

SPORTS & ENTERTAINMENT LAW JOURNAL
ARIZONA STATE UNIVERSITY

VOLUME 7

FALL 2017

ISSUE 1

**THE NFL AND MARY JANE: THE EARLY MAKINGS OF A LOVE
STORY**

IMAN KENDRA MCALLISTER

*If Ten-Percent of Moms Decide that Football Is Not Safe, the
NFL Is Dead.*¹

INTRODUCTION

Former National Football League (NFL or League) running back Ricky Williams may be the NFL's most notorious stoner athlete. A Heisman Trophy winner and an All-Pro running back, Williams first retired in 2004 after a failed drug test and amid speculation he would be suspended for a whole season.² He retired for the second and final time in 2011.³ "It's kind of true, but not the way that people see it, that I quit football to go smoke weed," says Williams.⁴

A group of retired NFL players spent the days leading up to Super Bowl 51 promoting pot. Former players attended the Cannabis in Professional Sports forum in Houston to raise

¹ *Seau's Suicide Helped to Make Concussions in Football a Nat'l Issue*, NPR (Dec. 22, 2015, 5:06 AM), <http://www.npr.org/2015/12/22/460656805/junior-seaus-suicide-helped-to-make-concussions-in-football-a-national-issue> (quoted in CONCUSSION (Columbia Pictures 2015)).

² Greg Bishop, *Ricky Williams Takes the High Road*, SPORTS ILLUSTRATED, <http://www.si.com/longform/2016/ricky-williams-weed/> (last visited Feb. 16, 2017).

³ *Id.*

⁴ *Id.* RICKY WILLIAMS TAKES THE HIGH ROAD (Sports Illustrated Films 2016).

awareness about “addictive and destructive opioid painkillers.”⁵ Players spoke of their struggles managing chronic pain. Players spoke of being driven close to suicide by addictive medications prescribed to ease their pain. They expressed frustration with the NFL’s drug policy, criticizing the league’s willingness to push addictive prescription painkillers while penalizing less harmful alternatives.⁶

Though Ricky Williams’ NFL career met a few road bumps, he was successful on the field—a success he says was made possible by marijuana. “I wouldn’t have won the 1998 Heisman Trophy, or played 11 NFL seasons, without cannabis,” he claims.⁷ “I think when the only options are Toradol or Indocin or Vicodin, that’s the NFL not doing a very good job,” he continued, referring to the NFL’s responsibility to help players take care of their bodies.⁸ “If you’re going to say we can put that poison in our bodies but we can’t put cannabis in our bodies, I don’t think that’s fair.”⁹ And Williams is not alone.

“Why does the NFL choose to test for marijuana?” ESPN sports commentator Mike Kellerman asks.¹⁰ “That’s a choice they’re making,” he continues, “[t]his is a league that is in bed with companies that peddle alcohol. They’re sponsored, they take money from companies that say ‘here, drink this.’”¹¹ Kellerman goes on to point out that in every objective study to date, the effects of alcohol are proven to be far worse than marijuana.¹² If alcohol is the threshold, why does the NFL choose to test for marijuana?¹³

⁵ Steve Birr, *NFL Players Rescued From ‘Suicide’ Push Pot Over Painkillers*, THE DAILY CALLER (Feb. 05, 2017, 2:49 PM), <http://dailycaller.com/2017/02/05/nfl-players-rescued-from-suicide-push-pot-over-painkillers-at-super-bowl/>.

⁶ *Id.*

⁷ Alec Banks, *Is the NFL’s Marijuana Policy Racist & Short-Sighted?*, HIGHNOBIETY (Nov. 18, 2016), <http://www.highsnobiety.com/2016/11/18/nfl-drug-policy-weed/>.

⁸ RICKY WILLIAMS TAKES THE HIGH ROAD (Sports Illustrated Films 2016).

⁹ *Id.*

¹⁰ Banks, *supra* note 7.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

Marijuana—formally known as cannabis, and less formally known as Mary Jane, pot, reefer, and dope—has therapeutic benefits that have been overlooked and ignored for decades. This article discusses the effects of the NFL’s current marijuana policy and proposes a more relaxed marijuana policy that would benefit both the League and its players.

Part II discusses the NFL’s current marijuana policy. Part III explores the drug’s history, and the contradiction between federal marijuana policy and US Patent No. 6,630,507 (which presents a medical use for marijuana). Part IV discusses Cannabidiol (CBD), a non-psychoactive marijuana component; Part V discusses chronic traumatic encephalopathy (CTE), the neurodegenerative brain disease now known to be common among retired NFL players; and Part VI concludes with a proposal to the NFL to reconsider its marijuana policy.

I. THE NFL CONTINUES TO FIGHT FATE

I don't think there's any question that pot is better for your body than Vicodin . . . And yet, athletes everywhere are prescribed Vicodin like it's Vitamin C.

—Steve Kerr, Golden State Warriors Head Coach¹⁴

The NFL adopted a policy prohibiting marijuana use in 1982, and the policy granted the League broad discretion to test players and to discipline those who fail.¹⁵ Despite forty-four states and the District of Columbia legalizing some form of marijuana use,¹⁶ the NFL’s policy still lists marijuana on its

¹⁴ Roger Groves, *The Science That Justifies Marijuana in the NFL and NBA*, FORBES (Dec. 6, 2016, 12:40 PM), <http://www.forbes.com/sites/rogergroves/2016/12/06/the-scientific-secret-that-justifies-marijuana-in-the-nfl-and-nba/#337b71c5719b>.

¹⁵ David Sisson & Brian Trexell, *The National Football League’s Substance Abuse Policy: Is Further Conflict Between Players and Management Inevitable?*, MARQUETTE SPORTS L. REV. 1, 3-9 (1991).

¹⁶ See, e.g., State Medical Marijuana Laws, NATIONAL CONFERENCE OF STATE LEGISLATURES (Feb. 2, 2017), <http://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx>. Recreational marijuana use is legal in Alaska, California, Colorado,

banned substance list.¹⁷ The League’s list, known as the “NFL Drug Panel,” bans marijuana along with synthetic cannabinoids,¹⁸ amphetamines, opiates (for example, morphine and codeine), opioids (for example, hydrocodone and oxycodone), Phencyclidine (PCP), and Methylenedioxymethamphetamine (MDMA).¹⁹ The NFL Drug Panel also includes alcohol, but specifies that alcohol is only prohibited if a Player’s Treatment Plan explicitly prohibits alcohol.²⁰

Under the NFL’s substance abuse program, there are four types of testing: pre-employment, pre-season, intervention

Massachusetts, Nevada, Oregon, Washington, and Washington DC. *Id.* Medical marijuana is legal in Arizona, Arkansas, Connecticut, Delaware, Florida, Hawaii, Illinois, Maine, Maryland, Michigan, Minnesota, Montana, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Ohio, Pennsylvania, Rhode Island, and Vermont. *Id.* Limited medical marijuana laws allow for the use of “low THC, high cannabidiol (CBD)” products for medical reasons in limited situations or as a legal defense, and have been approved in sixteen states—Alabama, Georgia, Iowa, Kentucky, Louisiana, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Utah, Virginia, Wisconsin, and Wyoming. *Id.*

¹⁷ NFL PLAYERS ASS’N, NAT’L FOOTBALL LEAGUE POLICY AND PROGRAM ON SUBSTANCES OF ABUSE, 7–8 (2016), https://nflpaweb.blob.core.windows.net/media/Default/PDFs/Agents/2016SOAPolicy_v2.pdf.

¹⁸ Synthetic cannabinoids, often called “synthetic marijuana,” refers to man-made mind-altering chemicals. They are not actual cannabis products, but are called cannabinoids because they bind to cannabinoid receptors. Synthetic cannabinoids affect the brain much more powerfully than marijuana. Their effects are unpredictable and may be severe. *Synthetic Cannabinoids*, NATIONAL INSTITUTE ON DRUG ABUSE (last updated Nov. 2015), <https://www.drugabuse.gov/publications/drugfacts/synthetic-cannabinoids>; see also Steve Featherstone, *Spike Nation*, THE NEW YORK TIMES MAGAZINE (July 8, 2015), <https://www.nytimes.com/2015/07/12/magazine/spike-nation.html>.

¹⁹ NFL PLAYERS ASS’N, NAT’L FOOTBALL LEAGUE POL’Y AND PROGRAM ON SUBSTANCES OF ABUSE, 7–8 (2016), https://nflpaweb.blob.core.windows.net/media/Default/PDFs/Agents/2016SOAPolicy_v2.pdf.

²⁰ *Id.* at 8.

program, and testing by agreement.²¹ Pre-employment tests may be administered to rookie or veteran players contemplating a contract with an NFL club, in addition to draft-eligible players during the annual scouting combines.²² Pre-season testing involves all players under contract with an NFL team; all players are tested at least once between April and August.²³ Players in the Intervention Program, those who have failed at least one drug test, are tested at the discretion of the league's medical advisor.²⁴ Testing by agreement involves an agreement between an NFL team and a player, providing that the player agrees to unannounced testing during the term of his contract, given the team has a reasonable basis for requesting the tests.²⁵

A positive test initiates a graduated series of disciplinary measures including entry into the NFL's Intervention Program, fines and suspensions.²⁶ On average, a player misses four games for a first-time marijuana violation.²⁷ Ironically, Adrian Peterson missed just one game following an indictment for child abuse.²⁸

NFL players who fail a drug test for the first time are immediately sent to the League's Intervention Program.²⁹ Subsequent positive tests lead to escalating repercussions, including one or more of the following: (1) fines of two- to four-sevenths of the player's salary; (2) suspension without pay for four or ten competitive games, including postseason games; or (3) banishment from the NFL for a minimum of one calendar year.³⁰

The NFL's marijuana policy is arguably the most restrictive policy when compared to rules governing other

²¹ *Id.* at 8–9.

²² *Id.* at 8.

²³ *Id.* at 9.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.* at 12–18.

²⁷ Jillian Rose Lim, *The NFL Pot Policy, By the Numbers*, MEN'S JOURNAL, <http://www.mensjournal.com/health-fitness/health/the-nfl-pot-policy-by-the-numbers-20140916> (last visited Sept. 9, 2017).

²⁸ *Id.*

²⁹ See NFL PLAYERS ASS'N, *supra* note 19 at 12.

³⁰ See NFL PLAYERS ASS'N, *supra* note 19 at 12–18.

professional athletes.³¹ Major League Baseball (MLB) players are not tested for marijuana unless there is “reasonable cause” to suspect they are using it,³² and the MLB does not discipline players who test positive beyond fines for excessive positive marijuana tests.³³ At a 50 ng/ml threshold, THC is unlikely to be detected in a one-time marijuana smoker’s urine sample beyond three days; for a 20 ng/ml threshold, THC is unlikely to be detected beyond seven days.³⁴ For moderate marijuana use, approximately four times a week, the detection window is five to seven days.³⁵ THC will remain detectible in a daily marijuana user’s urine for ten to fifteen days, and may take thirty days or more to drop below 50 ng/ml for habitual smokers.³⁶

A. THE WORLD ANTI-DOPING AGENCY & MARIJUANA: RELATIONSHIP GOALS

The World Anti-Doping Agency (WADA), the agency that sets the rules for Olympic drug use, has listed marijuana as a banned substance since the organization’s inception in 2003.³⁷ Richstead Pound, the first head of WADA and still a member of

³¹ See Tom Junod, *Eugene Monroe Has a Football Problem*, ESPN THE MAGAZINE (Nov. 2, 2016), http://www.espn.com/espn/feature/story/_/id/17943168/retired-baltimore-ravens-tackle-used-marijuana-quit-football.

³² See MAJOR LEAGUE BASEBALL’S JOINT DRUG PREVENTION AND TREATMENT PROGRAM 18–20, <http://mlb.mlb.com/pa/pdf/jda.pdf> (last visited Sept. 17, 2017).

³³ See Junod, *supra* note 31.

³⁴ Mena Raouf, *Two Puffs Too Bad: Demystifying Marijuana Urine Testing*, PAIN DR. (Aug. 30, 2015), <http://paindr.com/two-puffs-too-bad-demystifying-marijuana-urine-testing/>.

³⁵ *Id.*

³⁶ *Id.*

³⁷ Ted Hesson, *Why Are the Olympics Testing for Marijuana?*, ABC NEWS (May 19, 2013), http://abcnews.go.com/ABC_Univision/Politics/olympics-testing-marijuana/story?id=19212672. (More than 600 sports associations are governed by WADA’s drug policy). WORLD ANTI-DOPING AGENCY, <https://www.wada-ama.org/en/what-we-do> (last visited Feb. 16, 2017). (The World Anti-Doping Agency (WADA) was founded in 2004, with the goal of bringing consistency to anti-doping policies within sport organizations and governments across the world).

its board, “was rather ambivalent [toward marijuana] [from a sports perspective],” but explained that the United States was “keen to have it included.”³⁸ Needless to say, marijuana made it onto the banned substance list because of pressure from the United States.

