
pro se

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Jennifer N. Murphey, individually and on behalf of all others similarly situated, Plaintiff, v. United States of America, *et al.*, Defendants.	Case No.: 2:22-CV-01224-JJT PLAINTIFF'S OPPOSITION TO THE STATE DEFENDANT'S MOTION TO DISMISS (Oral Argument Requested)

INTRODUCTION

I hereby submit my response in opposition to the State Defendant's Motion to Dismiss (Doc. 31). Further, as Defendant admits that the Arizona Controlled Substance Act and related criminal provisions, A.R.S. § 13-3401 *et seq*. (collectively referred to as the "AZCSA") is based on the federal Controlled Substances Act (CSA) and the 1961 Single Convention on Narcotic Drugs and 1971 Convention on Psychotropic Substances (the Conventions), all references to the CSA and Conventions herein apply to the AZCSA. See Doc 31 p. 7

ARGUMENT

I. Plaintiff States a Claim for Violations of the First Amendment and Article 2 of the Arizona State Constitution

As alleged in the FAC, "Defendants use personal thoughts, beliefs, intentions, motivations, and expression to determine how substances should be scheduled and . . . criminalized . . . and chill and deter individual thoughts, beliefs, and expression, in

violation of the First Amendment." Doc. 22 ¶ 119. Defendants argue that these asserted rights are not protected by the Constitution. Doc. 40 p. 16-18.

It is well established that freedom of thought, which naturally includes belief, intention and motivation, are fundamental First Amendment rights. *See Lawrence* 539 U.S. at 562 (recognizing the fundamental right to "an autonomy of self that includes freedom of thought, belief, expression, and certain intimate conduct."); *Thomas v. Collins*, 323 U.S. 516, 531 (1945) ("The First Amendment gives freedom of mind the same security as freedom of conscience."); *Becerra*, 138 S. Ct. at 2379 ("Freedom of speech secures freedom of thought and belief."); *United States v. Alvarez*, 567 U.S. 709, 728 (2012) ("Freedom of . . . thought flows not from the beneficence of the state but from the inalienable rights of the person."); and *Turner Broad. Sys., Inc. v. Fed. Commc'n Comm'n*, 512 U.S. 622, 641 (1994) ("At the heart of the First Amendment lies the principle that each person should decide for him or herself the ideas and beliefs deserving of expression, consideration, and adherence.").

At every turn, the CSA and Conventions unconstitutionally intrude into the protected intimate realms of individual thought, belief, intentions and consciousness and the intrusions are far from merely incidental. The government overreach into the private realms of our minds is vast, downright frightening, and permeates virtually all aspects of decisions for which controlled substances will carry criminal penalties for their private possession. I alleged numerous facts demonstrating these impermissible intrusions, such as Defendants' definition of "drug abuse", the scheduling factors, inspection of personal anecdotes to presume thoughts, intentions, beliefs, how one feels or desires to feel when consuming a substance, and much more. Doc. 22 ¶¶ 119-127. For example, Defendants use the following definitions:

> *Drug Abuse*: the intentional, non-therapeutic use of a drug product or substance, even once, to achieve a desired psychological or physiological effect. Therefore, *abuse potential* refers to the likelihood that abuse will occur with a particular drug product or substance with CNS activity. Desired psychological effects can include euphoria . . . alterations in cognition, and changes in mood.

> *Psychological dependence*: a state in which individuals have impaired control over drug use based on the rewarding properties of the drug . . ..
>
> The presence of a euphoria-like response is a key observation in the clinical assessment of whether a test drug has abuse potential.
>
> *Euphoria-related terms*: Euphoric mood; Elevated mood; Feeling abnormal; . . . Thinking abnormal . . ..[1]

Thus, the definition of "drug abuse" includes the contents of one's mind prior to and during consuming a substance, and "psychological dependence" includes the contents of one's mind after consuming a substance. *See also* Doc. 22 ¶¶ 123-124, *and generally* Exhibit 2 (excerpts from *Manual on Drug Dependence*, WHO, 1975) (cited in Doc. 22 ¶ 124), and *Id*. at p. 25. ("In judging . . . psychic dependence . . . it is important to ascertain to what extent he (1) devotes his time to thinking about . . . drug affects[.]"). It is off-limits for Defendants to consider and use to determine criminal penalties one's personal thoughts when consuming a substance; whether one's desire for use conforms to commercially-indicated "therapeutic use"; how a substance affects one's personal cognition or mood; whether one's control over personal use is "impaired"; what is considered "abnormal thinking"; or any other factors that relate to personal cognition and emotions.

