From Drug to Medicine: Transforming Mariyuana for the Common Good An Analysis of New York's Compassionate Care Act

Victoria Bianco

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I. Introduction

The law is created to uphold those goods that a society deems valuable or necessary to the human experience. A law that cannot be shown to be in furtherance of the common good is a superfluous law. A law that hinders the population's pursuit of the common good is an unjust law and should not be allowed to continue. A law forbidding murder is one of the most basically good laws; it promotes life, which in turn allows for the pursuit of all other goods. However, not all laws are black and white and some may simultaneously promote good and hinder it. Each law must be analyzed individually in order to determine whether the positives outweigh the negatives and if the law is truly in pursuit of the common good.

The national debate over legalization of medical marijuana highlights both the positives and the negatives of the medical marijuana laws passed by a number of states. Meanwhile, as more and more states are legalizing marijuana, believing it to be to the benefit of their citizens, it remains illegal on a federal level. This dichotomy between the federal and state governments as well as between the individual states reflects the uncertainty that surrounds the justice of the law. New York is one the states that has most recently passed medical marijuana legislature. New York's Compassionate Care Act is one of the most strictly written medical marijuana provisions in the United State. The Act, which began as Bill No. A06357 was codified as NY Article 33 of the public health law, Title V-A.\(^1\) The Compassionate Care Act has given health care practitioners new hope as one of the most medically advanced

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medical marijuana initiatives instituted in the United States. As New York works to set up the many new operations detailed in the Act, New York citizens and other states alike look forward to seeing how this new legislature operates in practice.

II. The Compassionate Care Act

On July 7, 2014 Governor Cuomo signed New York’s medical marijuana bill, the Compassionate Care Act, making New York the 23rd state to legalize medical marijuana in the United States.\(^2\) The Compassionate Care Act allows doctors in New York to prescribe nonsmokable forms of marijuana to patients with serious medical conditions.\(^3\) New York’s approach to medical marijuana comes as a more strictly limited approach in comparison to other states such as California, which has allowed medical uses for marijuana since 1996, and Colorado, which has legalized broad medical use as well as limited recreational use.\(^4\)

In the section of the reform bill memorandum describing its purpose it directly addresses the difficulty in making sure people who could benefit from the drug have access to it while also preventing abuse of access by people who do not intend to use it for medical reasons.\(^5\) The purpose states:

This bill would comprehensively regulate the manufacture, sale and use of medical marihuana. It would strike the right balance between potentially relieving the pain and suffering of those in desperate need of a treatment and protecting the public against risks to its health and safety. The balance would be maintained by granting discretion to physicians to prescribe in accordance with regulatory requirements

\(^3\) Id.
and medical norms, empowering the Department of Health to oversee the regimen of medical marihuana usage and leaving to the Governor, the final say in seeing that the public's safety and health are protected by authorizing him to discontinue the program, in whole or in part, should risks to the public so warrant.\textsuperscript{6}

The most effective way to maintain the balance is to keep it in the forefront of lawmakers' and law enforcements' minds. This balance is also on the minds of New York’s citizens. Polls done by Quinnipiac University in February of 2014 showed that 88% of New York voters support legalizing medical marijuana.\textsuperscript{7} That same poll indicated that 57% of voters supported legalizing marijuana for recreation use in small amounts.\textsuperscript{8} The huge amount of voter support pushed the legislature to support the bill. On June 20, 2014 the New York senate approved the updated bill voting 117 to 13.\textsuperscript{9}

The balance between helping people who are ill and suffering and preventing abuse of a medical marijuana program was something that New York's Governor Cuomo emphasized during the months leading up to the passage of the Compassion Care Act. When he announced the agreement on the bill in June 2014, Governor Cuomo said, "Medical marijuana has the possibility to do a lot of good for a lot of people who are in pain and who are suffering and are in desperate need of a treatment that can provide relief. [...] At the same time, there are also risks that have to be averted: public health risks, public safety risks and we believe this bill strikes

\textsuperscript{6} \textit{Id.}
\textsuperscript{8} \textit{Id.}
\textsuperscript{9} NY Bill No. A06357E, \textit{supra} note 1.
the right balance." The Governor specifically emphasized the positive effects that medical marijuana has been shown to have on children suffering from epilepsy and other seizure disorders; when he signed the bill on July 7, 2014, he was introduced by 10 year old, New York resident, Amanda Houser, who suffers from Dravet Syndrome and who could greatly benefit from medical marijuana.