Under the original rules, athletes were disciplined if they had THC blood levels of 15 ng/ml or higher.³⁹ Ten years later, in 2013, WADA raised that threshold substantially.⁴⁰ Now WADA cannot punish Olympic athletes for anything less than 150 ng/ml.⁴¹ WADA essentially made it so that the only time an athlete *will* get disciplined is if they get high right before or during an event.⁴² Olympic athletes do not get punished for trace amounts of THC, which means they may smoke marijuana in their personal lives without fear of disqualification. The WADA drug policy establishes marijuana and cannabinoids as substances that are prohibited *in competition*.⁴³ Furthermore, Olympic athletes may seek a Therapeutic Use Exemption (TUE) for marijuana, allowing them to circumvent this rule.⁴⁴

B. A LITTLE REALITY CHECK

When asked whether the NFL had a pot problem, NFL’s Executive Vice President of Health and Safety Jeff Miller, responded with an explanation of the league’s drug testing policy. “We have a program for testing jointly negotiated with the players’ association on the advice of our medical advisors,” he explained.⁴⁵ Players are tested and “should they test positive

³⁸ Hesson, *supra* note 38.

³⁹ *Id.*

⁴⁰ Nick Lindsey, *Olympic Athletes Can Now Smoke Weed Without Being Disqualified*, GREEN RUSH DAILY (Aug. 5, 2016), <https://www.greenrushdaily.com/2016/08/05/olympic-athletes-can-now-smoke-weed/>.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *See generally id.*

⁴⁴ *USADA Therapeutic Use Exemption Policy*, U.S. ANTI-DOPING AGENCY, <https://www.usada.org/substances/tue/policy/> (last updated Jan. 30, 2017).

⁴⁵ *See Junod, supra* note 31.

they hopefully get the kind of help and assistance they need.”⁴⁶ If they repeatedly test positive, they are punished.⁴⁷

State laws and public opinion are changing fast, with only six states prohibiting all forms of marijuana use.⁴⁸ Unfortunately the NFL’s policy—“a policy consistent with prevailing medical opinion and federal law”—likely will remain unchanged until its medical advisors see the need to make a change.⁴⁹

Is the NFL’s drug policy consistent with prevailing medical opinion and federal law? Definitely not if you ask the hundreds of former players involved in the suit against the NFL, alleging that the various clubs made intentional misrepresentations regarding medication in violation of the Controlled Substance Act and the Food, Drug, and Cosmetic Act.⁵⁰ The answer would also be “no” from former players Eugene Monroe and Kyle Turley; Monroe describes standing in line for shots of Toradol.⁵¹ It’s possible we could also infer a “no” from former wide receiver Calvin Johnson, who claims the NFL handed out painkillers like Skittles.⁵²

The League likely has an opioid problem, but what about a *pot* problem? According to ESPN senior writer Tom Junod, the

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *See, e.g.*, NATIONAL CONFERENCE OF STATE LEGISLATURES, *supra* note 16.

⁴⁹ *See* Junod, *supra* note 31.

⁵⁰ *See* Dent v. NFL, No. C 14-02324 WHA, 2014 U.S. Dist. LEXIS 174448, at *3-4 (N.D. Cal. Dec. 17, 2014) (“Since 1969, doctors and trainers from the individual clubs have allegedly supplied players with a consistent string of pain medications,” oftentimes without a prescription and with “little regard for a player’s medical history or potentially-fatal interactions with other medications.”); Evans v. Ariz. Cardinals Football Club L.L.C., No. C 16-01030 WHA, 2016 U.S. Dist. LEXIS 86207, at *15 (N.D. Cal. July 1, 2016) (an order denying the NFL member clubs motion to dismiss the class action brought against it by former players challenging the league’s administration of painkillers).

⁵¹ Junod, *supra* note 31.

⁵² Dr. David Chao, *Monday Morning MD: Giving Out Pain Medicine “Like Candy”*, NFPOST.COM (July 11, 2016), <http://www.nationalfootballpost.com/monday-morning-md-giving-out-pain-medicine-like-candy/>.

problem with NFL's pot problem "is that it is the least of the NFL's problems."⁵³ Junod believes the League's gravest problem is that football is inherently dangerous.⁵⁴ An increasing number of players are reluctant to bear the risks and continue playing.⁵⁵ For those who are willing to play, the NFL needs to either forget about marijuana and focus on its opioid problem, or focus on marijuana research and marijuana's potential as an alternative drug. That is the least the NFL can do for the players who put on a jersey and represent the League. For a sport that "thrives on pain and a virtual 100% injury rate,"⁵⁶ it is important that the NFL explores pain relief alternatives besides addictive opioids.

At Super Bowl 50 in 2016, NFL Commissioner Roger Goodell said that the League knew of the scientific developments in marijuana studies.⁵⁷ Yet he remained confident that the NFL's current policy is still in the players' best interests.⁵⁸ On the other hand, Ricky Williams wonders how the NFL can remain so comfortable with the opioids it feeds players.⁵⁹ It appears the League's current policy may not be in the best interest of players when you actually listen to the players' opinions. "I know that Junior would be here, David Duerson would be here, Andre Waters, Justin Strzelczyk." Every single one of those guys would be here," said Kyle Turley, "[i]f they knew what cannabis could do for them."⁶⁰

⁵³ See Junod, *supra* note 31.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ Chris Lemieux, *Here's What We Learned From the Calvin Johnson Interview*, SB NATION PRIDE OF DETROIT (July 8, 2016, 11:00 AM), <http://www.prideofdetroit.com/2016/7/8/12126370/calvin-johnson-interview-recap-what-we-learned>.

⁵⁷ Greg Bishop, *Ricky Williams Takes the High Road*, SPORTS ILLUSTRATED, <http://www.si.com/longform/2016/ricky-williams-weed/> (last visited Feb. 16, 2017).

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Cf.* BISHOP, *supra* note 57. ESPN.com News Services, *Junior Seau Dies at 43*, ESPN (May 3, 2012), http://www.espn.com/nfl/story/_/id/7882750/junior-seau-former-san-diego-charger-found-dead-cops-probe-suicide. (Junior Seau, the "emotional leader of the San Diego Chargers for [thirteen] years," committed suicide in 2012, two years after his retirement). Brent

Former offensive lineman Eugene Monroe began taking painkillers in college while he was recovering from a knee injury, and continued taking them throughout his professional

Schrotenboer, *Former NFL Doctor Gets Probation in Junior Seau Case*, (Jan. 5, 2017, 9:36 PM),

<http://www.indystar.com/story/sports/nfl/2017/01/05/david-chao-chargers-doctor-settlement-junior-seau-Mark-Fainaru-Wada-et-al.>,

Doctors: Junior Seau's Brain Had CTE, ESPN (Jan 11, 2013),

http://www.espn.com/espn/otl/story/_/id/8830344/study-junior-seau-brain-shows-chronic-brain-damage-found-other-nfl-football-players.

(Junior's brain later tested positive for CTE. Dr. David Chao, the former San Diego Chargers team doctor, has been placed on probation for four years as a result of Junior Seau's death and a finding by the California State Medical Board that Chao "failed to exercise proper caution in the extended use of Ambien with a patient showing signs of depression and suicidal thought." As part of the settlement, Chao will not be allowed to prescribe the drug Ambien during his probationary period). Paul Solotaroff, *Dave Duerson: The Ferocious Life and Tragic Death*, MEN'S JOURNAL, <http://www.mensjournal.com/magazine/dave-duerson-the-ferocious-life-and-tragic-death-of-a-super-bowl-star-20121002> (last visited Feb. 16, 2017). (David Duerson, a former Chicago Bear and a Pro Bowl safety, committed suicide in 2011 with a gunshot to the chest. Doctors later announced he was suffering from a "moderately advanced" case of CTE). Alan Schwarz, *Expert Ties Ex-Player's Suicide to Brain Damage*, THE NEW YORK TIMES (Jan. 18, 2007),

<http://www.nytimes.com/2007/01/18/sports/football/18waters.html>.

(Former Philadelphia Eagles defensive back Andre Waters committed suicide in 2006, with a gunshot wound to the head. A neuropathologist tied Walter's depression and death on the brain damage he sustained while playing football). Alan Schwarz, *Lineman Dead at 36 Exposes Brain Injury*, THE NEW YORK TIMES (Jun. 15, 2007),

<http://www.nytimes.com/2007/06/15/sports/football/15brain.html>.

(Justin Strzelczyk, a former offensive tackle with the Pittsburgh Steelers, died in a violent crash in 2004, at the age of thirty-six. Strzelczyk was apparently experiencing a meltdown when he became involved in a high-speed chase with police in central New York. His truck collided with a tractor-trailer, killing him instantly. Strzelczyk's brain showed early signs of brain damage that experts believe to be a result of the persistent head trauma experienced by most football players. At the time, Strzelczyk was the fourth ex-NFL player "to have been found post-mortem to have had a condition similar to that generally found only in boxers with dementia or people in their [eighties].").

career.⁶¹ He stood in line on game days for injections of the anti-inflammatory Toradol, calling it the “T Train.”⁶² He also had a ten-year prescription for the anti-inflammatory Celebrex.⁶³ The Celebrex caused Monroe gastric distress, so he had another prescription for that; another prescription to deal with the migraines caused by his various concussions; more prescriptions for Vicodin and Oxycontin to deal with the pain; and another prescription for Ambien.⁶⁴

Monroe remembers going home with a prescription for Vicodin after having shoulder surgery, and how the pills made him feel groggy and listless.⁶⁵ “*Those drugs, they stone you. They have psychoactive components,*” he explained, “they cause drowsiness, fatigue; they cause lethargy.”⁶⁶ And in the aftermath of a concussion, Monroe could not put up with it anymore. “I was sitting there practically drooling,” he admitted.⁶⁷

Everything changed for Monroe after watching a documentary on CNN called *Weed*. *Weed* was presented by Dr. Sanjay Gupta, an American neurosurgeon, and followed families braving opposition in order to use marijuana to treat their children’s intractable illnesses.⁶⁸ Monroe saw himself in the film because, as a professional football player, he felt he had an intractable illness as well.⁶⁹ Monroe began to speak out about marijuana as an alternative to addictive opioids—an alternative to “something that led to enslavement and overdoses and lives thrown away.”⁷⁰

Eugene Monroe is the only active player to publicly support removing marijuana from the League’s banned

⁶¹ See Junod, *supra* note 31.

⁶² Eugene Monroe, *Getting Off the T Train*, THE PLAYERS TRIBUNE (May 23, 2016), <http://www.theplayerstribune.com/2016-5-23-eugene-monroe-ravens-marijuana-opioids-toradol-nfl/>.

⁶³ See Junod, *supra* note 31.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

substance list, advocating for a drug he did not use at the time.⁷¹ On June 15, 2016, three months after giving his first interview about marijuana and a day before he planned on submitting an application for the NFL to provide a “therapeutic use exemption”⁷² for marijuana, Monroe was cut from the Baltimore Ravens.⁷³ A month later, the free-agent announced his retirement in an essay titled “Leaving the Game I Love.”⁷⁴ Eugene Monroe now uses marijuana to “heal[] the hurt from a lifetime playing the game.”⁷⁵

C. “C’MON MAN!”

The NFL’s drug policy is almost identical to the DEA’s classification of drugs—it is archaic and contradictory:

⁷¹ *Eugene Monroe Announces Retirement*, ESPN (July 22, 2016), http://www.espn.com/nfl/story/_/id/17117984/eugene-monroe-plans-retire-seven-year-career.

⁷² A therapeutic use exemption would allow athletes who require the use of a prohibited substance to treat a diagnosed medical problem to request an exemption from the league’s policy. This is the same exemption to the prohibition on banned substances that allows players with ADHD to use Adderall. NFL PLAYERS ASS’N, NAT’L FOOTBALL LEAGUE POL’Y AND PROGRAM ON SUBSTANCES OF ABUSE, 34–36 (2016), https://nflpaweb.blob.core.windows.net/media/Default/PDFs/Agents/2016SOAPolicy_v2.pdf.