It also follows that the CSA and Conventions are content-based laws (contents of one's thoughts), prohibiting expressive conduct (acting on those thoughts by consuming a substance). *See Turner* 512 U.S. at 643 ("As a general rule, laws that, by their terms, distinguish favored speech from disfavored speech on the basis of the ideas or views expressed are content based."); *Wilson v. Lynch*, 835 F.3d 1083, 1095 (9th Cir. 2016) (Holding that the mere "acquisition of a [marijuana] registry card falls within the scope of conduct protected by the First Amendment"); and *Fulton v. City of Phila*., 141 S. Ct. 1868, 1893 (2021) (concurrence) (Finding that those who "ingest peyote . . . are surely engaging in expressive conduct that falls within the scope of the Free Speech Clause.").

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[1] Exhibit 1: excerpts from *Assessment of Abuse Potential of Drugs, Guidance for Industry*. U.S. Department of Health and Human Services, pp. 4, 21, 22 (Jan. 2017) (cited in FAC Doc. 22 ¶¶ 30, 55, 120-21).

1 Moreover, the required finding of "currently accepted medical use" under 21 U.S.C.
2 § 812, is determined by considering whether one uses a substance "on their own initiative"
3 versus the advice of a third party who can only prescribe commercial products. Doc. 22 ¶¶
4 80 & 123. Here, defendants take traditionally non-medical recreational substances and
5 prohibit the use thereof by applying them to medical standards meant for pharmaceutical
6 drugs. *Merriam-Webster Dictionary* defines the phrase "on one's own initiative" as "at
7 one's own discretion; independently of outside influence or control." Therefore, if the
8 motivation behind my personal choice comes from my own mind, and not someone else's,
9 that is used in favor of criminalizing the associated conduct.

10 Courts have consistently held laws that criminalize conduct, or otherwise penalize
11 people, based on personal thoughts, beliefs, and perspectives as violative of the First
12 Amendment. *See e.g., Stanley*, 394 U.S. 557 (Holding that a law criminalizing possession
13 of material the government deemed obscene violated First Amendment rights, including
14 rights to beliefs, thoughts, emotions, and sensations, to be let alone and satisfy one's
15 intellectual and emotional needs in the privacy of his own home.); *Ashcroft v. Free Speech*
16 *Coalition*, 535 U.S. 234, 253 (2002) (Invalidating a law criminalizing possession of
17 material in the government-asserted interest of protecting one's mind and stating, "The
18 government 'cannot constitutionally premise legislation on the desirability of controlling a
19 person's private thoughts.'") (internal quotes omitted); *Schneider v. Smith*, 390 U.S. 17, 25
20 (1968) (Invalidating procedures used by the U.S. to judge one's character and habits by
21 probing thoughts and beliefs, not actual past conduct, and stating "The First Amendment's
22 ban against Congress 'abridging' freedom of speech . . . create[s] a preserve where the
23 views of the individual are made inviolate."); *Speiser v. Randall*, 357 U.S. 513, 535-36
24 (1958) (concurrence) (Finding that a state cannot withhold benefits based on one's personal
25 beliefs and stating: "[W]hat one thinks or believes . . . [has] the full protection of the First
26 Amendment. It is only his actions that government may examine and penalize."); and *Baird*
27 *v. State Bar of Ariz.*, 401 U.S. 1, 6 (1971) (Reversing a bar admission denial where the
28 application probed into the applicant's political beliefs and stating, "The First

Amendment's protection . . . prohibits . . . punishing [a person] solely because . . . he holds certain beliefs").

Prevention of "drug abuse" is at crux of CSA and the Conventions[2], and the criminal provisions thereof are premised on the terms "drug abuse" and "potential for abuse", which are defined as one's thoughts and desires before, during, and after consuming a substance. In fact, drugs that do not have "potential for abuse", i.e. potential to produce certain thoughts or desires, are not considered for control. Defendants, along with the World Health Organization, took non-medical recreational activities, applied them to a medical framework, and criminalized those private activities solely because of the potential cognitive affects they might induce in Americans, including mere happiness, joy and increased perception, which threatens the government's agenda and control. *See* Exhibit 3 (*Drug Dependence*, Bull. Wld. Hlth. Org. 1965, 32, p. 731) (cited in Doc. 22 ¶ 124) (finding although hallucinogens do not cause physical dependency, they are likely to be used by "non-conformists" to "clarify perception" and gain "psychological insight"); and Exhibit 2 p. 40 (hallucinogens are used by those "who have a more than usual interest in artistic and intellectual pursuits . . . particularly to 'expand the consciousness'"[.]).

