

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

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MEMORANDUM

November 12, 2022

To: Members of the Subcommittee on Civil Rights and Civil Liberties

Fr: Subcommittee Staff

Re: Hearing on “Developments in State Cannabis Laws and Bipartisan Cannabis Reforms at the Federal Level”

On **Tuesday, November 15, 2022, at 10:00 a.m. ET in room 2154 of the Rayburn House Office Building and remotely on the Zoom video platform**, the Subcommittee on Civil Rights and Civil Liberties will host a hybrid hearing on “Developments in State Cannabis Laws and Bipartisan Cannabis Reforms at the Federal Level.” This hearing will be a bipartisan examination of the many benefits of decriminalization at the federal level, including: criminal justice reform, which will largely benefit communities of color, as well as the justice system more broadly; access for veterans through the Department of Veterans Affairs (VA); and the ability for the legal cannabis industry to access financial services.

The hearing will address the following issues:

- 1. Decriminalizing cannabis at the federal level would benefit multiple communities, including veterans, potential federal employees, people of color, and individuals arrested or convicted for non-violent cannabis offenses.**
- 2. Reforms are needed in several sectors, including criminal justice through the expungement of non-violent cannabis convictions, access to financial services, regulatory policy, and taxation.**
- 3. The federal government should establish protocols to regulate cannabis as it does alcohol.**

I. BENEFITS OF DECRIMINALIZATION

On October 6, 2022, President Biden announced that he granted a pardon to everyone convicted of simple marijuana possession under federal law and called for a review of how marijuana is scheduled under the Controlled Substances Act (CSA).¹ Advocates for cannabis reform have welcomed the President's actions but continue to call for action in the legislative branch to decriminalize cannabis.²

A. Racial Disparities in Cannabis Arrests and the Benefits of Decriminalization in the Criminal Justice System

As of May 27, 2022, 19 states, two territories, and the District of Columbia (DC) have enacted measures to regulate cannabis for adult non-medical use. In addition, 37 states, three territories, and DC allow the use of medical marijuana.³ However, cannabis remains a Schedule 1 drug under the CSA.⁴

Despite efforts to legalize and decriminalize cannabis possession at the state level, and de-prioritization of cannabis prosecutions by the Department of Justice in states where cannabis has been legalized, cannabis arrests remain widespread throughout the nation. Marijuana arrests account for 43% of all drug arrests with nine in ten of those being for possession only. However, states that have reformed their cannabis laws have seen markedly fewer arrests between 2010-2018.⁵ Jurisdictions that fully legalized marijuana before 2018 saw marijuana possession arrest rates (per 100,000 people) drop from 173.7 to 24.5 between 2010 and 2018. States that decriminalized marijuana saw arrest rates drop from 301.4 to 215.8. In contrast, states that have made no attempts to decriminalize marijuana have experienced an increased rate of cannabis arrests, from 255.7 to 279.1.⁶

¹ *Biden Pardons Marijuana Offenses, Calls for Review of Federal Law*, Politico (Oct. 6, 2022) (online at www.politico.com/news/2022/10/06/biden-to-pardon-marijuana-offenses-call-for-review-of-federal-law-00060796).

² *Advocates Cheer Biden Marijuana Decision, Call for Legalization*, The Hill (Oct. 6, 2022) (online at <https://thehill.com/business-a-lobbying/business-lobbying/3677069-advocates-cheer-biden-marijuana-decision-call-for-legalization/>).

³ National Conference of State Legislatures, *State Medical Cannabis Laws* (Sept. 12, 2022) (online at www.ncsl.org/research/health/state-medical-marijuana-laws.aspx).

⁴ Department of Justice, Drug Enforcement Administration, *Drug Fact Sheet* (Apr. 2020) (online at www.dea.gov/sites/default/files/2020-06/Marijuana-Cannabis-2020_0.pdf).

⁵ *A Tale of Two Countries: Racially Targeted Arrests in the Era of Marijuana Reform* (Apr. 17, 2020) (online at www.aclu.org/news/criminal-law-reform/a-tale-of-two-countries-racially-targeted-arrests-in-the-era-of-marijuana-reform?initms_aff=nat&initms_chan=web&utm_medium=web&initms=200420_420_marijuanareport_vanity&utm_source=earned&utm_campaign=420&utm_content=200420_criminallaw_marijuanareport_vanity&ms_aff=nat&ms_chan=web&ms=200420_420_marijuanareport_vanity&redirect=marijuana).