⁷³ Junod, *supra* note 31. Eugene Monroe made headlines during the 2016 offseason for his pro marijuana publicity. Soon after Monroe’s media rounds, the Ravens released him (they claim it had nothing to do with his active stance though). Teams including the Giants, Seahawks, 49ers, and Vikings came looking for Monroe, but the twenty-nine-year-old was not interested. “I’m only [twenty-nine] and I still have the physical ability to play at a very high level, so my decision to retire may be puzzling . . . But I am thinking of my family first right now—and my health and my future,” Monroe wrote. Zach Links, *Monroe Not Interested in Vikings*, PRO FOOTBALL RUMORS (Nov. 16, 2016, 10:11 AM), <https://www.profootballrumors.com/eugene-monroe>.

⁷⁴ Junod, *supra* note 31.

⁷⁵ *Id.*

No one would argue that Benzoylecognine (cocaine), amphetamine and its analogues, opiates (total morphine and codeine), opioids (e.g., hydrocodone, oxycodone), Phencyclidine (PCP), and Methylenedioxymethamphetamine (“MDMA”) should be taken off the banned substance list. However, one could argue that the aforementioned drugs are all viewed as *less* harmful than cannabis in the eyes of the law.⁷⁶

We know that these drugs cause high rates of death and addiction.⁷⁷ “And we have cannabis, which is far healthier, far less addictive and, quite frankly, can be better in managing pain,” former offensive lineman Eugene Monroe said.⁷⁸ Monroe expresses disappointment that NFL commissioner Roger Goodell would tell fans that there is no medical versus recreational use distinction when it comes to marijuana.⁷⁹

Many people have said that the NFL is in bed with the pharmaceutical companies.⁸⁰ “They want you taking their pills,” former Chicago Bears quarterback Jim McMahon told *Sports Illustrated Now*.⁸¹ “I think they’re in cahoots with big pharma,” said McMahon.⁸² “My whole career they were pushing pills on me. For whatever ailment you had, they had a pill for it and that’s the reason they’re demonizing this plant the way they are,” he concluded.⁸³

⁷⁶Alec Banks, *Is the NFL’s Marijuana Policy Racist & Short-Sighted?*, HIGHSNOBEITY (Nov. 18, 2016), <http://www.highsnobiety.com/2016/11/18/nfl-drug-policy-weed/>.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ Jeff Zrebiec, *Ravens’ Eugene Monroe Criticizes Commissioner Roger Goodell’s Stance*, THE BALTIMORE SUN (Mar. 15, 2016, 8:56 AM), <http://www.baltimoresun.com/sports/ravens/ravens-insider/bal-ravens-eugene-monroe-criticizes-commissioner-roger-goodells-stance-on-medical-marijuana-20160315-story.html>.

⁸⁰ Banks, *supra* note 76.

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

There are allegations of an affair between the NFL and the alcohol industry.⁸⁴ *Forbes* reported that Bud Light, the NFL's official beer since 2011, paid \$1.4 billion dollars to renew its sponsorship through 2022.⁸⁵ Some studies have suggested that drinking alcohol is more harmful than smoking marijuana.⁸⁶

The League's endeavor to supplement the criminal justice system, and its policy of punishing players for what is now considered legal in many states, does the NFL a disservice.⁸⁷ It deprives the sport of valuable players who could make the game more compelling, competitive, and exciting for viewers.⁸⁸ Imagine the impact the National Football League could have in pointing out the federal government's hypocrisy when it comes to marijuana.

The main argument against allowing marijuana usage in the NFL is that it is a privilege to play—the League has a right to hold its players to a higher standard.⁸⁹ The NFL is not only in the business of promoting a winning product, but a wholesome one.⁹⁰ But players are not asking the NFL to come out in *favor* of marijuana though, just to soften their stance against it.⁹¹

Would it hurt the NFL to implement a marijuana policy like the World Anti-Doping Agency's (WADA), allowing

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ Mike Florio, *Ditching Marijuana Ban Would Be Good Business for NFL*, NBC SPORTS (Sept. 30, 2016, 11:44 AM), <http://profootballtalk.nbcsports.com/2016/09/30/ditching-marijuana-ban-would-be-good-business-for-nfl/>. Some argue that the racial demographics of the NFL, seventy percent of players being African American, suggests that the league's marijuana policy is racially charged as well. Banks, *supra* note 78. "Calls of racism are not a new phenomenon for the NFL as it relates to their drug policy." *Id.* In the 1990's, Dr. Forest Tennant, who directed the league's testing program at the time, made charges that black players were unfairly being targeted. *Id.* Of the thirty players suspended for drug use at the time, just four were white. *Id.* Dr. Tennant charged that three white players, star quarterbacks, had tested positive for high levels of cocaine yet received no counseling or treatment. *Id.*

⁸⁸ Florio, *supra* note 87.

⁸⁹ Banks, *supra* note 76.

⁹⁰ *Id.*

⁹¹ *Id.*

players to use marijuana in their personal lives similar to the way alcohol use is permitted? Who is benefiting from the NFL's policy as it stands?

Nothing in the NFL's drug policy stopped Williams from smoking marijuana when he wanted to. It addressed neither what the League deemed substance abuse, *nor* "Williams's belief that sporadic marijuana use did not constitute substance abuse at all."⁹² Former offensive lineman Kyle Turley says that all the league's policy did was turn Williams into a target.⁹³ "The NFL took it upon itself to try and ruin someone," says Turley. "I can't imagine the career Ricky would have had if these idiots had left him alone and just let him play football."⁹⁴

Those experiencing chronic pain are needlessly hit with a double whammy—pain and punishment—in a system where the science supports remedies that are still punished on archaic data points.⁹⁵ Attorney Roger Groves points out that this scenario sounds awfully similar to when the NFL used to renounce the relationship between concussions and brain disease, generally known as chronic traumatic encephalopathy (CTE).⁹⁶ Groves suggests the NFL resort to the education model and rely on top industry experts if they want to be on the right side of player care.⁹⁷ This is something the NFL did not do with the concussion dilemma, where the League acted primarily from fear and came out on the wrong side of a \$1 billion settlement.⁹⁸ The NFL may fear loosening the marijuana policy would cause players to become potheads, hurting the league's reputation and resulting in

⁹² Greg Bishop, *Ricky Williams Takes the High Road*, SPORTS ILLUSTRATED, <http://www.si.com/longform/2016/ricky-williams-weed/> (last visited Feb. 16, 2017).

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ Roger Groves, *The Science That Justifies Marijuana in the NFL and NBA*, FORBES (Dec. 6, 2016, 12:40 PM), <http://www.forbes.com/sites/rogergroves/2016/12/06/the-scientific-secret-that-justifies-marijuana-in-the-nfl-and-nba/#337b71c5719b>.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ Jimmy Golen, *Supreme Court leaves \$1B NFL concussion settlement in place*, AP NEWS (Dec. 13, 2016), <https://www.apnews.com/249f93a0ce544de79a73cc71bda5ef69>. The NFL's prior primary "expert" did not specialize in brain trauma. *Id.*

lower revenue.⁹⁹ But if the NFL “[is] not too blinded by the public relations mythology, they should be relieved to hear of the scientific studies separating the pothead buzz from the positive pain relief.”¹⁰⁰

Many NFL players believe that a therapeutic use exemption for marijuana use would reduce the use of pharmaceutical painkillers.¹⁰¹ In one study that surveyed 226 of nearly 3,000 active NFL players, researchers found that sixty-percent of players were worried about the long-term effects of pharmaceutical painkillers, and forty-two percent believed one or more teammates were addicted to them.¹⁰² Sixty-one percent of players agreed that players would take fewer injections of Toradol if they could legally resort to marijuana.¹⁰³

II. THE GOVERNMENT’S OBJECTIONS

The Nixon campaign in 1968, and the Nixon White House after that, had two enemies: the antiwar left and black people . . . We knew we couldn’t make it illegal to be either against the war or black, but by getting the public to associate the hippies with marijuana and blacks with heroin. And then criminalizing both heavily, we could disrupt those communities . . . Did we know we were lying about the drugs? Of course we did.

—John Ehrlichman, *White House Domestic Affairs Advisor (1969- 1973)*¹⁰⁴

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ Bay Area News Group, *Majority of NFL Players Say Medicinal Marijuana Would Reduce Use of Chemical Painkillers*, MERCURY NEWS (Nov. 2, 2016, 8:47 AM), <http://www.mercurynews.com/2016/11/02/majority-of-nfl-players-say-medicinal-marijuana-would-reduce-use-of-chemical-painkillers/>.

¹⁰² *Id.* The survey was conducted by ESPN The Magazine. Results also showed that sixty-four percent of respondents had taken an injection of Toradol or another painkiller, many of which have strong side effects (i.e. intestinal bleeding) when administered over a long period of time. *Id.*

¹⁰³ *Id.*

¹⁰⁴ Tom LoBianco, *Report: Aide Says Nixon’s War on Drugs Targeted Blacks*, CNN POLITICS (Mar. 24, 2016, 3:14 PM),

The NFL is not completely to blame for its willful blindness to the potential benefits of marijuana use because federal law has set the stage. Though the NFL could help rein in a controversial medication,¹⁰⁵ the League's current marijuana policy essentially mimics federal law.

A. A BRIEF HISTORY

Marijuana has been used as an intoxicant in this country for over a century.¹⁰⁶ From the beginning it was hard to distinguish between the medicinal use and the recreational use of the drug “whose purpose is to make you feel good.”¹⁰⁷ An 1862 issue of *Vanity Fair*, for example, included an advertisement for hashish candy, describing it as a wonderful medical agent for the cure of nervousness, weakness, melancholy, and confusion of thoughts.¹⁰⁸ The ad explained that, under the influence of the pleasurable and harmless stimulant, “all classes seem to gather new inspiration and energy.”¹⁰⁹ Though hashish use became a fad to some extent during the nineteenth century,¹¹⁰ strictly recreational use of hashish or other preparations of the marijuana plant remained neither widely known nor accepted.¹¹¹

<http://www.cnn.com/2016/03/23/politics/john-ehrllichman-richard-nixon-drug-war-blacks-hippie/>.

¹⁰⁵ Louis Bien, *Comfortably Numb: The NFL Fell in Love with a Pain Killer It Barely Knew*, SB NATION (Aug. 3, 2016), <http://www.sbnation.com/2016/8/3/12310124/comfortably-numb-the-nfl-fell-in-love-with-a-painkiller-it-barely-knew>.

¹⁰⁶ THE NAT'L COMM'N ON MARIHUANA AND DRUG ABUSE, MARIHUANA: A SIGNAL OF MISUNDERSTANDING, at 6 (Mar. 1972).

¹⁰⁷ Stephen Siff, *The Illegalization of Marijuana: A Brief History*, ORIGINS (May 2014), <http://origins.osu.edu/article/illegalization-marijuana-brief-history>.

¹⁰⁸ *Hasheesh Candy*, THE ANTIQUE CANNABIS BOOK, <http://antiquecannabisbook.com/chap15/QCandy.htm> (last visited Feb. 16, 2017).

¹⁰⁹ *Id.*

¹¹⁰ FRONTLINE, *Marijuana Timeline*, ARIZONA PBS, <http://www.pbs.org/wgbh/pages/frontline/shows/dope/etc/cron.html> (last visited Feb. 16, 2017).

¹¹¹ Siff, *supra* note 107.

During the “nineteenth century, marijuana became a popular ingredient in many medicinal products and was openly sold in public pharmacies.”¹¹² It was not until the 1906 Pure Food and Drug Act that the federal government first attempted to regulate marijuana.¹¹³ The Act, largely a “truth in labeling” law, worked to reduce drug addiction in the new century.¹¹⁴ Nineteenth century addiction was largely accidental, caused in part by careless prescription practices and secret distribution of “narcotic” drugs—opium, morphine, heroin, and cocaine—in patent medicines.¹¹⁵ Among other things, the 1906 Act created a list of ten ingredients that had to be labeled at all times; the list included marijuana (along with alcohol, cocaine, and morphine).¹¹⁶ Even so, marijuana continued to be legally available without a prescription as long as it was labeled.

By the early twentieth century, law enforcement offices and medical communities began focusing on recreational or “street” use of drugs by inner-city, ethnic minorities.¹¹⁷ The response was criminal legislation, banning the non-medical production, distribution, or consumption of narcotics.¹¹⁸ In 1914, the federal government passed the Harrison Narcotics Act as a sort of record-keeping law.¹¹⁹ Though it only provided for the

¹¹² FRONTLINE, *supra* note 110.

¹¹³ *Id.*

¹¹⁴ *The Pure Food and Drug Act*, U. OF MO. LIBR.: FOOD REVOLUTIONS (June 2012), <https://library.missouri.edu/exhibits/food/purefood.html>.

¹¹⁵ THE NAT’L COMM’N ON MARIHUANA AND DRUG ABUSE, *supra* note 106.