The bill gave the New York Department of Health 18 months to put the regulations into effect; however, recently Governor Cuomo has asked that that be reexamined to try and get New York's epileptic children the help they need sooner. Weeks after the signing of the bill, nine year old Anna Conte, whose family "played a central role in the passing [of the bill]" died from complications resulting from Dravet Syndrome. Following her death, the Drug Policy Alliance and other advocate groups urged the Governor and legislators to implement an emergency program allowing children like Anna to have access to medical marijuana before all of New York's systems are in put in place under the Compassionate Care Act. Countless news articles about the Compassionate Care Act mention Anna Conte and Olivia Marie Newton, whose family also fought for medical marijuana only to watch their daughter die before she had the chance to benefit from it. More articles mention Amanda Houser, who introduced Governor Cuomo before he signed the act, and

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12 Id and NY Bill No. A06357E, supra note 1.
14 Id.
Oliver Miller; again and again the public is reminded that Amanda and Oliver may run out of time just as Anna and Olivia did unless an emergency system is implemented to give them access to the lifesaving medicine they desperately fought to have legalized. Governor Cuomo responded to these pleas by sending a letter to the State Department of Health requesting a more immediate implementation plan for children like Anna.\textsuperscript{15} In the letter he wrote:

Striking the right balance to ensure public safety and public health are protected is crucial. That said, I ask that you review the eighteen-month implementation timeline to determine if there is any way to accelerate the process for this specific dire population. [...] Families with children struggling from epilepsy have fought for years for the passage of the Compassionate Care Act. Now that it is finally law, the children struggling with this condition deserve every consideration we can make that could potentially ease their pain and suffering.\textsuperscript{16}

Since then the Governor has also requested a federal waiver to allow a limited amount of marijuana to be imported from other states for use while New York works to set up their own growers in state.\textsuperscript{17} For those people who could be affected by this accelerated timeline, the Governor's letter was a step in the right direction. However, there are plenty of other New York citizens who are suffering from illnesses that are covered by the Compassionate Care Act who will still have to wait up to 18 months before they are eligible for medical marijuana.

A. Allowed Medical Marijuana under the Compassionate Care Act


\textsuperscript{16} Id.

There are two ways in particular that the Compassionate Care Act differs from every other medical marijuana law that has come before it: it requires individual dosing of medical marijuana and it forbids any smokable forms of marijuana.\textsuperscript{18} Of the other 22 states where medical marijuana is legal, as well as the district of Columbia and Guam, Minnesota is the only other state besides New York which does not allow medical marijuana to be distributed in a smokable form.\textsuperscript{19} In the justification for the bill, the New York State assembly cited the National Institute for Drug Abuse's statement that "The smoke of marijuana, like that of tobacco, consists of a toxic mixture of gases and particulates, many of which are known to be harmful to the lungs."\textsuperscript{20} Additionally, legislators were concerned a statute that allowed smoking in any capacity would greatly undermine the strides that New York has made in decreasing smoking on a general level because of the associated health risks to all New York citizens and visitors. The assembly believed that "however well intentioned, any effort that reduces the stigma associated with smoking, and that has the potential to lead to an increase in smoking rates among New Yorkers, especially young New Yorkers, presents an unwarranted public health risk. [The Compassionate Care Act] would avoid that risk."\textsuperscript{21} Smoking marijuana has all of the same side effects that make smoking tobacco so dangerous, including carcinogenic and respiratory risks.\textsuperscript{22} In an article for the Wall Street Journal, Dr. Steven Patierno, the deputy director of the Duke Cancer Institute, pointed out that,

\textsuperscript{19} \textit{State Medical Marijuana Laws}, supra note 4.
\textsuperscript{20} NY Bill No. A06357E, supra note 1.
\textsuperscript{21} Id.
\textsuperscript{22} Patierno, supra note 18.
"State health-care systems should not be in the business of sanctioning smoking of anything, for any reason." This is particularly true considering the fact that there are plenty of other alternative forms of medical marijuana available, all of which are better medicinal options than smokable marijuana. Marijuana delivered as a liquid, pill, or vaporized form are all safer to the patient than smoking it. Nonsmokable forms of marijuana are also much safer for the family, friends, and caregivers of patients who would otherwise be at risk of inhaling harmful secondhand smoke.

Requiring that medical marijuana administered in New York be in a nonsmokable form allowed legislators to give doctors a much greater level of control over the way in which medical marijuana was being used. As opposed to other states where a physician can simply give a patient a prescription that allows them to buy an amount of marijuana of their choosing, New York physicians are required to prescribe specific dosages administered in a specific way. By instituting measured dosages, New York's approach to medical marijuana is much closer to traditional medication and pharmaceuticals than previously seen with marijuana. Amounts and strengths of the prescribed marijuana may be adjusted by the prescriber to whatever best suits the patient, similar to other pharmaceuticals. The approach is much more scientific and much less of the guessing game that comes with smoking marijuana, where consistency in quality and potency is hard to regulate.