⁶ *Id.*

Racial disparities in cannabis arrests continue to persist nationwide, even though Black and white people use cannabis at roughly the same rates. In fact, Black people are nearly four times as likely to be arrested for violating marijuana possession laws than white people.⁷

An American Civil Liberties Union study shows that since 2010, racial disparities in marijuana arrests worsened in 31 states.⁸ In Colorado, one of the first states to legalize marijuana for adult use, Black people are still 1.5 times more likely to be arrested for marijuana-related crimes. Montana has the worst racial disparity in marijuana arrests with Black people being 9.6 times more likely to be arrested than white people.⁹ And in Virginia, the first state in the south to legalize cannabis, Black adults account for 60% of cannabis-related cases despite being only 20% of the state's population.¹⁰

In many states, marijuana arrests can have life-altering consequences—parents may lose their children in court proceedings, disabled and low-income recipients of public assistance may lose healthcare, immigrants can face deportation, families can be evicted from public housing, and finding a job can be difficult or outright impossible in some cases. Black and Brown people disproportionately face these repercussions.¹¹

B. Veterans' Treatment Needs Cannot Be Met if Veterans Affairs Cannot Prescribe Medical Cannabis

The federal prohibition against VA doctors prescribing or recommending medical cannabis leaves a significant treatment gap.¹² More than 20% of Iraq and Afghanistan veterans will experience post-traumatic stress or depression.¹³ About 60% of veterans returning from the Middle East, and 50% of older veterans, experience chronic pain.¹⁴ According to Nick Etten, founder and executive director of the Veterans Cannabis Project, “60% of what the VA treats can

⁷ *Id.*

⁸ *Id.*

⁹ American Civil Liberties Union, *Extreme Racial Disparities Persist in Marijuana Arrests* (online at <https://graphics.aclu.org/marijuana-arrest-report/>) (accessed Oct. 31, 2022).

¹⁰ *After Virginia Legalized Pot, Majority of Defendants Are Still Black*, Washington Post (Oct. 16, 2022) (online at www.washingtonpost.com/dc-md-va/2022/10/16/virginia-marijuana-enforcement-disparities/).

¹¹ *A Tale of Two Countries: Racially Targeted Arrests in the Era of Marijuana Reform* (Apr. 17, 2020) (online at www.aclu.org/news/criminal-law-reform/a-tale-of-two-countries-racially-targeted-arrests-in-the-era-of-marijuana-reform?initms_aff=nat&initms_chan=web&utm_medium=web&initms=200420_420_marijuanareport_vanity&utm_source=earned&utm_campaign=420&utm_content=200420_criminallaw_marijuanareport_vanity&ms_aff=nat&ms_chan=web&ms=200420_420_marijuanareport_vanity&redirect=marijuana).

¹² NORML, *Federal: Legislation Pending to Expand Veterans' Access to Medical Marijuana* (online at <https://norml.org/act/federal-legislation-pending-to-expand-veterans-access-to-medical-marijuana/>) (accessed Sept. 29, 2022).

¹³ Veterans Cannabis Project, *Home Page* (online at www.vetscp.org) (accessed Sept. 29, 2022).

¹⁴ *Veterans Face Greater Risks Amid Opioid Crisis*, Frontline (Mar. 28, 2016) (online at www.pbs.org/wgbh/frontline/article/veterans-face-greater-risks-amid-opioid-crisis/).

fall into the category of chronic pain, and the system was not designed to do much more than push pills, and those pills aren't working.”¹⁵

A 2013 analysis by the Center for Investigative Reporting found that veterans' opiate prescription rates increased 270% over the preceding 12 years. The VA estimates that 13% of the total population of veterans taking opioids has an opioid use disorder.¹⁶

Despite years of limited access to medical cannabis for research, the first Food and Drug Administration (FDA)-regulated study of veterans' treatment with smoked cannabis was conducted in fall 2021. The study revealed promising potential for PTSD alleviation.¹⁷ Additional recent research has shown a correlation between cannabis use and reduced recovery timelines and PTSD symptoms.¹⁸ In addition, studies of medical cannabis use by pain patients in multiple states show a significant reduction or outright elimination of opioid use following treatment.¹⁹

Although the VA has taken the position that it will not deny benefits for medical cannabis use, it cannot prescribe medical marijuana in the jurisdictions where it is legal. In addition, veterans and medical marijuana advocates believe the VA has blocked efforts to conduct trials of plant-derived cannabis for therapeutic purposes.²⁰ A 2022 study from Kansas State University found that the fear of losing VA benefits made it more likely for service-connected disabled veterans to remain on traditional medications, even as they recognized the potential for devastating side effects and dependency issues related to those medications.²¹ More than 80% of veterans support medical cannabis legalization according to recent surveys by the American Legion and Iraq and Afghanistan Veterans of America.²²

¹⁵ DAV, *The Cannabis Cure* (Nov. 6, 2018) (online at www.dav.org/learn-more/news/2018/the-cannabis-cure/).