¹¹⁶ *Regulatory Information: Federal Food and Drugs Act of 1906*, U.S. FOOD & DRUG ADMINISTRATION, <https://www.fda.gov/regulatoryinformation/lawsenforcedbyfda/ucm148690.htm> (last updated May 20, 2009).

¹¹⁷ THE NAT’L COMM’N ON MARIHUANA AND DRUG ABUSE, *supra* note 106, at 12-13.

¹¹⁸ *Id.* at 14. Scientific literature and statutory provisions even began to incorrectly classify marijuana as a “narcotic” drug. The drug was assumed to render the user psychologically dependent, to provoke violent crime, and to cause insanity. *Id.*

¹¹⁹ Edward M. Brecher, *The Consumers Union Report on Licit and Illicit Drugs*, SCHAFFER LIBRARY OF DRUG POLICY, <http://www.druglibrary.org/schaffer/library/studies/cu/cu8.html> (last visited Feb. 16, 2017).

imposition of a special tax on and registration of those involved in the production or manufacture of narcotics, the Act quickly became a de facto prohibition.¹²⁰ There was no debate as to the immorality of non-medical use of narcotics—“the non-medical use of narcotics was a cancer which had to be removed entirely from the social organism.”¹²¹

The practice of smoking marijuana recreationally was largely unknown in the United States until the years following the Harrison Narcotics Act.¹²² Some historians believe Mexican immigrants introduced the habit,¹²³ and as the immigrants spread to the cities, marijuana use became commonplace within the same urban communities identified with opiate abuse.¹²⁴

By 1931, twenty-nine states passed legislation criminalizing the improper possession or use of marijuana.¹²⁵ And despite there being no comprehensive scientific study on marijuana or its effects, the National Conference of Commissioners on Uniform State Laws added an optional marijuana clause in the Uniform Narcotics Act in 1932.¹²⁶ Five years later, “every state had enacted some form of legislation related to marijuana”.¹²⁷ The drug was thrown into the category of narcotics and was assumed to render the user psychologically dependent, provoke violent crime, and cause insanity.¹²⁸

¹²⁰ *Id.*

¹²¹ THE NAT’L COMM’N ON MARIHUANA AND DRUG ABUSE, *supra* note 108, at 12.

¹²² *Id.*

¹²³ FRONTLINE, *supra* note 112; Siff, *supra* note 109.¹²⁴ THE NAT’L COMM’N ON MARIHUANA AND DRUG ABUSE, *supra* note 108, at 12.

¹²⁴ THE NAT’L COMM’N ON MARIHUANA AND DRUG ABUSE, *supra* note 108, at 12.

¹²⁵ Richard J. Bonnie & Charles H. Whitebread, *The Forbidden Fruit and the Tree of Knowledge*, SCHAFFER LIBRARY OF DRUG POLICY, <http://www.druglibrary.org/schaffer/library/studies/vlr/vlr3.htm> (last visited Feb. 16, 2017).

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ THE NAT’L COMM’N ON MARIHUANA AND DRUG ABUSE, *supra* note 106, at 13.

Following the States' lead, Congress passed the Marihuana Tax Act in 1937.¹²⁹ The purpose and effect of the bill was to restrict marijuana use so heavily that its use essentially was prevented altogether.¹³⁰ The only person to speak against the bill was Dr. William Woodward, who spoke on behalf of the American Medical Association (AMA).¹³¹ The AMA opposed the bill on grounds that there was no evidence that the medical use of marijuana had caused or was causing marijuana addiction:

Since the medical use of cannabis has not caused and is not causing addiction, the prevention of the use of the drug for medicinal purposes can accomplish no good end whatsoever. How far it may serve to deprive the public of the benefits of a drug that on further research may prove to be of substantial value, it is impossible to foresee.¹³²

Dr. William Woodward, legislative counsel of the AMA, pointed out that professional marijuana use could be controlled as effectively as professional uses of opium and coca leaves were, if further legislation was in fact needed.¹³³ Nevertheless, the Marijuana Tax Act passed, effectively outlawing the possession or sale of marijuana. More severe measures followed in 1952, with the Boggs Act providing mandatory sentences for offenses involving marijuana among other drugs.¹³⁴

¹²⁹ *Id.*

¹³⁰ Wm. C. Woodward, *American Medical Association Opposes the Marijuana Tax Act of 1937*, PORTLAND NORML (JULY 10, 1937), http://www.marijuanalibrary.org/AMA_opposes_1937.html.

¹³¹ Siff, *supra* note 107; Woodward, *supra* note 130.

¹³² Woodward, *supra* note 130.

¹³³ *Id.*

¹³⁴ Scott C. Martin, *A Brief History of Marijuana Law in America*, TIME (Apr. 20, 2016), <http://time.com/4298038/marijuana-history-in-america/>.

I. THE ANTI-NARCOTICS MOVEMENT VERSUS THE TEMPERANCE MOVEMENT

“Just why the alcoholic is tolerated as a sick man while the opiate addict is persecuted as a criminal is hard to understand.”

*—Dr. Robert S. de Ropp, Biochemist*¹³⁵

It is important to note the major differences between the anti-narcotics and temperance movements. We have a highly organized nationwide lobby to thank for temperance legislation; anti-narcotics legislation was essentially *ad hoc*.¹³⁶ The temperance movement was the subject of intense public debate; the anti-narcotics movement was not.¹³⁷ Temperance legislation dealt with known problems associated with alcohol abuse; anti-narcotics legislation was anticipatory.¹³⁸ Last, anti-narcotics legislation outlawed all drug-related behavior; temperance legislation almost never restricted private activity.¹³⁹ These conflicting policy patterns evidence the distinction in American minds between alcohol and tobacco, and “narcotics.”¹⁴⁰

Unlike alcohol and tobacco use, which were a part of indigenous American practices, recreational use of “narcotics” was alien.¹⁴¹ These drug users were either immigrants or marginal members of society.¹⁴² Not surprisingly, the immediate response to marijuana mirrored the narcotics prohibition pattern as opposed to the alcohol or tobacco temperance.¹⁴³

¹³⁵ Brecher, *supra* note 119.

¹³⁶ THE NAT’L COMM’N ON MARIJUANA AND DRUG ABUSE, *supra* note 106, at 12.

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

2. *A FOUNDATION BUILT ON A LIE*

The sprawled body of a young girl lay crushed on the sidewalk the other day after a plunge from the fifth story of a Chicago apartment house. Everyone called it a suicide but actually it was murder. The killer was a narcotic known to America as marijuana, and history as hashish. It is a narcotic used in the form of cigarettes, comparatively new to the United States and as dangerous as a coiled rattlesnake.

*-Harry Anslinger, 1st Commissioner of the U.S. Treasury Department's Federal Bureau of Narcotics (1930-1962)*¹⁴⁴

This was the typical “bureau educational campaign” describing marijuana, its recognition, and its evil effects.¹⁴⁵ The mid-1960s marijuana explosion played out in the context of thirty-years of fear instilled by the US government.¹⁴⁶

For decades, marijuana use was primarily confined to low-class urban communities and some insulated social groups, like artists and jazz musicians.¹⁴⁷ This all changed in the mid-1960's. By 1965, the college campus drug epidemic occupied newspaper headlines nationwide. Public confusion and fear over this development became obvious.¹⁴⁸ The sudden interest by the public in marijuana stimulated new scientific and medical interest in the drug and for the first time, marijuana became the subject of intense medical and scientific scrutiny.¹⁴⁹

Unfortunately, the research took place in this spotlight of controversy.¹⁵⁰ The press automatically relayed isolated and incomplete findings to the public, with little effort to analyze the

¹⁴⁴ *Marijuana – The First Twelve Thousand Years*, SCHAFFER LIBRARY OF DRUG POLICY. <http://www.druglibrary.org/Schaffer/hemp/history/first12000/13.htm> (last visited Feb. 16, 2016).

¹⁴⁵ *Id.*

¹⁴⁶ THE NAT'L COMM'N ON MARIJUANA AND DRUG ABUSE, *supra* note 106, at 12.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

meaning of those findings.¹⁵¹ Marijuana use's visibility to groups previously unfamiliar with the drug, extreme public scrutiny, and fishbowl research gave root to the marijuana problem today.¹⁵²

a. The Controlled Substances Act

In 1970 Congress enacted the Comprehensive Drug Abuse Prevention and Control Act.¹⁵³ Title II, known as the Controlled Substances Act (CSA), placed individual drugs into one of four "Schedules" depending on perceived medical value and potential for abuse.¹⁵⁴ The most restrictive schedule, Schedule I, covers drugs the federal government deems to have no medical value and a high potential for abuse.¹⁵⁵ As part of President Richard Nixon's war on drugs, the Act classified marijuana as a Schedule I drug—more due to Nixon's animosity toward the counterculture and his association of the counterculture with marijuana than to any medical, scientific, or legal opinion.¹⁵⁶

Dr. Leo Hollister—an employee of the Veterans Administration Hospital, a member of the Scientific Advisory Board of the Bureau of Narcotics and Dangerous Drugs, and a member of the National Academy of Science-National Research Council (NAS-NRC)—spoke at the 1970 hearing on the proposed Controlled Substance Act.¹⁵⁷ He described the proposed method of scheduling drugs and the penalty structure as greatly disturbing to the scientific community.¹⁵⁸

Dr. Hollister made three personal recommendations to deal with the problem: (1) base drug schedules on the danger to the individual and the danger the drug use may cause for society, also referred to as the liability of abuse; (2) use a multidisciplinary expert committee to decide drug scheduling;

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ Martin, *supra* note 134.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Leo Hollister on the Controlled Substances Act (1970)*, DRUGSCIENCE.ORG, <https://www.drugscience.org/lib/Holl70.html> (last visited Sept. 12, 2017).

¹⁵⁸ *Id.*

and (3) base penalties for drug use on moral grounds instead of punishing someone for personal drug use.¹⁵⁹

The second half of Dr. Hollister's statement to Congress explained why the proposed legislation would "become a laughing stock" if passed.¹⁶⁰ Primarily, he was concerned with his inability to identify any scientific colleague consulted about the proposed legislation or anyone who found the scheduling logical.¹⁶¹ According to Dr. Hollister, the scheduling reinforces the delusion that such diverse drugs as LSD, heroin, and marijuana are equal in pharmacological effects or in the degree of danger they pose to individuals and society at large.¹⁶² Dr. Hollister pointed to the low scheduling of highly addictive amphetamines, reiterating his first recommendation that medical use criteria be abandoned in favor of liability of abuse criteria.¹⁶³

Dr. Hollister concluded his statement with the fact that criminal legislation had not appreciably discouraged drug users, a group of individuals that sound medical and legal opinion consider foolish or sick or both.¹⁶⁴ He described a policy that punishes the only possible victim as an unsound policy.¹⁶⁵ "If our hearts were in the right place," he said, "we'd put no penalty on users."¹⁶⁶ Such a proposal was said to be politically unrealistic, to which Dr. Hollister responded, "if this is the case, and to be politically realistic, we must injure our fellows, then politics be damned!"¹⁶⁷

In 1972, two years after the enactment of the Controlled Substances Act, the National Commission on Marijuana and Drug Abuse recommended that the possession of marijuana for personal use no longer be an offense.¹⁶⁸ The Commission, which Congress created and filled with members appointed by

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ Paul Armentano, *35 Years of Prohibition*, NORML, <http://norml.org/component/zoo/category/celebrating-35-years-of-failed-pot-policies> (last visited Sept. 26, 2017).

President Nixon, explained that the potential harm of marijuana use “is not great enough to justify intrusion by the criminal law into private behavior.”¹⁶⁹ Nixon shelved the report.¹⁷⁰ And for decades, the United States has ignored the experts and followed the path of Nixon’s prejudice.¹⁷¹

Since 1972 parties have petitioned the federal government to remove or reschedule marijuana.¹⁷² National Organization for the Reform of Marijuana Laws (NORML), a nonprofit organization working to legalize marijuana, launched the first petition in 1972.¹⁷³ The petition to reschedule marijuana from Schedule I to II and allow physicians to legally prescribe the drug was denied after twenty-two years of court challenges.¹⁷⁴ Notwithstanding the Drug Enforcement Agency’s (DEA) classification, Administrative Law Judge Francis Young’s conclusion that “[m]arijuana . . . is one of the safest therapeutically active substances” and, in medical terms, “marijuana is far safer than many foods we commonly consume.”¹⁷⁵

The DEA has denied every petition it has ruled on to reschedule the drug, in some cases overriding the advice of federal judges.¹⁷⁶ Marijuana remains in the most tightly restricted category of drugs, a category of drugs deemed to have no

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ Kevin Zeese, *Once-Secret “Nixon Tapes” Show Why the U.S. Outlawed Pot*, ALTERNET (Mar. 20, 2002, 11:00 PM), http://www.alternet.org/story/12666/once-secret_%22nixon_tapes%22_show_why_the_u.s._outlawed_pot.