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23 Patierno, supra note 18.
25 Patierno, supra note 18.
26 Id.
27 Id.
By moving towards a more scientific approach to medical marijuana, New York's statute will allow more people to benefit from using medical marijuana than other states have before. Many prescribers and physicians are reluctant to suggest a drug that is so difficult to regulate as smokable marijuana; and many patients would not be comfortable or capable of smoking marijuana, even if it could ease their suffering. By putting marijuana into a liquid or pill form, which can be measured and monitored, many more physicians will be willing to prescribe it and it will be able to be used by more of the patients who actually need it. In a metered dose, marijuana can be easily tested for contaminants, which also makes it safer for patients.28

B. Manufacture and Distribution of Medical Marijuana under the Compassionate Care Act

Under the Compassionate Care Act, all medical marijuana distributed to patients in New York must be grown in New York to ensure that the quality is in keeping with the standards laid out in the bill.29 The bill allows the Commissioner of Health to register up to five licensed growers in the state, which could each operate up to four dispensaries.30 In addition to those 20 main distributors, the Commissioner has the authority to license additional organizations for advanced manufacturing and distribution using the raw material grown by one of the five state licensed growers.31

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28 Patierno, supra note 18.
29 NY Bill No. A06357E, supra note 1.
31 NY Bill No. A06357E, supra note 1.
Physicians must also obtain particular registration to prescribe medical marijuana to their patients. To qualify under the Compassionate Care Act, the medical practitioner must be a licensed physician practicing in the New York State who is qualified to treat one of the explicitly listed serious medical conditions which qualify patients for treatment.\textsuperscript{32} Practitioners are required to complete an education course selected by the Commissioner regarding the use of marijuana medically.\textsuperscript{33} Even if all of these factors are met, medical practitioners may still have their registration applications rejected by the Commission under certain circumstances. These circumstances can include but are not limited to past history of negative conduct relating to the distribution of controlled substances or association with any production company involved in the manufacturing, production, or distribution of medical marijuana.\textsuperscript{34} While these may seem strict requirements for physicians, and compared to other states (only one of which has a similarly restrictive statute) they are, the high standards apply to all parties involved in bill in order to maintain and protect the common good of the entire state.

C. Use of Medical Marijuana under the Compassionate Care Act

The Compassionate Care Act lays out a clear list of serious health conditions that qualify a patient for treatment with medical marijuana including Cancer, positive status for HIV or AIDS, Multiple Sclerosis, Epilepsy, and Huntington’s Disease.\textsuperscript{35} It also applies to patients who are suffering from Wasting Syndrome, severe or chronic pain, severe nausea, seizures, severe muscle spasms or similar

\textsuperscript{32} NY Bill No. A06357E, supra note 1.
\textsuperscript{33} Id.
\textsuperscript{34} Id.
\textsuperscript{35} Id.
conditions that may be added by the commissioner.\textsuperscript{36} If a patient has one or more of
the approved conditions they must still follow a lengthy and particular certification
process in order to obtain their prescription for medical marijuana.

Like organizations and physicians, patients must also be registered in order
to purchase medical marijuana under the Compassionate Care Act. Registration
lapses every 12-18 months unless the patient is designated terminal, in which case
they are not expected to survive more than 18 months.\textsuperscript{37} Patients are required to
carry their medical marijuana registration cards on their person at all time when
they are in possession of or under the influence of marijuana.\textsuperscript{38} Failure to present a
registration card under such circumstances will be considered a violation of the
Compassionate Care Act for which patients can be legally punished.\textsuperscript{39} While some
patients and patient advocates feel that this Act is too limiting, it is certainly a step
in the right direction and it contains the necessary provisions for future
modification.\textsuperscript{40}

D. Preventing Abuse of the Compassionate Care Act

By limiting the way in which the medical marijuana can be distributed, the
NY legislators have made it much more difficult for the Act to be misused since the
majority of illegal marijuana involves smokable forms of marijuana. Additionally,
the strict guidelines regarding quantities, production, and distribution will further