¹⁶ *Veterans Face Greater Risks Amid Opioid Crisis*, Frontline (Mar. 28, 2016) (online at www.pbs.org/wgbh/frontline/article/veterans-face-greater-risks-amid-opioid-crisis/).

¹⁷ Marcel O. Bonn-Miller et al., *The Short-Term Impact of 3 Smoked Cannabis Preparations Versus Placebo on PTSD Symptoms: A Randomized Cross-over Clinical Trial*, PLOS One (Mar. 17, 2021) (online at <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0246990>).

¹⁸ *Marijuana Helps Treat PTSD Symptoms But Federal Policy Impedes Science, VA Researcher Says*, Schedule 6 Foundation (Dec. 7, 2021) (online at www.marijuanamoment.net/marijuana-helps-treat-ptsd-symptoms-but-federal-policy-impedes-science-va-researcher-says/).

¹⁹ Minnesota Department of Health, Office of Medical Cannabis, *Intractable Pain Patients in the Minnesota Medical Cannabis Program: Experience of Enrollees During the First Five Months* (Mar. 2018) (online at www.health.state.mn.us/people/cannabis/docs/about/ipreport.pdf); Jacob M. Vigil et al., *Associations Between Medical Cannabis and Prescription Opioid Use in Chronic Pain Patients: A Preliminary Cohort Study*, PLOS One (Nov. 16, 2017) (online at <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0187795>).

²⁰ *VA Rejects Cannabis Research as Veterans Plead For Medical Pot*, Politico (Nov. 8, 2021) (online at www.politico.com/news/2021/11/08/va-reject-medical-marijuana-veterans-519757).

²¹ Mark W. Landess, *Barriers to Access of Medical Cannabis as a Healthcare Option for Service-Connected Disabled Veterans* (2022) (online at <https://krex.k-state.edu/dspace/bitstream/handle/2097/42218/MarkLandess2022.pdf.pdf?sequence=1&isAllowed=y>).

²² Veterans Cannabis Project, *Veterans Back Protections, Access Measures in New House Bill* (Nov. 15, 2021) (online at www.vetscp.org/news/2019/9/25/veterans-applaud-states-reform-act-introduction).

C. Current and Potential Federal Employees

Under the Drug-Free Federal Workplace Program established in 1986, it remains illegal for the 2.1 million federal employees in the country to use marijuana, even when off duty or when it has been prescribed.²³ This holds true in jurisdictions where cannabis has been fully legalized. According to Morgan Fox, the political director of the National Organization for the Reform of Marijuana Laws (NORML): “There’s a lot of misconceptions among the federal government and employers generally that cannabis use is detrimental to productivity or can potentially increase worker safety issues, which research has consistently shown is not the case—in fact the opposite of that.”²⁴

Earlier this year, the American Federation for Government Employees (AFGE) approved a resolution to “[s]upport deleting responsible off-duty marijuana usage from suitability criteria” for “non-safety-sensitive, non-national-security positions.” AFGE also expressed support for the Marijuana Opportunity Reinvestment and Expungement (MORE) Act.²⁵ The MORE Act would remove cannabis from the Controlled Substances Act, decriminalizing it at the federal level, and therefore removing it from consideration for federal hiring.²⁶

II. NECESSARY REFORMS RELATED TO DECRIMINALIZATION

A. Expungement

Twenty-one states have enacted legislation permitting or facilitating the process of having select marijuana convictions expunged, vacated, otherwise set aside, or sealed from public view. California, New York, Connecticut, Illinois, New Jersey, New Mexico, Rhode Island, and Vermont have an automatic expungement process for qualifying convictions. New Hampshire has an annulment process for certain offenders, which requires an application and \$325 fee; Virginia and Nevada allow certain marijuana convictions to be sealed; and in North Dakota those with certain convictions may be eligible for unconditional pardons from a state advisory board.²⁷ Although these states have provided access to clearing past records, decriminalization of marijuana, and expungement of past convictions, advocates have argued

²³ Exec. Order No. 12564, *Drug-free Federal Workplace* (Sept. 15, 1986).