¹⁷² *Marijuana Law Reform* Timeline, NORML, <http://norml.org/shop/item/marijuana-law-reform-timeline> (last visited Feb. 16, 2017).

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ Francis L. Young, *Marijuana Rescheduling Petition*, U.S. DEP’T OF JUSTICE DRUG ENF’T ADMIN. (Sept. 6, 1988), <http://www.ccguides.org/young88.php>.

¹⁷⁶ Christopher Ingraham, *The Government is Stifling Medical Marijuana Research*, WASH. POST (Oct. 20, 2015), https://www.washingtonpost.com/news/wonk/wp/2015/10/20/the-federal-government-is-stifling-medical-research-major-think-tank-declares/?utm_term=.d9936bb9e4dd.

accepted medical value, a lack of accepted safety for use, and a high potential for abuse.¹⁷⁷

As a Schedule I drug, marijuana is considered to have no currently accepted medical use, despite the thousands of personal testimonials to the contrary.¹⁷⁸ Schedule I drugs may not be prescribed, administered, or dispensed for medical use.¹⁷⁹ But drugs listed under Schedules II through V have some accepted medical use and may be prescribed for medical use within limitations.¹⁸⁰ Classifying marijuana as medically useless has restricted research access and ensured that marijuana would not follow the normal path through medical, scientific, and pharmaceutical standards.¹⁸¹

The most recent petition to reschedule marijuana was denied in 2016, five years after it was filed.¹⁸² Governors Lincoln Chafee of Rhode Island and Christine Gregoire of Washington petitioned the DEA to repeal the regulations that categorize marijuana as a Schedule I drug.¹⁸³ The petition claimed: cannabis has an accepted medical use in the United States; cannabis is safe for use under medical supervision; and medical cannabis has a relatively low potential for abuse, especially when compared to other Schedule II drugs.¹⁸⁴

In a substantive science-based report, the Governors laid out non-smoking methods, and describe how recent scientific developments support the pharmacy model.¹⁸⁵ The petition

¹⁷⁷ Letter from Chuck Rosenberg, Acting Adm'r, U.S. Dep't of Justice Drug Enf't Admin., to the Hon. Gina M. Raimodo, Governor of R.I. and the Hon. Jay R. Inslee, Governor of Wash., at 3 (Aug. 11, 2016) (on file with the U.S. Dep't of Justice Drug Enf't Admin.).

¹⁷⁸ Press Release, Office of the Governor, *Governors Lincoln Chafee and Chris Gregoire File Petition to Reclassify Marijuana*, RI.GOV (Nov. 30, 2011), <http://www.ri.gov/press/view/15325>.

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ Scott C. Martin, *A Brief History of Marijuana Law in America*, TIME (Apr. 20, 2016), <http://time.com/4298038/marijuana-history-in-america/>.

¹⁸² Rosenberg, *supra* note 177, at 1.

¹⁸³ *Schedule of Controlled Substances: Maintaining Marijuana in Schedule I of the Controlled Substances Act*, U.S. DEP'T OF JUSTICE DRUG ENF'T ADMIN. at 2 (July 2016).

¹⁸⁴ *Id.*

¹⁸⁵ Press Release, *supra* note 178.

explained how modern DNA analysis had made it easy to determine the plant's beneficial compounds and how easy it would be for a compounding pharmacist to then use the appropriate cannabis blend to create a customized medicine.¹⁸⁶

Per protocol, the DEA submitted the petition to the United States Department of Health and Human Services (HHS), requesting that HHS provide a scientific and medical evaluation and scheduling recommendation for marijuana.¹⁸⁷ HHS recommended that marijuana remain a Schedule I drug, pointing to the drug's high potential for abuse, unknown chemistry, and the fact that there are no adequate studies and scientific evidence is not widely available.¹⁸⁸

In a report filled with contradictions and self-serving information, the DEA attempted to justify its decision to keep marijuana in Schedule I of the Controlled Substances Act.¹⁸⁹ At one point in the report, the DEA points to a 2005 study reporting that exposure of immunodeficient mice infected with HIV to THC enhanced HIV replication.¹⁹⁰ Interestingly, the DEA chose to rely on animal studies when real life figures show that almost one in three HIV/AIDS patients turn to cannabis to counteract pain, nausea, appetite loss, cachexia, and depression.¹⁹¹

Furthermore, HHS (the same department that recommended marijuana remain classified as a Schedule I drug with no medicinal value) owns a patent for a medical use for marijuana.¹⁹² The same department that owns a patent titled "Cannabinoids as Antioxidants and Neuroprotectants" refuses to acknowledge that the drug has any medical value.

III. CBD: A NON-PSYCHOACTIVE CANNABINOID

Marijuana is a Schedule I controlled substance because it contains tetrahydrocannabinol (THC), a psychoactive

¹⁸⁶ *Id.*

¹⁸⁷ *See Schedule of Controlled Substances, supra* note 183, at 2.

¹⁸⁸ *Id.* at 2–3.

¹⁸⁹ *See id.* at 35–39.

¹⁹⁰ *Id.* at 30.

¹⁹¹ Bailey Rahn, *Cannabis and HIV/AIDS*, LEAFLY, (Sept. 18, 2014), <https://www.leafly.com/news/health/cannabis-and-hiv-aids>.

¹⁹² U.S. Patent No. 6,630,507 (filed Apr. 21, 1999).

ingredient.¹⁹³ Cannabidiol (CBD) contains less than one percent of THC and has virtually no psychoactive effects.¹⁹⁴

A. U.S. PATENT NO. 6,630,507: CANNABINOIDS AS ANTIOXIDANTS AND NEUROPROTECTANTS

Marijuana refers to all parts of the *Cannabis sativa* plant—the seeds; the resin; and “every compound, manufacture, salt, derivative, mixture, or preparation” of the plant, its seeds, or its resin.¹⁹⁵ The Cannabis plant contains over 400 chemicals, seventy to a hundred of which are unique to the plant and known as cannabinoids.¹⁹⁶ THC and CBD are the two main cannabinoids found in marijuana.¹⁹⁷ Unlike THC, the psychoactive element that produces a “high” feeling, CBD has no psychoactive effects.¹⁹⁸ Marijuana is a Schedule I controlled substance due to the presence of THC.¹⁹⁹ CBD contains less than one percent THC and has shown potential medical value, though it remains a Schedule I controlled substance under the Controlled Substance Act.²⁰⁰

U.S. Patent No. 6,630,507, granted to the HHS in 2003, claims the rights to several non-psychoactive cannabinoids, including CBD.²⁰¹ The patent claims cannabinoids can act as antioxidants and neuroprotectants that are useful for treating ischemic, age-related inflammatory, and autoimmune diseases; Alzheimer’s disease; Parkinson’s disease; HIV; and dementia.²⁰²

¹⁹³ *DEA Eases Requirements for FDA-Approved Clinical Trials on Cannabidiol*, U.S. DRUG ENFORCEMENT ADMINISTRATION (Dec. 23, 2015), <https://www.dea.gov/divisions/hq/2015/hq122315.shtml>.

¹⁹⁴ *Id.*; see also Delilah Butterfield, *CBD: Everything You Need to Know About Cannabidiol*, HERB (July 26, 2016), <http://herb.co/2016/07/26/everything-you-need-to-know-about-cbd/>.

¹⁹⁵ 21 U.S.C. § 802(d) (2012).

¹⁹⁶ *What Chemicals Are in Marijuana and Its Byproducts*, PROCON (July 8, 2009, 6:11 PM), <https://medicalmarijuana.procon.org/view.answers.php?questionID=000636>.

¹⁹⁷ Butterfield, *supra* note 194.

¹⁹⁸ *Id.*

¹⁹⁹ *DEA Eases Requirements*, *supra* note 193.

²⁰⁰ *Id.*

²⁰¹ U.S. Patent No. 6,630,507, *supra* note 192.

²⁰² *Id.*

The patent allows for companies to apply for licenses to further research cannabinoid compounds to develop drugs.²⁰³

Does this patent contradict the federal classification of marijuana as a Schedule I drug with no medical value? I would say so, and I believe others would too. But the federal government maintains that it does not—instead, the patent acknowledges only the potential medical value in cannabinoids, not any proven medical value.²⁰⁴ The patent also only covers specific compounds of marijuana.²⁰⁵ “[T]he patent is for the use of cannabinoid compounds similar to and including those that naturally occur in marijuana, but not for the whole marijuana plant,” and thus, according to the government, does not contradict the blanket schedule for marijuana.²⁰⁶

B. Why Fight the Science?

CBD first made headlines not long ago. The “miracle compound” has helped to treat seizures in children, calm psychotic patients, and relieve those with chronic pain.²⁰⁷ CBD is the compound identified in US Patent No. 6,630,507 as having significant antioxidant and neuroprotective properties, suggesting the compound may be an alternative treatment for neurological disorders.²⁰⁸ The therapeutic potential of CBD is promising due to the lack of psychoactive side effects and the ability to execute “higher doses than with psychotropic” compounds.²⁰⁹

Though CBD has not been FDA approved for any condition, scientific and medical research highlights CBD’s

²⁰³ Alicia Wallace, *Patent No. 6,630,507: Why the U.S. Government Holds a Patent on Cannabis Plant Compounds*, THE CANNABIST (Aug. 22, 2016), <http://www.thecannabist.co/2016/08/22/marijuana-patents-6630507-research-dea-nih-fda-kannalife/61255/>. (rule 16.3)

²⁰⁴ German Lopez, *Marijuana’s Medical Use Is Illegal Under Federal Law. It’s also Patented by the Feds*, VOX (Mar. 18, 2015), <http://www.vox.com/2014/10/8/6932997/medical-marijuana-patent-CBD-HHS-federal-government>. (rule 16.3)

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ Butterfield, *supra* note 194.

²⁰⁸ *See* U.S. Patent No. 6,630,507, *supra* note 192.

²⁰⁹ *Id.*

potential as a treatment for a wide variety of conditions and a number of institutions are pushing for more research.²¹⁰ Relying on anecdotal evidence, numerous people have resorted to CBD to treat a variety of medical conditions.

Dr. Dustin Sulak, a licensed osteopathic physician in Maine, speaks of the therapeutic effects of marijuana:

In one day I might see cancer, Crohn's disease, epilepsy, chronic pain, multiple sclerosis, insomnia, Tourette's syndrome and eczema.... The patients are old and young. Some are undergoing conventional therapy. Others are on a decidedly alternative path. Yet despite their differences, almost all of my patients would agree on one point: cannabis helps their condition.²¹¹

Though one should be wary of a medicine that claims to act as a cure-all, the therapeutic potential of marijuana has not disappointed.²¹² Figuring out how one plant can help with so many conditions led scientists to the discovery of the endocannabinoid system, "named after the plant that led to its discovery," and "perhaps the most important physiologic system" involved in health and healing.²¹³

The endocannabinoid system is a chemical signaling system and described as the "bridge between body and mind."²¹⁴ Humans naturally synthesize endocannabinoids, chemical compounds that activate the same receptors as THC, the psychoactive component of marijuana.²¹⁵ Endocannabinoids and endocannabinoid receptors are spread throughout the body, the

²¹⁰ *What is Cannabidiol?*, MEDICAL MARIJUANA INC. (Oct. 11, 2016), <http://www.medicalmarijuanainc.com/what-is-cannabidiol/>; *What is CBD?*, PROJECT CBD, <https://www.projectcbd.org/what-cbd> (last visited Feb. 16, 2017).

²¹¹ Dustin Sulak, *Introduction to the Endocannabinoid System*, NORML, <http://norml.org/library/item/introduction-to-the-endocannabinoid-system> (last visited Feb. 16, 2017).