Therefore, the foundation of determining what conduct is criminalized, and what is not, is the contents of one's thoughts and the potential that consuming a substance might produce thoughts the government deems undesirable. These intimate thoughts are presumed through unlawful probing of and bias conclusions about individual cognition. What's next? The prohibition of dancing or consuming chocolate, without prior physician approval, due to the euphoric effects or effects on the central nervous system of those? Or banning the private possession of books that serve as mere entertainment or might expand the consciousness of the reader, but are devoid of ideological content approved by the government? This type of communistic control over thoughts and perception was emphatically rejected in *Stanley*. 394 U.S. at 565-66. Allowing such control to persist

[2] The stated purpose of the CSA is "to provide increased research into, and prevention of, drug abuse and drug dependence . . . and to strengthen existing law enforcement authority in the field of drug abuse." Pub.L. No. 91-513, 84 Stat. 1236 (1970) (preamble).

creates a slippery slope towards federal control, under the guise of the power to regulate the medical industry, over anything that might produce thoughts or desires they deem inappropriate.

Accordingly, the fundamental right of freedom of thought protected by the First Amendment is infringed, and thus, I stated a claim for violations of the First Amendment, and thereby, Article 2 of the Arizona Constitution, for which relief may be granted.

II. Plaintiff States a Claim for Substantive Due Process Violations

A Plaintiff need only allege the deprivation of a fundamental right to state a claim for Substantive Due Process violations.

The fundamental right alleged is as follows:

> I have a constitutionally protected liberty interest in exercising my personal and mental autonomy by determining and choosing what is best for my own mind, body and spirit . . . [interacting] with and [expanding] my own consciousness. . . . growing plants or fungi of my choosing for personal use in the sanctity of my own home and choosing to consume those substances. The CSA, AZCSA, Conventions, and related criminal provisions unlawfully tread into those sacred and intimate realms of my human existence by criminalizing my private life choices to continue using the natural remedies described above for my personal healing . . .. (Doc. 22 ¶ 132)

At the crux of my asserted right is the fundamental right to make personal private life choices in the privacy of my home. The U.S. Supreme Court consistently recognizes the fundamental rights of humans to engage in private conduct in the privacy of their home or make choices constitutive of private life, while consistently rejecting the narrow analysis of such right as to allow the court or government to impute its own moral codes.

The Supreme Court in *Lawrence* invalidated a law criminalizing sodomy and specifically rejected the framing of the right as a right to homosexual sodomy, stating such framing was a "failure to appreciate the extent of the liberty at stake." 539 U.S. at 564-67. Instead, the Court stated, "We conclude the case should be resolved by determining whether the petitioners were free as adults to engage in the private conduct in the [exercise of their liberty]." *Id*. at 564. The Court also stated, "for centuries there have been powerful

1 voices to condemn homosexual conduct as immoral, but this Court's obligation is to define
2 the liberty of all, not to mandate its own moral code." *Id.* at 571.

3 The Court stated "There are broad statements of the substantive reach of liberty
4 under the Due Process Clause in earlier cases" (*Id*. at 564.), and cited some of the following
5 cases: *Griswold v. Conn.*, 381 U.S. 479, 485 (1965) (Invalidating a law prohibiting the use
6 of contraceptive drugs and describing the protected interest as a right to privacy, especially
7 in the marital relationship – not as the right to possess contraceptives.); *Eisenstadt v. Baird*,
8 405 U.S. 438, 453 (1972) (Adding to *Griswold*, finding that individuals have the same
9 fundamental privacy rights as married couples to such personal private decisions such as
10 whether to take contraceptive drugs.); *Pierce v. Society of Sisters*, 268 U.S. 510, 534-35
11 (1925) (Invalidating a law criminalizing private school attendance, framing the right as
12 "the liberty of parents and guardians to direct the upbringing and education of children
13 under their control"); and *Cruzan ex rel. Cruzan v. Dir., Mo. Dep't of Health*, 497 U.S.
14 261, 306 (1990) (Recognizing that the consequences of personal decisions do not vitiate
15 rights of medical self-determination and finding that the well-established rule that it is the
16 patient who decides treatment has never been qualified by either the nature or purpose of
17 the treatment.); *Santosky v. Kramer*, 455 U.S. 745, 753 (1982) (addressing the "Court's
18 historical recognition that freedom of personal choice in matters of family life is a
19 fundamental liberty interest.")