\textsuperscript{36} NY Bill No. A06357E, \textit{supra} note 1.
\textsuperscript{37} \textit{id.}
\textsuperscript{38} \textit{id.}
\textsuperscript{39} \textit{id.}
\textsuperscript{40} See \textit{BREAKING: NY to Become 23rd Medical Marijuana State}, Drug Policy Alliance (June 19, 2014),
http://www.drugpolicy.org/news/2014/06/breaking-ny-become-23rd-medical-marijuana-state and
\textit{New York Becomes the 23rd State to Pass a Medical Marijuana Bill}, Drug Policy Alliance (June 20,
marijuana-bill.
prevent marijuana products from being misused. In particular, the act requires that medical marijuana be kept in the original packaging in which it was dispensed. In this way, any patient, health care provider, or law enforcement officer would know who it had been prescribed to, in what amount, for what purpose, and would know that it does not contain any illicit mixed substances.\textsuperscript{41} It also required that any organization seeking registration be able to provide the necessary security of their premises and facilities to ensure that the products are not tampered with or taken for illegal use.\textsuperscript{42} In this way, not only will law enforcement and legislators work to uphold the bill but any organization or distributor registered with the state is also responsible for ensuring additional safety and security.

\textbf{E. The Federal Implications of the Compassionate Care Act}

The Compassionate Care Act is in direct opposition to federal law, which classifies marijuana as a Schedule I substance prohibited in any form in the United States.\textsuperscript{43} In his campaign, President Obama insisted that they would not target individual patients using medical marijuana in states where it had been legalized.\textsuperscript{44} Some medical marijuana advocates claim that the President stated that he would not target any dispensaries operating in states where medical marijuana was legal, and that they would instead respect the states’ laws as long as the states were keeping up with enforcement.\textsuperscript{45} President Obama later clarified, “what I specifically said was that we were not going to prioritize the prosecutions of persons who are using

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\textsuperscript{41} NY Bill No. A06357E, supra note 1. \\
\textsuperscript{42} Id. \\
\textsuperscript{43} State Medical Marijuana Laws, supra note 4. \\
\textsuperscript{44} Carly Schwartz, \textit{HARBORSIDE HEALTH CENTER COMMUNITY SUFFERS UNDER FEDERAL CANNABIS CRACKDOWN,} Huffington Post (September 4, 2012), http://www.huffingtonpost.com/2012/09/04/harborside-health-center-_n_1853344.html. \\
\textsuperscript{45} Id. 
\end{flushleft}
medical marijuana. I never made a commitment that somehow we were going to give carte blanche to large-scale producers and operators of marijuana.\textsuperscript{46} With the fate of large distributors still up in the air, the executive director of Harborside Health Center, one of California's largest distributors of medical marijuana vows that they will go to court for the right to remain open and that they will not abandon their patients.\textsuperscript{47} It has been more than three years since the federal crackdown on large distributors and they are still open.\textsuperscript{48} Only time will tell how this dichotomy will be resolved, but considering the rate at which states are passing medical marijuana laws, it doesn't look like the federal government will be able to stop them.

III. Analyzing the Compassionate Care Act through the Lens of Finnis's Practical Reasonableness

In his book \textit{Natural Law and Natural Rights}, author and philosopher John Finnis discusses the basic human goods. The pursuit of these goods are what make up the common good, the ultimate goal towards which society is always moving. Practical reasonableness demands that communities come together as one in pursuit of those goods, which define every person's individual experience and for which each person must always strive. Early in his book, Finnis sets out the seven basic goods of life, knowledge, play, aesthetic, sociability, practical reasonableness, and religion. Some of these goods are fairly self-explanatory or at the very least, could be guessed at based on the names by which Finnis has chosen to identify

\textsuperscript{46} Schwartz, \textit{Harborside Health Center Community Suffers Under Federal Cannabis Crackdown}, supra note 44.
\textsuperscript{47} Id.
\textsuperscript{48} Id.
them. However, each one encompasses so much more than can be inferred from those single words at first blush.

The good of life, at its most basic form, is existence. Life in Finnis's way of thinking can mean vigor and energy, both mental and physical. It also extends to the ability to create new life through procreation. It is not simply being alive but being able to enjoy being alive and take advantage of all that life has to offer. Knowledge is also self-evident in some way, but one thing that is especially important to note about the way in which Finnis refers to knowledge is that knowledge does not need to be acquired for a purpose in order for it to have value. It is not the pursuit of a specific answer to a specific question for a specific reason. It is rather the ability to learn and discover new things. Knowledge is desirable for its own sake, not merely as an instrument to further something else. Play is enjoyment; it is recognizing that an act with no purpose may require no more reason for doing it than just to do it. The pursuit of play means understanding the value of joy and being able to enjoy things that you do every day.

Aesthetic is similar to play in that it also is valuing enjoyment; however aesthetic differs from play in that no action is involved. While play can mean doing something just for the fun of doing it, aesthetic means not doing anything at all and simply getting enjoyment out of what is already in existence. The true good of aesthetic is recognizing beauty in everything around you. Sociability or friendship is at minimum a peace and harmony between people who share a community. On a deeper level, the pursuit of sociability means striving to form deep, meaningful relationships with all of the people in your society or community. Pursuit of a
common good will only be truly valued when the common people are connected to one another.