²¹² *Id.*

²¹³ *Id.*

²¹⁴ *Id.*

²¹⁵ *Id.*

brain, organs, tissue, and glands.²¹⁶ The cannabinoid system performs different tasks in different parts of the body, “but the goal is always the same: homeostasis,” or the maintenance of a stable internal environment in spite of variations in the external environment.²¹⁷

Endocannabinoids are found at the intersection of the body’s nervous and immune systems as well.²¹⁸ They facilitate cell-to-cell communication and “coordination between different cell types.”²¹⁹ Take for instance an injury site. Cannabinoids can be found working to decrease the “release of activators and sensitizers” from the damaged tissue; “stabilizing the nerve cell” to avoid excess firing; and “calming nearby immune cells” to block the “release of pro-inflammatory substances.”²²⁰ And all for a single purpose, to minimize pain and damage resulting from the injury.²²¹

The endocannabinoid system, and its complex role in the body, shows how different states of consciousness may “promote health or disease.”²²² Cannabinoids not only regulate homeostasis, they also influence an individual’s “relationship with the external environment.”²²³ “[T]he administration of cannabinoids” often promotes human behaviors such as “sharing, humor, and creativity.”²²⁴ By mediating neurogenesis, the active production of new neurons, cannabinoids may directly foster an individual’s open-mindedness and their ability to move past “limiting patterns of thought and behavior.”²²⁵ Being able to reformat these old habits is a critical part of health in our ever changing environment.²²⁶ “It certainly would be odd to rely on science when it suits us and disregard it otherwise.”²²⁷ Ironically that insight comes from the letter written by Chuck Rosenberg,

²¹⁶ *Id.*

²¹⁷ *Id.*

²¹⁸ *Id.*

²¹⁹ *Id.*

²²⁰ *Id.*

²²¹ *Id.*

²²² *Id.*

²²³ *Id.*

²²⁴ *Id.*

²²⁵ *Id.*

²²⁶ *Id.*

²²⁷ Rosenberg, *supra* note 177, at 1

the Acting Administrator of the DEA, denying the most recent petition to reschedule marijuana. Not that the rest of the letter is any better, but Rosenberg *had* to be laughing when he concluded it with that. Then again, according to Rosenberg smoking marijuana as medicine is a joke.²²⁸ If only the former prosecutor could have provided the source of the information that lead him to that conclusion.²²⁹

Marijuana's Schedule I designation continues to make research on the plant and its compounds difficult. Contradictory federal policy is "interfering with the relationship between doctor and patient" every day.²³⁰ In states where medical marijuana is legal, doctors and patients still find themselves in a bind between state and federal laws.

The majority of the current research corroborates the federal government's claim that CBD and other cannabinoids exhibit therapeutic and neuroprotective capabilities. In 2000, Colorado voters approved Amendment 20, authorizing the medical use of marijuana for those suffering from a "debilitating medical condition."²³¹ The definition of "debilitating medical condition" explicitly included eight conditions: cancer, glaucoma, HIV/AIDS, cachexia (or wasting syndrome), persistent muscle spasms, severe pain, severe nausea, and seizures.²³² The Amendment established an affirmative defense for patients and care-givers using medicinal marijuana, creating

²²⁸ Paula Reid & Stephanie Condon, *DEA Chief Says Smoking Marijuana as Medicine "is a Joke"*, CBS NEWS (Nov. 4, 2015, 3:10 PM), <http://www.cbsnews.com/news/dea-chief-says-smoking-marijuana-as-medicine-is-a-joke/>. See generally Eliana Dockterman, *People Want DEA Chief to Resign After He Called Medical Marijuana 'a Joke'*, TIME (Nov. 10, 2015), <http://time.com/4107603/dea-medical-marijuana-joke-2/> (after agency head Chuck Rosenberg called medical marijuana "a joke" during a Q&A with reporters last week, over 10,000 people have signed a petition demanding his resignation). (rule 16.3) This is the third cite that had a titled that was shorted. I couldn't find a rule that lets you shorten a title or how to decide what part of a title is important so I just added the full titles passed on what they said online.

²²⁹ *Id.*

²³⁰ Ingraham, *supra* note 176.

²³¹ *Colorado Amendment 20*, NATIONAL FAMILIES IN ACTION (Mar. 1, 2012), <http://www.nationalfamilies.org/guide/colorado20-full.html>.

²³² *Id.*

an identification card system for those covered by the bill.²³³ All but six states have followed suit, developing some sort of medicinal marijuana law.²³⁴

In December of 2015, the DEA decided to ease regulatory requirements for those conducting clinical trials on CBD.²³⁵ Previously, the Controlled Substances Act required CBD researchers who modified the scope of their studies and who needed more CBD than originally approved to provide a written request to adjust their DEA research registrations—an approval process, involving the DEA and the Food and Drug Administration, which significantly delayed research.²³⁶ The changes allow previously registered researchers conducting CBD-based clinical trials to receive a waiver, allowing them to tweak their process and continue research smoothly.²³⁷ This modification is a minor attempt to streamline the CBD research process and facilitate more scientific studies.²³⁸

If the federal government believes marijuana has *any* medical value, it should reschedule the drug. A lower schedule would give state governments an opportunity to relax marijuana laws without the fear of federal interference. Countless patients, medical professionals, and elected officials have sought to place marijuana in a lower schedule, a schedule that would reflect the drugs accepted medical value, relative safety, and low abuse potential.²³⁹

²³³ *Id.*

²³⁴ NORML: STATE LAWS, <http://norml.org/laws> (last visited Oct. 26, 2017).

²³⁵ *DEA Eases Requirements for FDA Approved Clinical Trials on Cannabidiol*, U.S. DRUG ENFORCEMENT ADMINISTRATION (Dec. 23, 2015), <https://www.dea.gov/divisions/hq/2015/hq122315.shtml>.

²³⁶ *Id.*

²³⁷ *Id.*

²³⁸ *Id.*

²³⁹ DRUG POLICY ALLIANCE (May 2013) http://www.drugpolicy.org/sites/default/files/DPA_Fact%20sheet_Marijuana%20Reclassification_May%202013.pdf.

IV. MARIJUANA: WORTHY OF A CHANCE

Matt and Paige Figi can personally attest to marijuana's medical potential. Their daughter Charlotte experienced her first seizure when she was three months old.²⁴⁰ In the following months, their daughter had frequent seizures lasting two to four hours and was hospitalized often.²⁴¹

One of Charlotte's doctors eventually found a possible diagnosis: Dravet Syndrome.²⁴² Dravet Syndrome is a rare form of severe epilepsy—a neurological disorder characterized by sudden recurring seizures, and associated with abnormal electrical activity in the brain.²⁴³ It is a lifelong disease that begins in the first year of infancy.²⁴⁴

When Charlotte turned two, her condition declined.²⁴⁵ The Figis took her to see a Dravet specialist, who put her on the ketogenic diet.²⁴⁶ The ketogenic diet is a low-carb, high-fat diet frequently used to treat epilepsy.²⁴⁷ However, two years into the diet, Charlotte's seizures returned.²⁴⁸ The five-year-old was experiencing 300 seizures a week.²⁴⁹ She eventually lost the ability to eat, talk, and walk.²⁵⁰ The Figis were running out of options. Doctors suggested the family try an anti-seizure drug being tested on dogs before suggesting the young girl simply be

²⁴⁰ Saundra Young, *Marijuana Stops Child's Severe Seizures*, CNN (Aug. 7, 2013, 4:51 PM), <http://www.cnn.com/2013/08/07/health/charlotte-child-medical-marijuana/>.

²⁴¹ *Id.*

²⁴² *Id.*

²⁴³ *Dravet Syndrome*, EPILEPSY FOUNDATION, <http://www.epilepsy.com/learn/types-epilepsy-syndromes/dravet-syndrome> (last visited Feb. 16, 2017).

²⁴⁴ *Id.*

²⁴⁵ Young, *supra* note 240.

²⁴⁶ *Id.* See also DR. MARGARET GEDDE, <http://geddewholehealth.com/naturalhormonebalance/index.htm> (last visited Oct. 26, 2017).

²⁴⁷ *Id.*

²⁴⁸ *Id.*

²⁴⁹ *Id.*

²⁵⁰ *Id.*

put in a medically induced coma.²⁵¹ Evidently there was nothing more the hospital could do for Charlotte.

The Figis finally decided to give marijuana a try after finding an online video of a California boy using marijuana to treat his Dravet.²⁵² But finding two doctors to sign off on a medical marijuana card for the youngest patient in Colorado to ever apply took some time.²⁵³ Mrs. Figi eventually reached Dr. Margaret Gedde, a Stanford educated MD PhD pathologist and award-winning researcher, who agreed to sign on.²⁵⁴ Childhood is a delicate time in brain development and the long-term effects marijuana use may have on children is still not fully understood.²⁵⁵ But when Dr. Gedde put the risks of marijuana in context with Charlotte's multiple near-death experiences and the extent of the child's brain damage from seizures (and likely pharmaceuticals), the decision was easy.²⁵⁶ Dr. Alan Shackelford, a Harvard educated physician with a number of medical marijuana patients, provided the second signature.²⁵⁷ Though Dr. Shackelford did not have experience with Dravet, he understood that the family had exhausted all of their options.²⁵⁸ They had tried everything already—everything except marijuana.

With signatures from Dr. Gedde and Dr. Shackelford, the Figis were set. Mrs. Figi visited a Denver dispensary, purchasing two ounces of a high CBD low THC marijuana.²⁵⁹ She had a friend extract the oil for Charlotte and the results were stunning.²⁶⁰ Charlotte went from 300 seizures a week to not having a single one in her first seven days of treatment.²⁶¹ When the Figis supply got low, they contacted the Stanley brothers.²⁶² One of Colorado's largest marijuana growers, the

²⁵¹ *Id.*

²⁵² *Id.*

²⁵³ *Id.*

²⁵⁴ *Id.*

²⁵⁵ *Id.*

²⁵⁶ *Id.*

²⁵⁷ *Id.*

²⁵⁸ *Id.*

²⁵⁹ *Id.*

²⁶⁰ *Id.*

²⁶¹ *Id.*

²⁶² *Id.*

group of six brothers had developed a crossbreed between industrial hemp and a particular strain of marijuana low in THC and high in CBD.²⁶³ The breed of marijuana that Charlotte and dozens of others now use to ease the symptoms of diseases ranging from cancer to epilepsy has been named Charlotte's Web after the young girl.²⁶⁴ The oil created by the Stanley Brothers maintains a thirty to one ratio of CBD to THC.²⁶⁵ Doctors found three to four milligrams of oil per pound of Charlotte's body weight stopped the seizures completely.²⁶⁶ Charlotte receives a dose of the cannabis oil twice daily with food, and today she is thriving.²⁶⁷

Though Charlotte's Web was originally developed to treat seizures, football players took notice of the extraordinary medicine, its neuroprotective capabilities, and its potential as a treatment for symptoms of chronic traumatic encephalopathy (CTE), the degenerative brain disease found in forty percent of retired NFL players.²⁶⁸

A. CTE AND THE NFL: A HISTORY OF DENIAL

In 2013, UCLA researchers notified ex-Super Bowl champion Leonard Marshall that he exhibited signs of chronic traumatic encephalopathy.²⁶⁹ *Encephalopathy* derives from the Ancient Greek words *kephale* meaning "head" and *patheia*

²⁶³ *Id.*

²⁶⁴ *Id.*

²⁶⁵ *Charlotte Figi's Ongoing Story with Medical Marijuana*, HEALTHY HEMP OIL <https://healthyhempoil.com/charlotte-figi-2/> (last visited Feb. 16, 2016).

²⁶⁶ Young, *supra* note 240.

²⁶⁷ *Id.*

²⁶⁸ Jason M. Breslow, *87 Deceased NFL Players Test Positive for Brain Disease*, PBS (Sept. 18, 2015), <http://www.pbs.org/wgbh/frontline/article/new-87-deceased-nfl-players-test-positive-for-brain-disease/>.

²⁶⁹ Doug Farrar, *Leonard Marshall on CTE, Concussion, and the NFL Then and Now*, SPORTS ILLUSTRATED (Sept. 1, 2015), <http://www.si.com/nfl/2015/09/02/leonard-marshall-nfl-concussion-movie-cte>.

meaning “suffering.”²⁷⁰ CTE is a progressive degenerative brain disease caused by repetitive head trauma.²⁷¹ CTE was previously thought to exist primarily among boxers, but is now known to be common among ex-football players.²⁷²

The disease persists over a period of years and gradually deteriorates the brain.²⁷³ Deposits of proteins and changes in white matter occur in the brain in response to the disease, adversely affecting cell-to-cell communication.²⁷⁴ The symptoms of CTE, which do not become noticeable until approximately eight to ten years after the repetitive trauma, can be debilitating.²⁷⁵ The most common symptoms include memory loss, erratic behavior, aggression, depression, and a gradual onset of dementia.²⁷⁶ Many of the CTE symptoms are similar to those of Alzheimer’s or Parkinson’s disease so people often dismiss the signs as an undesirable, yet normal part of aging.²⁷⁷

Although some of the effects of CTE are apparent with brain imaging, a diagnosis of the disease can only be made after death.²⁷⁸ Today, there is no cure for CTE.²⁷⁹ The best way to limit the risk is simply to prevent head trauma.²⁸⁰ CTE has been diagnosed in several high-profile cases, including the 2012 suicide of former NFL linebacker Junior Seau.²⁸¹ After years of

²⁷⁰ *What is CTE?*, BRAIN INJURY RESEARCH INSTITUTE, <http://www.protectthebrain.org/Brain-Injury-Research/What-is-CTE.aspx> (last visited Sept. 15, 2017).