²⁴ *The Fight to End Firing of Federal Workers for Cannabis Use*, Filter Mag (Aug. 4, 2022) (online at <https://filtermag.org/cannabis-federal-workers-fired/>) (citing *Cannabis Use and Work-related Injuries: A Cross-sectional Analysis* (online at <https://pubmed.ncbi.nlm.nih.gov/33108459/>)).

²⁵ *The Fight to End Firing of Federal Workers for Cannabis Use*, Filter Mag (Aug. 4, 2022) (online at <https://filtermag.org/cannabis-federal-workers-fired/>).

²⁶ Marijuana Policy Project, *The MORE Act* (online at www.mpp.org/policy/federal/the-more-act/) (accessed Nov. 7, 2022).

²⁷ NORML, *Expungement* (online at <https://norml.org/laws/expungement>) (accessed Oct. 31, 2022); *NH Law Eases Process to Annul Pot Convictions*, Foster’s Daily Democrat (Aug. 10, 2019) (online at www.fosters.com/story/news/crime/2019/08/10/nh-law-eases-process-to-annul-pot-convictions/4493270007/).

that reforms should be implemented on the federal level to rectify the harm created by marijuana’s federal prohibition.²⁸

Some states permit mayors and other officials to issue pardons for marijuana offenses. In Alabama, Birmingham Mayor Randall Woodfin has utilized a 1975 law to establish the Pardons for Progress program, pardoning more than 15,000 city residents for marijuana possession offenses occurring between 1990 and April 20, 2022, and removing barriers to employment for those individuals.²⁹ Mayor Woodfin continues to issue pardons on a rolling annual basis and has encouraged other mayors in the state to do the same.³⁰

B. Addressing the Harm to Legal Cannabis Companies and Communities from Prohibition, Licensing Restrictions, and Exclusion from Financial Services

Federal cannabis prohibition produces significant barriers to entry for cannabis businesses. It raises compliance costs for financial service providers seeking to serve cannabis companies, hinders access to financial services for small businesses, and increases violent burglaries of those companies left with no choice but to carry significant amounts of cash in-store.³¹ Only one in about 30 banks or credit unions across the United States accepts a cannabis company as a customer.³²

Industry and government leaders concur that forcing legal companies to operate entirely in cash is generating criminal activity. From 2012 to 2016, 10% of Denver’s commercial burglaries occurred at cannabis companies, despite those companies constituting less than 1% of all local businesses.³³ In San Francisco last fall, cannabis companies suffered dozens of seemingly coordinated robberies.³⁴ In Washington, state officials say there were more than 50 armed robberies of cannabis companies in the first two months of 2022—a greater number than in all of 2020 or 2021.³⁵ “It’s dangerous—and sometime even fatal—for the employees behind

²⁸ *Support the Expungement of Federal Marijuana Conviction Records* (online at <https://norml.org/act/support-the-expungement-of-federal-marijuana-conviction-records/>) (accessed Oct. 31, 2022).

²⁹ *Birmingham Mayor Randall Woodfin to Pardon Some Close Marijuana Convictions*, WFFA12 News (Apr. 20, 2022) (online at www.wsfa.com/2022/04/20/birmingham-mayor-randall-woodfin-pardon-some-closed-marijuana-convictions/); City of Birmingham, *Pardons for Progress* (online at www.birminghamal.gov/inpogresspardonsforprogress) (accessed Oct. 26, 2022).

³⁰ *Id.*

³¹ *Banks Don’t Want to Work with Marijuana Companies. It’s Time for That to Change*, Brookings (Mar. 28, 2019) (online at www.brookings.edu/opinions/banks-dont-want-to-work-with-marijuana-companies-its-time-for-that-to-change/).

³² *Id.*

³³ National Conference of State Legislatures, *Banking and Cannabis: Yearning to Be Buds?* (Mar. 7, 2022) (online at www.ncsl.org/research/fiscal-policy/banking-and-cannabis-yearning-to-be-buds-magazine2022.aspx).

³⁴ *Pot Shop Robberies Are Fueling Calls for a U.S. Banking Bill*, National Public Radio (Apr. 20, 2022) (online at www.npr.org/2022/04/20/1093841615/pot-shop-robberies-are-fueling-calls-for-a-u-s-banking-bill).