Practical reasonableness and religion are the two most abstract of Finnis's goods. They are no less important than the other five, but on some level pursuit of these last two goods means that the individual pursuer must decide for himself how to achieve the good. Practical reasonableness is the effective use of one's own intelligence. It is the intellectual freedom to think and decide and act however one desires. Inherent in the pursuit of practical reasonableness is a personal, individualized analysis of the importance of the individual goods in the whole experience and the form that the pursuit of those goods will take. Finnis's take on religion is not the established religions that a person would initially think of upon hearing the word religion. To pursue the good of religion is not to practice Christianity, Judaism, Hinduism, or Buddhism. Rather the pursuit of the good of religion means recognition of a universal order, which encompasses human freedom and reason and allows the individual to recognize both their independence and their responsibility in relation to the other members of their society. While these goods may seem like abstract concepts, each of them has some impact and connection with the Compassionate Care Act.

A. Furthering Finnis's Seven Basic Goods

The foremost good pursued by the Compassionate Care Act is life. In some situations, medical marijuana can save lives and allow a person to continue to be alive who would otherwise not be alive. However, if you look deeper, life in this instance means health and vitality. Medical marijuana can give a person suffering
severe, chronic pain a respite; this can allow them to enjoy more aspects of their life that they could not do before. Additionally by removing the constant mental stress that is accompanied by such pain, mental health is also restored. New York legislators and Governor Andrew Cuomo in particular have focused the medical marijuana issue around children with epilepsy and other seizure disorders. While these children are only one of the groups of people who can be treated under the Compassionate Care Act, the Governor and the media have both seemed to make the Act all about the kids.

One article which profiled children who use medical marijuana celebrated that one patient, a seven year old girl named Charlotte, used to suffer from more than 40 seizures a day but has stopped having seizures since being treated medical marijuana in an oil form.49 Another patient, ten year old Zaki, suffered from thousands of seizures a day and had tried more than 17 prescriptions which failed to help him before he tried medical marijuana; however, since trying medical marijuana he has been seizure free since.50 Currently, there are over 180 children being treated with medical marijuana in Colorado, many of whose families moved to the state for the express purpose of gaining access to medicine that was not available in their home states.51

There is no question that in the cases of these children, medical marijuana is helping them. It is improving their lives and in some cases, it is the reason that they are still alive. For so many of the children in the United States who have already

49 Carly Schwartz, Meet the Children who Rely on Marijuana to Survive, Huffington Post (January 31, 2014), t.com/2014/01/31/cannabis-for-children_n_4697135.html.
50 Id.
51 Id.
been treated with marijuana, they are finally beginning to live normal lives which they had never been able to do before. Parents and family members tell stories of children who almost died repeatedly or had to be placed in medically induced comas. They remember times when seizures would prevent children from talking or moving or eating for an entire day. And then these children receive medical marijuana and they no longer need their wheelchairs or seizure helmets; suddenly they can learn to walk normally, become more comfortable around family, are able to attend school and advance through life like any healthy uninhibited child. One child with severe autism was treated with medical marijuana in Colorado and used to have “up to 20 head-beating episodes per day [but since starting medical marijuana] has only had one episode total in three weeks.”52 Another child who suffers from epilepsy was rushed to the hospital in an ambulance more than 45 times by the age of five; but after he started taking medical marijuana for his seizures and chronic pain his health care provider noted an 80% reduction in his symptoms as well as the fact that he sings and smiles all the time now.53 Changes like these seem like miracles to parents and loved ones and care givers. There is no doubt that in these instances, medical marijuana has allowed these children and their families to pursue life to a fuller extent than they could have without the drug.

However, putting a suffering child at the center of a legislative debate may not be the best approach to making good law for the people of New York. As Dr. Patierno put it, “the use of medical marijuana as a medicine is remarkably