²⁷¹ *Id.* A concussion is a traumatic brain injury caused by a sudden blow to the head or other injury that shakes the brain causing bruising, blood vessel damage, and nerve injury. *Chronic Traumatic Encephalopathy – Medical Marijuana Research Overview*, MEDICAL MARIJUANA, INC. (Jan. 5, 2016), <http://www.medicalmarijuanainc.com/chronic-traumatic-encephalopathy-overview/>.

²⁷² BRAIN INJURY RESEARCH INSTITUTE, *supra* note 270.

²⁷³ *Id.*

²⁷⁴ MEDICAL MARIJUANA, INC., *supra* note 271.

²⁷⁵ *Id.*

²⁷⁶ *Id.*

²⁷⁷ BRAIN INJURY RESEARCH INSTITUTE, *supra* note 270.

²⁷⁸ MEDICAL MARIJUANA, INC., *supra* note 271.

²⁷⁹ *Id.*

²⁸⁰ *Id.*

²⁸¹ Martin Pengelly, *Junior Seau ‘Oral History’ Details NFL Culture of Silence on Head Injuries*, THE GUARDIAN (Aug. 19, 2013),

erratic behavior and depression, Junior took his life with a gunshot wound to the chest.²⁸² He was forty-three years old.²⁸³

The hall of famer known for his aggressive tackles often kept concussions, among other injuries, private.²⁸⁴ Not once in his twenty years in the NFL was Junior diagnosed with a concussion, but his family claims he had many.²⁸⁵ Like many players, Junior did not recognize the harm he was doing to his body: “[i]f I could feel some dizziness, I know that guy’s feeling double of what I feel. [T]he hitting that I put on somebody else is always going to be judged on how I feel going back to the bench.”²⁸⁶

After his death, Junior’s family donated his brain tissue to the National Institute of Neurological Disorders and Stroke, part of the National Institutes of Health (NIH).²⁸⁷ The NIH concluded that his brain showed definitive signs of CTE.²⁸⁸

Junior Seau’s suicide is reminiscent of that of former NFL safety Dave Duerson. Duerson took his life in 2011 at the age of fifty.²⁸⁹ He left a suicide note asking that his family donate his brain to Boston University School of Medicine to be studied for brain trauma.²⁹⁰ Neurologists at the University confirmed that Duerson suffered from a neurodegenerative disease tied to concussions.²⁹¹

<https://www.theguardian.com/sport/2013/aug/19/junior-seau-brain-concussion-gq>.

²⁸² NPR, *supra* note 1. Martin Pengelly, *supra* note 281.

²⁸³ *Id.*

²⁸⁴ NPR, *supra* note 1.

²⁸⁵ *Id.*

²⁸⁶ *Id.*

²⁸⁷ Mary Pilon & Ken Belson, *Seau Suffered From Brain Disease*, N.Y. TIMES (Jan. 10, 2013), <http://www.nytimes.com/2013/01/11/sports/football/junior-seau-suffered-from-brain-disease.html>.

²⁸⁸ Sam Farmer, *Junior Seau Had Brain Disease When He Committed Suicide*, LOS ANGELES TIMES (Jan. 10, 2013), <http://articles.latimes.com/2013/jan/10/sports/la-sp-sn-junior-seau-brain-20130110>.

²⁸⁹ *Id.*

²⁹⁰ *Id.*

²⁹¹ Tony Perry & Sam Farmer, *Junior Seau Sent Texts to Ex-Wife, Kids Before Killing Himself*, LA TIMES (May 3, 2012, 7:21 AM),

A study by Boston University and the Department of Veterans Affairs autopsied former players and found CTE in ninety-six percent of the NFL players examined and in seventy-nine percent of football players at various other levels of play.²⁹² The study found CTE in 131 of 165 deceased former football players, who played the sport in high school, college, or professionally.²⁹³

In the most recent study presented to the American Academy of Neurology, researchers found that more than forty percent of retired NFL players have signs of traumatic brain injury.²⁹⁴ Researchers examined the brains of forty participants who had played an average of seven years in the league and reported an average of 8.1 concussions.²⁹⁵ Most of the participants had been retired for less than five years.²⁹⁶

Researchers took brain scans of the retired NFL players while giving them memory and concentration tests.²⁹⁷ The scans measured the amount of damage to the brain's white matter, the part of the brain that connects its various regions.²⁹⁸ Forty-three percent of the players had levels of movement 2.5 standard deviations below that of healthy individuals at the same age.²⁹⁹ This is considered evidence of traumatic brain injury, having less than a one percent error rate.³⁰⁰ Thirty percent of the tested athletes showed evidence of injury to the brain resulting from damage to nerve axons, the part of the brain that allows cells to transfer information.³⁰¹ Testing of athletes' thinking skills

<http://latimesblogs.latimes.com/lanow/2012/05/junior-seau-sent-texts-to-wife-kids-before-killing-himself.html>.

²⁹² Travis M. Andrews, *40 Percent of Former NFL Players Suffer From Brain Injuries, New Study Shows*, WASHINGTON POST (Apr. 12, 2016), https://www.washingtonpost.com/news/morning-mix/wp/2016/04/12/40-percent-of-former-nfl-players-suffer-from-brain-damage-new-study-shows/?utm_term=.090da24c010f.

²⁹³ *Id.*

²⁹⁴ *Id.*

²⁹⁵ *Id.*

²⁹⁶ *Id.*

²⁹⁷ *Id.*

²⁹⁸ *Id.*

²⁹⁹ *Id.*

³⁰⁰ *Id.*

³⁰¹ *Id.*

showed fifty percent had major problems on executive function, forty-five percent on memory, forty-two percent on concentration, and twenty-four percent on spatial reasoning.³⁰²

The study came months after the NFL's 2015 injury report, showing a thirty-two percent jump in instances of head trauma from the previous year.³⁰³ Instances of head trauma rose from 206 in 2014 to 271 reported concussions in 2015.³⁰⁴ The NFL's concussion problem has come under national fire in recent years and CTE is becoming an increasing threat to players and football organizations nationwide.

At Kannalife Sciences, in Doylestown, Pennsylvania, researchers are working with Temple University to explore CBD as a treatment for CTE.³⁰⁵ The company has taken a more biopharmaceutical approach than others. They want to synthesize CBD and distribute it in pill form to increase the drug's effectiveness and the rate at which it is absorbed into the bloodstream.³⁰⁶ Ricky Williams hopes "[c]annabis research is going to be the new wave of medicine this century," especially for football players.³⁰⁷

The NFL empties your tank. I look at Junior Seau. I played with Junior. He literally gave everything he had, and when I heard about his suicide, I understood. We have to teach these guys that everything's connected: the body and the mind, all the trauma. With all the damage we've suffered, we're one group of people with an amazing capacity to heal. We just need the tools.³⁰⁸

³⁰² *Id.*

³⁰³ *Id.*

³⁰⁴ *Id.*

³⁰⁵ Greg Bishop, *Ricky Williams Takes the High Road*, SPORTS ILLUSTRATED, <http://www.si.com/longform/2016/ricky-williams-weed/> (last visited Sept. 17, 2017).

³⁰⁶ *Id.*

³⁰⁷ *Id.*

³⁰⁸ *Id.*

B. THE BEST OF BOTH WORLDS

While the NFL has dedicated large amounts of money to fund research to limit the traumatic brain injuries that cause CTE, that research has much to do with innovative equipment and little to do with a known neuro-protectant.³⁰⁹ The League has attempted to protect players by adjusting playing rules and developing better helmets.³¹⁰ The NFL implemented two logical policy changes: bans on intentional head-to-head contact, and the striking of a defenseless player.³¹¹ But efforts to create a helmet capable of protecting players from head injury seem futile, at least in relation to concussions. A helmet may be able to cushion the skull, but concussions involve movement of the brain within the skull—no helmet can prevent that.³¹² What the NFL's CTE strategy should incorporate is marijuana.

Leonard Marshall, one of the former players involved in the billion-dollar NFL concussion settlement and a key player in the medical marijuana world, resorts to marijuana to relieve his symptoms of CTE.³¹³ In 2014, Marshall participated in the first study that attempted to diagnose signs of CTE in living people and tested positive.³¹⁴ Marshall says that CBD products have worked to relieve his headaches, depression, and mood swings

³⁰⁹ See Josh Keefe, *Can Weed Protect Your Brain (and Save Football)?*, OBSERVER (June 27, 2016, 1:26 PM), <http://observer.com/2016/06/can-weed-protect-your-brain-and-save-football/>.

³¹⁰ *New NFL Rules Designed to Limit Head Injuries*, NFL (July 26, 2012, 8:40 PM), <http://www.nfl.com/news/story/09000d5d81990bdf/article/new-nfl-rules-designed-to-limit-head-injuries>; Alexander Aciman, *The NFL's New Helmet is Supposed to Make Players Safer from Brain Injuries. It'll Almost Certainly do the Opposite*, QUARTZ (Sep. 22, 2017), <https://qz.com/1084348/the-nfls-new-helmet-is-supposed-to-make-players-safer-from-brain-injuries-itll-almost-certainly-do-the-opposite/>

³¹¹ *Id.*

³¹² See Aciman, *supra* note 310.

³¹³ *Id.*

³¹⁴ Kalyn Kahler, *Leonard Marshall: A Giant in the World of Medicinal Marijuana*, THE MMBQ (June 24, 2016), <http://mmqb.si.com/mmqb/2016/06/24/nfl-leonard-marshall-marijuana-hemp>.

better than anything else.³¹⁵ The fifty-five year-old takes four droplets of a CBD-based hemp oil in the morning and four droplets at night and maintains that his quality of life has improved thanks to CBD.³¹⁶ Leonard Marshall joins former offensive tackle Eugene Monroe in the campaign to petition the NFL to reconsider its stance on marijuana and support medical research, especially related to CTE.

Marijuana offers two major medical benefits of interest to the NFL: brain protection and pain relief. CBD promises multiple benefits to the human body, providing potent therapeutic effects without the “high” produced by high THC variations. CBD addresses many intractable conditions, and works especially well in treating neuropathic pain.³¹⁷ A growing body of research is identifying CBD as a valuable asset for former and current NFL players.

I. AN ALTERNATIVE PAIN RELIEVER

The first major benefit of marijuana is its ability to act as a pain reliever. A non-addictive pain reliever, with a primary side effect of euphoria, should spark the interest of a League currently being sued by former players for the negligent and harmful distribution of opioids.³¹⁸

A study conducted by researchers at Washington University in St. Louis found that the rate of retired NFL players misusing opioid painkillers is more than four times the rate of the general population.³¹⁹ Furthermore, evidence suggests this is

³¹⁵ *Id.*

³¹⁶ *Id.*

³¹⁷ *Cannabinoids, CHRONIC RELIEF*, <http://mychronicrelief.com/cannabis-science/cannabinoids/> (last visited Sept. 17, 2017).

³¹⁸ Nadia Kounang, *Lawsuit Alleges that NFL Teams Gave Painkillers Recklessly* CNN (Mar. 13, 2017), <http://www.cnn.com/2017/03/12/health/nfl-painkiller-lawsuit/index.html>.

³¹⁹ John Barr, *Study: Players Misuse Painkillers*, ESPN: OUTSIDE THE LINES, <http://www.espn.com/espn/eticket/story?page=110128/PainkillersNews> (last visited Feb. 16, 2017). Fifty-two percent of the retired players surveyed said they used prescription painkillers during their NFL

“because players misused painkillers during their NFL careers.”³²⁰ Former NFL defensive tackle Sam Rayburn was arrested in 2009 for stealing and forging prescriptions from a doctor’s office. Rayburn later admitted to consuming one hundred Percocet pills a day to control his chronic pain.³²¹ “‘I think if I would have given it another two or three months, it probably would have killed me,’ Rayburn said of his addiction.”³²² “I don’t have any doubts whatsoever that it would have turned into a death situation, because I didn’t see any way of slowing down.”³²³ The NFL, an organization that is in the pain business, has forced the black market to deal with the after-effects of playing.³²⁴

careers. *Id.* Of those, seventy-one percent admitted to misusing the drugs then. *Id.* Retired players who misused prescription painkillers during their NFL careers were three times more likely to misuse the drugs today. *Id.*

³²⁰ *Id.*

³²¹ John Barr, *Painkiller Use in Today’s NFL*, ESPN:

PAINKILLER MISUSE NUMBS NFL PAIN,
<http://www.espn.com/espn/eticket/story?page=110128/PainkillersCurrentUse> (last visited Feb. 16, 2017). Percocet is a combination of oxycodone and acetaminophen, making it an opioid/non-opioid combination, and is used to relieve moderate to severe pain. The drug’s label includes a black box warning, the “strictest warning put in the labeling of prescription drugs” and FDA drug products “when there is reasonable evidence of an association of a serious hazard with the drug.” *Black Box Warnings*, WALGREENS,
<https://www.walgreens.com/topic/faq/questionandanswer.jsp?questionTierId=900002&faqId=5400004> (last visited Feb. 16, 2017). The label warns of risk of addiction, abuse, and misuse, which may lead to overdose and death. It also notes that life-threatening or fatal cases may occur even when using Percocet as recommended. *Percocet*, EPOCRATES,
<https://online.epocrates.com/u/10b2298/Percocet/Black+Box+Warnings> (last visited Feb. 16, 2017).