20 The purpose of narrowing an asserted right, narrowing of which the courts take
21 liberty rather than relying on the plaintiff or dismissing a claim for failure to do so, is to
22 minimize the court's risk of placing "the matter outside the arena of public debate and
23 legislative action" when constitutional protection is extended to it. *Washington v.*
24 *Glucksberg*, 521 U.S. 702, 720 (1997). However, as indicated by multiple U.S. Supreme
25 Court holdings, the true and correct analysis is to determine whether the specific asserted
26 right (private possession and consumption of natural substances of my personal choosing
27 and determination for my personal wellbeing, growth, benefit or happiness) is constitutive
28 of the established fundamental right to make private life choices – not whether the court

deems the specific conduct or substance as moral or acceptable to Defendants, the medical industry, pharmaceutical companies, other corporate institutions, or even society. That private determination and discretion is mine alone.

The fundamental right to make personal private choices in the privacy of one's own home has already been established as deeply rooted in this nation's history and tradition. The question is whether the CSA and Conventions violate those fundamental rights through their prohibition of private conduct. *See Coons v. Lew*, 762 F.3d 891 (9th Cir. 2014) (Considering whether a statute violated the plaintiff's well-established substantive due process rights to medical autonomy and informational privacy and omitting any reference to whether his claims were deeply rooted in this nation's history and tradition.)

Because the Supreme Court has recognized under the broad fundamental right to privacy the rights to engage in sodomy in one's home, to consume contraceptive drugs, to direct the upbringing of one's child, and to medical self-determination, then it follows that I have a fundamental right of privacy to make a personal choice to consume a natural substance in the privacy of my home, to be intimate with my own mind, body and spirit. The government and courts do not get to examine my private recreational choices and decide for me whether those choices serve me or my central nervous system, medically or psychologically, in a way they or others approve and then criminalize those choices they do not approve. *See Stanley* 394 U.S. 557 (rejecting this exact analysis and the government's argument that private consumption of ideas must be regulated by the government, stating, "The line between the transmission of ideas and mere entertainment is much too elusive for this Court to draw, if indeed such a line can be drawn at all.").

Equally notable, most of the recognized fundamental rights described above involve another person: the right of consenting adults to engage in anal sex, the right of parents to direct the upbringing of children, the right to consume contraceptive drugs in respect of the marital relationship. Similarly, the court in *Dobbs v. Jackson Women's Health Org.* rested its decision on the fact that abortion involves "potential life". 142 S. Ct. 2228, 2261 (2022) ("The exercise of the rights at issue in [prior cases] does not destroy a 'potential life,' but

an abortion has that effect."). Here, the right I assert is arguably more sacred and deserving of protection as it involves no other. It involves intimacy with my own mind, body, and spirit – a decision that is personal and private in those terms' purest form.

Finally, contrary to Defendant's claim (Doc. 31 p. 5), the *Raich v. Gonzales* decision is not controlling here. The court held "federal law does not recognize a fundamental right to use medical marijuana prescribed by a licensed physician to alleviate excruciating pain and human suffering." 500 F.3d 850, 866 (9th Cir. 2007). However, Raich's arguments vastly differ from mine. Raich's arguments, and subsequently the court's analysis, focused on the history of medical use of marijuana at the advice of a physician. Raich did not assert a right to make personal choices constitutive of private life, and therefore, the court did not conduct an analysis thereof. As discussed at length above, it is not for the court or government to decide which substances I may choose to consume in the privacy of my home or the reason therefore, nor to consider, one by one, whether each substance's use is moral or accepted by Defendants, the medical industry, pharmaceutical companies, other institutions, or society. *See Becerra*, 138 S. Ct. at 2374-75 ("Professionals might have a host of good-faith disagreements . . .. Doctors and nurses might disagree about the ethics of assisted suicide or the benefits of medical marijuana . . .. [A]nd the people lose when the government is the one deciding which ideas should prevail."). Rather, it is my fundamental right to make the personal private choice for the satisfaction of my own wellbeing and happiness of what enters my body in the privacy of my own home. Accordingly, my asserted right is well within the realm of previously recognized fundamental rights such that I have stated a claim for substantive due process violations under the Fourteenth Amendment and Art. 2 of the Arizona State Constitution.