52 Schwartz, Meet the Children who Rely on Marijuana to Survive, supra note 49.
53 Schwartz, Harborside Health Center Community Suffers Under Federal Cannabis Crackdown, supra note 44.
uncontroversial at the bedside of a cancer patient or a child suffering from convulsions who might be helped."\textsuperscript{54} This statement, at first glance, seems to be a criticism of the ease with which the public has come to accept medical marijuana. However, in this particular instance, Dr. Patierno goes on to say that New York has finally "got[ten] it right" with their approach in the Compassionate Care Act.\textsuperscript{55} The danger that may undermine the good in this case, is truly the danger of the unknown. This type of treatment is so new, that there is simply no information about how these children or any patient using medical marijuana may be affected long term. Many who benefit from using medical marijuana would likely argue that the benefits now are worth the risks in the future, especially in those cases where without the marijuana, the patient would not be alive in the future. Of course there is research that continues to show that marijuana has negative health effects;\textsuperscript{56} and it would seem that this is the research that the federal government is paying attention to. But for every negative research find, there is another research team adapting marijuana in a different way and finding extremely positive results.\textsuperscript{57} It is difficult to know which research to listen to, particularly when the terms marijuana and cannabis are used so generally that two research teams may be working with entirely different medicines or drugs that have merely come from the same species of plant. Some research indicates that as nonmedical marijuana becomes more potent and contains higher levels of THC that it becomes more dangerous; however,

\textsuperscript{54} Patierno, supra note 18.
\textsuperscript{55} Id.
medical researches in Colorado have synthesized liquid versions of marijuana which contain hardly any THC thus avoiding the signature high associated with marijuana without losing any of the newly discovered health benefits. This problem of not knowing what research is right highlights the implications of the Compassionate Care Act in the pursuit of knowledge.

The Compassionate Care Act promulgates the pursuit of knowledge on both an intentional level that seeks to learn more and answer a question but also on the level that Finnis described of learning for the sake of learning. The research and discovery opportunities that are made possible by the implementation of a broader spectrum of medical marijuana plans are endless. While there would most certainly be specific research being done in an attempt to help the sick benefit from medical marijuana, patients would also gain the ability to learn and grow for the sake of knowledge just because they were too ill to do so before they received the medication. The implications that medical marijuana has on the pursuit of the good is not limited to the pursuit by patients; the lives and pursuits of medical professionals, researchers, scientists, patients and their families, and so many others would be affected by this opportunity. Currently one of the drawbacks to legalizing medical marijuana is all of the things that are still unknown. The reason there are so many unknowns is that there has been no opportunity for legitimate research while marijuana has been an illegal substance. Legalizing it allows that research to progress, which will be to the benefit of thousands of people.

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58 See Research on Marijuana’s Negative Health Effects Summarized in Report, supra note 56 and Schwartz, Meet the Children who Rely on Marijuana to Survive, supra note 49.
The pursuit of both play and aesthetic, while they may seem less impressive than the substantial contribution that this act makes in the pursuit of life is knowledge, is evident and important. In much the same way that medical marijuana allows for mental relief and mental health, it also allows for pursuit of aesthetic. A person suffering from constant pain, a child suffering from hundreds or thousands of seizures a day, simply does not have the opportunity to pursue play or aesthetic. They are physically limited and mentally swamped and can’t take on anything else. But when patients’ symptoms are relieved by medical marijuana, they can partake in the pleasures of play and aesthetic in ways that they never could before. It may be as small a pursuit as taking a walk outside when the patient had previously been confined indoors or to a wheel chair. While medical marijuana doesn’t directly encourage the joy that comes from play and aesthetic, it facilitates the pursuit in a way that would be impossible without that medicine.

The effect on the pursuit of sociability is similar. The child who was constantly in the hospital before treatment now has the opportunity to go to school and befriend other children his age. Meanwhile an adult who may have been restricted due to illness or pain now has the opportunity to maintain relationships, continue to work with friends and neighbors, and generally pursue sociability and friendship. In terms of practical reasonableness, medical marijuana can return to a patient control of his life. Being able to cure the symptoms of his disease will give him the opportunity to do what he wants, go where he wants, and frees up his mind to think what he wants. Even if the disease is terminal, the patient still has the
opportunity to get the most out of life without suffering from the same symptoms they would otherwise be enduring.

The one good that it is difficult to relate directly to the Compassionate Care Act is the pursuit of religion. While the same argument could be made again, that the mind is no longer focused on pain and suffering and is now clear to pursue other avenues of thought, the connection is weaker on this point than it would be in the instance of play or knowledge. An argument could be made that alleviating the symptoms of disease and making the patient more comfortable may allow a patient to come to terms with their diagnosis and figure out how they fit into the universal order of things. To no longer be controlled by their disease is to exercise human freedom and reason, although at this point, the most marijuana can do is cure the symptoms. It is possible that in the future, as scientists and researchers learn more about the medical uses of marijuana that it may be used as a total cure for some conditions. If that were to happen, then patients would essentially be given a second chance at life to reclaim their position in the universe that may have seemed lost. As science evolves the possibilities are endless.