³²² Alec Banks, *Is the NFL’s Marijuana Policy Racist & Short-Sighted?*, HIGHSNOBEITY (Nov. 18, 2016),
<http://www.highsnobiety.com/2016/11/18/nfl-drug-policy-weed/>.

³²³ *Id.*

³²⁴ *Id.*

2. A KNOWN NEURO-PROTECTANT

The second major benefit of marijuana is its unique neuro-protective qualities, and its ability to protect the brain from injury. Research on CTE and CBD shows that marijuana can prevent the protein build up in the brain commonly associated with head injury.³²⁵ Researchers believe this accumulation of protein causes the death of neurons seen in CTE.³²⁶ The studies on CBD's neuro-protective capabilities are promising.³²⁷

If you ask former NFL offensive lineman Kyle Turley, marijuana saved his life.³²⁸ During his ten-year NFL career, Turley relied on pain killers prescribed to him by NFL medical staff.³²⁹ According to Turley, doctors handed out medications without any consideration of addiction.³³⁰ It is commonplace for NFL players to numb their injuries with prescription painkillers under pressure to perform on Sundays, Turley explained.³³¹ But after his career ended in 2007, his reliance on pain killers persisted.³³² Turley was addicted, and he believes this contributed to his struggle with depression, anxiety, rage, and chronic headaches.³³³

³²⁵ *Tau Proteins, CTE and CBD*, PANACEA HEMP OIL (Nov. 9, 2016), <https://www.ophempoil.com/blogs/news/tau-proteins-cte-and-cbd>.

³²⁶ *Id.*

³²⁷ *See id.*

³²⁸ SI WIRE, *Former NFL Player Kyle Turley: Marijuana Saved My Life*, SPORTS ILLUSTRATED (Jul. 13, 2016), <http://www.si.com/nfl/2016/07/13/kyle-turley-ricky-williams-marijuana-saved-my-life>.

³²⁹ *See id.*

³³⁰ Rod O'Connor, *Ex-Lineman Kyle Turley on NFL Cannabis Ban*, LEAFLY (Feb. 3, 2016), <https://www.leafly.com/news/pop-culture/ex-lineman-kyle-turley-on-nfl-cannabis-ban-this-whole-thing-has-t>.

³³¹ *See id.*

³³² *Id.*

³³³ SI WIRE, *supra* note 328 (Turley—who says he suffered two documented concussions and over 100 undocumented ones—details how messed up his brain is, and how various drugs he has taken messed it up even further); Stefanie Loh, *Is it time to legalize marijuana in sports?*, SAN DIEGO TRIBUNE (Aug. 1, 2015, 6:00 AM),

For Turley, it was the neurological issues, a result of the numerous concussions he suffered throughout his NFL career, that posed the biggest threat to him and his family.³³⁴ Though he first experienced bouts of vertigo during his rookie season, it was only after he retired that Turley received his first MRI.³³⁵ By this time his vertigo had worsened, as did his episodes of rage and depression.³³⁶ The real trouble for Turley began after doctors prescribed him a series of psychiatric drugs, including Wellbutrin and Depakote.³³⁷ Suicidal and homicidal tendencies became part of his daily living.³³⁸ “I couldn’t be around a knife in the kitchen without having an urge to stab someone, including my wife and kids,” Turley admits.³³⁹ He points out that the drugs may have worked for people with psychological issues alone, but giving these drugs to someone whose brain is damaged is lethal.³⁴⁰

In 2014, Turley swore off all prescription drugs in favor of marijuana.³⁴¹ Turley and his family moved to California where medicinal marijuana is legal and he has since identified the strains that best fit his needs.³⁴² One of Turley’s lifesavers is Jack Herer, a 55% sativa hybrid that works to eliminate his light sensitivity, anxiety, and depression.³⁴³ “I’ve got all these issues,” said Turley, “and I’ve found strains of cannabis that have resolved these issues like no synthetic drug I’ve ever been given by a normal doctor.”³⁴⁴

<http://www.sandiegouniontribune.com/sports/aztecs/sdut-marijuana-sports-opioids-arguments-kyle-turley-2015aug01-story.html>.

³³⁴ O’Connor, *supra* note 330.

³³⁵ *Id.*

³³⁶ *Id.*

³³⁷ *Id.*

³³⁸ Greg Bishop, *Ricky Williams Takes the High Road*, SPORTS ILLUSTRATED (2016), <http://www.si.com/longform/2016/ricky-williams-weed/>.

³³⁹ *Id.*

³⁴⁰ O’Connor, *supra* note 330.

³⁴¹ *Id.*

³⁴² *Id.*

³⁴³ *Id.*; Jack Herer, LEAFLY, <https://www.leafly.com/sativa/jack-herer> (last visited Oct. 5, 2017).

³⁴⁴ O’Connor, *supra* note 330.

CONCLUSION: A MODEST PROPOSAL

*Imagine a medicine that's side effect is euphoria. And people actually take it for nothing, just the side effect. We need to get rid of the insane prohibition mindset that feeling euphoria is a bad thing. It's okay if your medicine feels good.*³⁴⁵

The NFL's stance on marijuana threatens the livelihood of its players and it makes the League look bad.³⁴⁶ This is the exact opposite of what the League should want for its players, the ones who put their bodies on the line every day. For some reason, marijuana has become less of a problem for everyone except for those in charge of the rulemaking.³⁴⁷

The gap between the NFL's current drug policy, which bans any marijuana use, and public opinion continues to grow, and increasing acceptance of medicinal marijuana suggests the NFL should reconsider its stance. The NFL's marijuana policy not only hurts players, it hurts the League—" [p]ut simply, if a guy doesn't get arrested and can continue to perform at a satisfactory level regardless of whether he uses marijuana, he should be allowed to keep playing — and the league should want to do all it can to help him keep playing."³⁴⁸

Ricky Williams, Sam Rayburn, and countless other NFL players have seen their livelihoods threatened by the league's policy. In an open letter to the NFL, Doctors and Players for NFL Cannabis Reform (DCFR) urged the NFL to remove marijuana from its banned substance list.³⁴⁹ The letter

³⁴⁵ Joshua Kellem, *Should the NFL Legalize Marijuana?*, HYPEFRESH (June 21, 2017), <https://hypefreshmag.com/culture/should-the-nfl-legalize-marijuana>.

³⁴⁶ See Mike Florio, *Ditching Marijuana Ban Would Be Good Business for NFL*, NBC SPORTS, <http://profootballtalk.nbcsports.com/2016/09/30/ditching-marijuana-ban-would-be-good-business-for-nfl/>.

³⁴⁷ See Banks, *supra* note 7.

³⁴⁸ Florio, *supra* note 346.

³⁴⁹ Hunter Atkins, *Former NFL Players, Physicians Gather in Houston to Erase the Sticky Stigma of Marijuana*, HOUS. CHRON. (Feb. 2, 2017, 1:16 AM), <http://www.houstonchronicle.com/sports/texans/article/Former-NFL-players-physicians-discuss-marijuana-10902221.php>.

recommends: (1) that no player be punished for using cannabis, medicinally or recreationally; (2) that the NFL treat marijuana like alcohol, focusing on misuse rather than mere use, and offering substance abuse intervention; and (3) that the NFL provide opioid addiction education.³⁵⁰

The NFL needs to better align itself with contemporary science and modern societal views by relaxing its marijuana policy. This would not only satisfy players, but it would also lessen the odds of another embarrassing moment of fans ridiculing the League for handing receiver Josh Gordon a season long suspension for multiple failed marijuana tests, while former running back Ray Rice received a two-game suspension “for coldcocking” his fiancé in an elevator.³⁵¹

Federal restrictions on marijuana and other Schedule I drugs, including an exhausting registration and application process, makes legitimate research almost impossible. Federal marijuana policy is a circular policy that hinders scientific research.³⁵² Medical marijuana research is limited by the drug’s Schedule I designation, a designation given to the plant due to the lack of research into its medical applications. If the federal government believes marijuana has any medical value—and one may reasonably assume it does in light of U.S. Patent No. 6,630,507—then marijuana should be rescheduled to a less restrictive category of drugs.

³⁵⁰ *Id.*

³⁵¹ Patrick Hruby, *The NFL’S Hazy Logic on Marijuana*, THE ATLANTIC (Sept. 17, 2014), <https://www.theatlantic.com/entertainment/archive/2014/09/the-nfl-embraces-marijuana-finally/380246/>. Ray Rice was suspended for the first two games of the 2014 season for “violating the NFL’s personal conduct policy” after an offseason arrest for domestic violence. The Baltimore Raven’s running back was fined an additional regular-season game paycheck, but was eligible to participate in training camp and all of the team’s preseason games. Adam Schefter et al., *Ray Rice Suspended 2 Games*, ESPN (Jul. 25, 2014), http://www.espn.com/nfl/story/_/id/11257692/ray-rice-baltimore-ravens-suspended-2-games.

³⁵² See Mike Tanier, *Jake Plummer’s Pot Crusade*, BLEACHER REP. (Sept. 2, 2016) <http://thelab.bleacherreport.com/jake-plummer-s-pot-crusade/>.

Marijuana deserves serious attention as an alternative pain treatment and a potential neuro-protectant. Though there is much more to discover about CBD, and marijuana generally, its future is promising. CBD could help millions who suffer brain injuries every year and the federal government seems to know that. CBD could do wonders for those suffering from chronic pain and symptoms of CTE. Former Denver Bronco Jake Plummer spoke of CBD: “I’ve had friends, guys I played alongside, whose mood changed from night to day. I know others who’ve replaced hellacious amounts of pain killers with CBD.”³⁵³ Plummer continued, “The bigger the number, the better the chance we have to get in front of (NFL [C]ommissioner) Roger Goodell and say, ‘[y]ou need to fund this.’ Not just for football players, but for the millions of others it could help.”³⁵⁴

The conversation on player safety in the NFL is not new. Interested parties have discussed it for over a century.³⁵⁵ And in a League drowning in opioids, the NFL should give players freedom to choose a medicine that meets their needs; a medicine whose side effects fail to include death. Nearly three-quarters of NFL players believe marijuana use should be legal.³⁵⁶ A little open-mindedness could go a long way for the League. The NFL’s policy views CBD usage—“[w]e’re talking about something with a safety profile that looks like vitamin C”—as the same thing as smoking marijuana.³⁵⁷ It is understandable that the NFL wants to avoid creating a “pot-head” association. But with CBD, a non-psychoactive compound, that issue is almost moot. And in relation to marijuana’s psychoactive propensities,

³⁵³ Jim Litke, *Leaders Off the Field: Former QBs Push Medical Research Funding on CBD*, THE CANNABIST (Mar. 18, 2016, 8:41 PM), <http://www.thecannabist.co/2016/03/18/former-nfl-players-jake-plummer-jim-mcmahon-cannabidiol-cbd-research/49790/>.

³⁵⁴ *Id.*

³⁵⁵ In 1905, President Roosevelt summoned Harvard, Princeton, and Yale athletic advisers to the White House to talk about “reducing the element of brutality in play.” Andrews, *supra* note 292.

³⁵⁶ Bay Area News Group, *Majority of NFL Players Say Medicinal Marijuana Would Reduce Use of Chemical Painkillers*, THE MERCURY NEWS (Nov. 2, 2016, 8:47 AM), <http://www.mercurynews.com/2016/11/02/majority-of-nfl-players-say-medicinal-marijuana-would-reduce-use-of-chemical-painkillers/>.

³⁵⁷ Banks, *supra* note 7.

“[i]t’s not that [players are] choosing to get high. It’s that they already are.”³⁵⁸

³⁵⁸ Junod, *supra* note 31.