III. Plaintiff States a Claim for Procedural Due Process Violations

To sufficiently state a procedural due process claim, a plaintiff must allege (1) deprivation of a protected liberty interest, and (2) a governmental failure to provide an appropriate level of process. *See Bd. of Regents v. Roth*, 408 U.S. 564, 569–73 (1972). Defendant does not deny the adequacy of procedures used by Defendants nor does

Defendant suggest I failed to allege inadequate procedures. Rather, Defendant's argument rests solely on the contention that I did not allege a cognizable property or liberty interest.

A. Plaintiff Alleged Cognizable Liberty Interests

Liberty interests for procedural due process purposes denotes the freedom "generally to enjoy those privileges long recognized . . . as essential to the orderly pursuit of happiness by free men. . . . In a Constitution for a free people, there can be no doubt that the meaning of 'liberty' must be broad indeed." *Id.* at 572.

I have alleged multiple cognizable liberty interests. Doc. 22 ¶¶ 132-135. First, it is well-established that liberty interests include the freedoms from imprisonment and prosecution, and that the mere presence of criminal penalties within a law invokes this liberty interest. *See Bd. of Pardons v. Allen*, 482 U.S. 369, 373 n. 3 (1987) ("[F]reedom; liberty from bodily restraint is at the heart of the liberty protected by the Due Process Clause."); *Forbes v. Woods*, 71 F. Supp. 2d 1015, 1018 (D. Ariz. 1999) ("where a statute imposes criminal penalties, the standard of certainty that due process requires is higher.") (internal quotation omitted); *Briggs v. Treatment Assessment Screening Ctr*., 562 F. Supp. 3d 168, 172 (D. Ariz. 2021) (Recognizing a liberty interest in "freedom from imprisonment or freedom from prosecution and the possibility of a criminal record and imprisonment"). (internal quotations omitted). As the CSA imposes criminal penalties for conduct I engage in, I identified a cognizable liberty interest invoking procedural due process requirements.

I also allege multiple liberty interests in exercising personal private choices, and deprivation thereof. Doc. 22 ¶¶ 130-36. While the private choices I allege include those relating to personal, bodily and medical autonomy, informed consent, private consumption of substances, and more, courts do not consider the specific choice in question. Rather, they recognize that it is within the constitutional liberty among free men to make a personal private choice in the first place. Courts have long recognized that freedom of choice and privacy are protected liberty interests. *See Lawrence*, 539 U.S. at 562 ("Liberty protects the person from unwarranted government intrusions into a dwelling or other private places."); *Glucksberg*, 521 U.S. at 724 ("[L]iberty protected by the Due Process Clause

includes 'basic and intimate exercises of personal autonomy[.]'"); *Cruzan*, 497 U.S. at 341 ("[T]his Court has long recognized that the liberty to make the decisions and choices constitutive of private life is so fundamental to our concept of ordered liberty" and finding a liberty interest in self-determination and choice of medical treatment.); *Harris v. McRae*, 448 U.S. 297, 317 (1980) ("liberty" includes freedom of choice); and *Carey v. Population Servs. Int'l*, 431 U.S. 678, 684-86 (1977) (the liberty to make choices regarding contraception is a right of personal privacy.)

The government may interfere with the freedom of choice and privacy only if they provide fundamentally fair procedures. *Keates v. Koile*, 883 F.3d 1228, 1236 (9th Cir. 2018). As I allege cognizable liberty rights, and a deprivation thereof through inadequate procedures, I have stated a procedural due process claim under the Fourteenth Amendment and Art. 2 of the Arizona State Constitution for which relief may be granted.