B. Applying Practical Reasonableness to the Other Goods: Finnis’s Nine Requirements of Practical Reasonableness

The good of practical reasonableness, while being something for which a person strives generally, must also be applied to the pursuit of the other goods. Finnis defines nine requirements for practical reasonableness. The first requirement is a coherent plan of life, which states that the individual must have a rational, logical, plan with reasonable but still worthy purposes and goals. The
Compassionate Care Act, in and of itself, has a worthy purpose and set of goals and is very organized and coherent in its furtherance of those goals. The second requirement is that there can be no arbitrary preference amongst values. While it is inevitable that the act will not equally focus on all of the goods, it satisfies the second requirement by not discounting any of the goods. All of the goods are recognized as being important pursuits to people in the community and as such the Act does not discount the possibility of pursuing any of them. The third requirement is that the act has no arbitrary preference amongst persons, meaning that it cannot benefit some individuals at the expense of other individuals. The Compassionate Care Act does not intentionally harm any individuals by its nature or intention. The one area in which the Act may be lacking would be if there were serious medical conditions that could benefit from medical marijuana that were not currently covered by the act. However, the Act does prepare for this by allowing that the Commissioner may add coverage to include any conditions that should qualify.

The third and fourth requirements of practical reasonableness are often considered together; they are detachment and commitment. Detachment is necessary to maintain perspective and balance; obsession with the pursuit of any idea or good is unnatural and unproductive. On the other hand, commitment is equally necessary to ensure that the seven basic goods, in addition to any other ideas worth pursuit, are receiving the level of effort due to them; no one should be half-hearted in their pursuit of the common good. The Compassionate Care Act is both detached and committed. The commitment is reflected in the strict requirements for registration and use, showing that in forming and drafting the Act,
the Legislature carefully considered all of the ripple effects that it would have and prepared for them accordingly. The detachment is evident in places where the Act includes mechanisms allowing for the adjustment of certain provisions with the understanding that the Act may not operate flawlessly as it was written and that it is okay to fine-tune the statute moving forward. Additionally, the Act does allow that at any time, any provision may be suspended or terminated based on the recommendations of the Commissioner. Even as the most advanced medical marijuana legislature to date in the United States, it is still understood that it may not work as it is expected to and that certain provisions of the Act may need to be sacrificed in the future for the greater good.

Efficiency (within reason) is Finnis's sixth requirement of practical reasonableness. Building off of the reasoning behind detachment and commitment, if there is an easier or simpler way of pursuing the goal of the Compassionate Care Act or the greater good of the society that would be equally effective it is only logical that that approach be pursued first. In this case, medical marijuana is being offered as a last resort to patients who have not been able to find relief in any other available medications or medical practices. It's organization and specificity will hopefully allow it to run efficiently in the coming months as the state begins instituting the provisions of the Act.

The seventh requirement of practical reasonableness is respect for every basic value and never allowing the pursuit of one good to directly impede another. This is similar to the second requirement in that the second requirement expects individuals to be understanding that a good that is less important to them may be
more important to another person; however, the more explicit understand of the seventh requirement is that one good cannot be sacrificed for the benefit of another, even if it seems that the harm to the one is greatly outweighed by the benefit to the other one. The Compassionate Care Act does not sacrifice any good for the benefit of another; it upholds and furthers each one to the greatest extent possible for each one.

Finnis’s final two requirements are that actions must perpetuate the common good of the community and that must be in accordance with one’s conscience. While every individual has their own personal ranking of the goods and those that they consider to be more or less important than others, those must all be considered second to the common good of the community. The ninth requirement is meant to prevent any actions that just feel morally wrong to the person who is performing them. The Compassionate Care Act works to maintain the balance that Governor Cuomo repeatedly emphasized between helping the suffering and protecting the public’s health and safety. Because of the delicacy of the common good of all New York as a single community, the Act is strictly worded to help those who can benefit without harming anyone else. The strict provisions came to exist in part as a result of members of the legislature expressing their unwillingness to pass an act that allowed smoking. The fact that those adjustments were made shows that the act was designed in keeping with Finnis’s ninth requirement.
C. The Authority of the People through Finnis’s Lens

The formation of these medical marijuana laws on a state level seems wrong to many people. While the federal government of the United States has announced that it is not their intention to go after sick individuals who utilize marijuana on a small scale exclusively for personal use, that does not hold true in the cases of the larger medical marijuana institutions, like the Harborside Health Center in California which the federal government worries has become too big a distribution network in recent years.  

Harborside serves over 100,000 patients including large numbers of young patients, senior citizens, disabled patients, and other underserved populations.  

If the dispensary were to close, many of their patients would have no alternative dispensary to turn to and would not be able to purchase marijuana on the street.  

One thing that it is important to remember, is that in many states, the impetus to legalize marijuana came directly from the people who voted on it. In other states, while the citizens did not vote on the subject directly, their voices were heard loudly advocating for legalization of medical marijuana.

In this particular situation, the decision at the state level to enact laws that defy the federal government is in keeping with Finnis’s views of authority. The unanimity of the state communities allowed the state governments to move forward in enacting their laws. Following this logic of unanimity, as a the number of states legalizing medical marijuana continues to increase, a point will ultimately be reached where change is required on the part of the federal government. As it

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59 Schwartz, Meet the Children who Rely on Marijuana to Survive, supra note 35.
60 Schwartz, Harborside Health Center Community Suffers Under Federal Cannabis Crackdown, supra note 44.
61 Id.
stands now, states look to other states in considering their own medical marijuana laws. California was the first state to pass a medical marijuana law in 1996. From 1996 to 2008 eleven more states passed medical marijuana laws and in the last five years an additional eleven states have passed marijuana legislation, bringing the number up to 23 states plus the District of Columbia and Guam.\textsuperscript{62} The pace has doubled in the last five years and will likely continue to speed up now that New York has established a more medically accurate precedent, which is likely to help sway those states that are currently undecided in the direction of approving medical marijuana. Finnis states “someone's stipulation has authority when practically reasonable subjects, with the common good in view, would think they ought to consent to it.”\textsuperscript{63} In this instance, American citizens, who would be the reasonable subjects of their states of residence as well as of the United States, have consented to or complied to their state’s laws and in doing so have knowingly withheld their compliance with federal law.

\textbf{IV. Conclusion}

At the end of the day, what we take away from all of this is that there is no way to know at this time whether or not the Compassionate Care Act will truly be an effective and just law. No law is totally and completely good; even the law forbidding murder, the introductory example of an inherently good law, has exceptions and the way in which that law is upheld has flaws. Murderers argue self defense and are set free because society considers their act of killing another person to be justified and

\textsuperscript{62} State Medical Marijuana Laws, supra note 4.
therefore to be just. As a species, humanity rejects those individuals who kill other
people, and yet many societies punish murder with a death sentence. The
lawbreaker is ultimately punished by the same act for which he is being punished:
causing the death of another human being.

At its core, every law is intended to be totally good by those who created it
and instituted it, but that does not mean that every law is entirely good. In reality,
whether or not a law can truly be considered to be in pursuit of the common good
depends on the people who are upholding the law and the people who choose to
follow the law. The Compassionate Care Act’s purpose is to help people who are
suffering; that is its driving goal. At its most basic level, all that the Compassionate
Care Act does is take a plant that has medicinal value and provide it to people who
are sick and suffering and who could benefit from that plant’s medicinal qualities.
Unfortunately, legislators are forced to think beyond the basic goal of helping sick
people into the regulation and control and distribution; because of societal
irresponsibility, a commodity that should be valued for its medicinal properties is
instead strictly controlled or flat out prohibited because of mankind’s propensity for
abusing such a substance. Governor Cuomo’s obsessive need to maintain the balance
between helping the sick and protecting the public against risks to its health and
safety derives from the fact that individual members of society would take
advantage of an unregulated access to marijuana.

In today’s world, marijuana is thought of as a drug first and a medicine
second; it is thought of as an abuse issue, an addiction, a substance problem instead
of as a cure. There is no question that there are people suffering unnecessarily
because they do not have access to medical marijuana. To give them access would be to stop that suffering and uphold the common good. And yet, many of those people have no hope of gaining access to medical marijuana in the near future unless they move to different states and even then they will have to jump though countless hoops of restrictions and limitations just to have the opportunity to try medical marijuana and hopefully find some relief from their suffering.

Overall, in its as yet untested form, the Compassionate Care Act has all the best intentions and also takes into account the drawbacks of the society that it serves. It is better designed than any other medical marijuana statute that the United States has seen up to now. The New York legislature accurately recognized the potential for abuse and took precautions necessary to prevent it. The Compassionate Care Act has also been shaped to serve the patients who will benefit from it in the best way possible, by ensuring that the medicine to which they are given access is pure, measurable, and appropriate for their individual needs and situations. It is by far the most thorough and medically viable plan for legalizing marijuana that has been proposed thus far.

Using Finnis’s reasoning, the goods that he has defined, and the requirements that he laid out it is evident that the Compassionate Care Act has the potential to greatly further the common good of the people of New York and perhaps other states that follow in New York’s foot steps. While it is unfortunate that the complications and specificity of the act mean it will take some time to full enact, it is worth it to take the time to do it right. The New York legislature did not pass the bill until it had been sufficiently vetted and edited and reimagined to be the best
possible scenario for the people of New York. All of its measures are there for a reason and should be implemented in the way in which they were designed.