IV. Strict Scrutiny Applies to Plaintiff's First Amendment and Substantive Due Process Claims

It is well established that legislation implicating fundamental rights must survive strict scrutiny. *See e.g. Regan v. Taxation with Representation*, 461 U.S. 540, 547 (1983) ("Statutes are subjected to [strict] scrutiny if they interfere with the exercise of a fundamental right."); and *Baird* 401 U.S. at 6-7 ("When a State seeks to inquire about an individual's beliefs and associations a heavy burden lies upon it to show that the inquiry is necessary to protect a legitimate state interest."). The infringement may occur either directly or indirectly. *See Buckley v. Valeo*, 424 U.S. 1, 65 (1976) ("[Strict] scrutiny is necessary even if any deterrent effect on the exercise of [fundamental] rights arises . . . indirectly as an unintended but inevitable result of the government's conduct . . .."). As described above, freedom of thought is a First Amendment fundamental right and the freedom to make personal choices constitutive of private life is a fundamental right under the Fourteenth Amendment's substantive due process guarantees, and each are infringed upon by Defendant. Also, as described herein, (*supra* p. 2-6), the CSA and Conventions are content-based laws (contents of one's thoughts), prohibiting expressive conduct (acting

on those thoughts by consuming a substance). These facts provide additional grounds necessitating strict scrutiny.

To withstand strict scrutiny, the State carries the burden to show that legislation is narrowly tailored to serve and is the least restrictive means to achieve compelling state interests. *See Boardman v. Inslee*, 978 F.3d 1092, 1136 (9th Cir. 2020). That legislation merely prohibits conduct is not a permissible scapegoat for the government. *See generally Stanley* 394 U.S. 557 (Invalidating a law criminalizing mere possession of material in the privacy of one's home as violative of the First Amendment.)

The Supreme Court in *Stanley* considered multiple interests set forth by the State and struck down each when considering whether a statute imposing criminal sanctions upon the mere possession of obscene matter was constitutional. In *Stanley*, the State argued it had the broad authority to regulate materials it deemed offensive. The Court recognized the State's power to regulate obscenity, but held that power did not reach into the privacy of one's home. *Id*. at 565. The State next asserted the right to protect the individual's mind from the effects of obscenity. The Court stated this amounted to an assertion "that the State has the right to control the moral content of a person's thoughts" and that it "cannot constitutionally premise legislation on the desirability of controlling a person's private thoughts." *Id*. at 565-66. The State next asserted that exposure to obscene materials may lead to future crime. The Court rejected this stating, "the State may no more prohibit mere possession of obscene matter on the ground that it may lead to antisocial conduct than it may prohibit possession of chemistry books on the ground that they may lead to the manufacture of homemade spirits." *See also, Ashcroft* 535 U.S. at 253 (2002) ("The government may not prohibit speech because it increases the chance an unlawful act will be committed at some indefinite future time."). Finally, the State argued "prohibition of possession of obscene materials is a necessary incident to statutory schemes prohibiting distribution." *Id*. at 567. The Court rejected this as insufficient justification and found that the rights involved are so "fundamental to our scheme of individual liberty, its restriction may not be justified by the need to ease the administration of otherwise valid criminal

laws." The Court held that "the First and Fourteenth Amendments prohibit making mere private possession of obscene material a crime."

The strict scrutiny analysis used in *Stanley* is controlling here. Like Stanley, I seek to invalidate legislation criminalizing private possession of substances and assert similar rights. *See Id.* at 564-65 (an individual's right to their beliefs, thoughts, emotions, and sensations, to be let alone, to read or observe what one please and satisfy one's intellectual and emotional needs in the privacy of one's own home). Here, Defendant sets forth only one broad interest – "an interest in regulating drugs" – with no further explanation. Doc. 31 p. 7. The State's asserted interest falls drastically short of satisfying its burden and, thereby, does not withstand strict scrutiny.

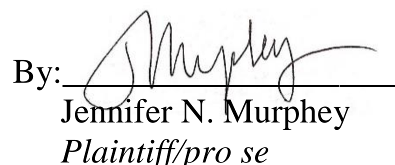
V. Defendant's Facial Challenge Argument

Defendant incorrectly argues that I allege the CSA, Conventions, and thereby, the AZCSA, are facially unconstitutional. Doc. 31 p. 7-8. Defendant cites cases wherein plaintiffs allege a law is facially unconstitutional. None of the eight counts in my FAC include a constitutional facial challenge, therefore, there is nothing for the court to consider for dismissal in this regard. Accordingly, I will not entertain that section in Defendant's Motion.

CONCLUSION

For the foregoing reasons, Defendant's Motion to Dismiss (Doc. 31) should be denied in its entirety.

Respectfully submitted on May 18, 2023,

By: 

Jennifer N. Murphey
Plaintiff/pro se