³⁵ *Cannabis Crime Wave Boosts Banking Prospects on Capitol Hill*, Politico (May 10, 2022) (online at www.politico.com/news/2022/05/10/cannabis-crime-wave-banking-capitol-hill-00030330).

the register, but this situation is also completely preventable,” said Senator Patty Murray (D-WA).³⁶

Despite more legal markets, arrests related to marijuana markets have risen since 2021. NORML attributes these numbers to continued incidences of prohibition, “[l]ack of access to banking services and capital, high barriers to entry into legal cannabis markets, and exorbitant tax rates at all levels of government.”³⁷ This can also have downstream effects on cannabis employees. As Senator Sherrod Brown noted in his opening statement at a Senate Committee on Banking hearing: “[G]etting paid in cash means it’s difficult to get a credit card, prove your income to get a loan, or even keep your personal bank account. That can force workers to turn to shady outfits like payday lenders and check cashing services ... or trap people in a cycle of debt.”³⁸

Those compliance costs and legal considerations require banks to take on a role that the Cato Institute has characterized as “drug enforcement investigators”:

While some of these investigations may be desirable for a financial institution assessing the risk of a client, financial institutions should not be investigators for the federal government—especially since the public is largely unaware that this financial surveillance is taking place.³⁹

Moreover, entry into the industry is much more difficult for historically disadvantaged groups including minorities and women.⁴⁰ Existing licensing restrictions are also harmful to minority participation in the cannabis industry. As one commentator noted, restrictions on the ability to be employed by or own a cannabis business if you have been arrested or convicted of a cannabis offense is “contrary to one of the key goals of legalization—minimizing the harms of the drug war—to continue to penalize license applicants for marijuana crimes.”⁴¹ It also directly undermines the goal of eradicating the illicit market and its associated violence.

³⁶ *Washington Senator Pushing for SAFE Banking Act to Help Stop Violent Pot Shop Robberies*, KOMO News (Apr. 20, 2022) (online at <https://komonews.com/news/local/washington-senator-pushing-for-safe-banking-act-to-help-stop-violent-pot-shop-robberies>).

³⁷ *Despite More Legal Markets, Pot-Related Arrests and Plant Seizures Are Up from Last Year, Say Feds*, Forbes (June 20, 2022) (online at www.forbes.com/sites/irisdorbian/2022/06/20/despite-more-legal-markets-pot-related-arrests-and-plant-seizures-are-up-from-last-year-say-feds/?sh=7eb035bf6969).

³⁸ Senate Committee on Banking, Housing, and Urban Affairs, *Hearing on Challenges for Cannabis and Banking: Outside Perspectives*, 116th Cong. (July 23, 2019) (online at www.govinfo.gov/content/pkg/CHRG-116shrg38310/pdf/CHRG-116shrg38310.pdf).

³⁹ Cato Institute, *Cannabis Banking: A Clash Between Federal and State Laws* (May 27, 2022) (online at www.cato.org/blog/cannabis-banking-clash-between-federal-state-laws).

⁴⁰ Matthew J. McCarthy, *Notes on Social Equity from a Former Cannabis Regulator*, Duane Morris LLP (July 11, 2022) (online at www.duanemorris.com/articles/notes_on_social_equity_former_cannabis_regulator_0711.html).

⁴¹ Reason Foundation, *Criminal Conviction Restrictions for Marijuana Licensing* (online at <https://reason.org/wp-content/uploads/criminal-conviction-restrictions-for-marijuana-licensing.pdf>) (accessed Nov. 8, 2022)

The number of states with policies prohibiting individuals convicted of non-violent cannabis possession from participating in the legal marketplace is a substantial concern for social equity and true second chances.⁴² Nearly every medical cannabis adult-use program explicitly disqualifies licensure due to certain convictions, while only a handful provide exemptions for qualified cannabis convictions.⁴³ Over two-thirds of states cap the total number of businesses that can operate in the state, reducing the total number of opportunities to enter the market, and further disadvantaging individuals with cannabis convictions.⁴⁴

C. The Need for Regulation to Fully Decriminalize Cannabis

Decriminalization from the Controlled Substance Act only unwinds the most direct criminal justice concerns—other concerns also need to be addressed. The Federal Food, Drugs, and Cosmetics Act also creates issues for cannabis products that could perpetuate the illegality of the industry and directly harm producers and consumers.

Currently, the molecules of THC (Marinol) and CBD (Epidiolex) are approved drugs by the FDA. However, the FDA does not allow cannabis or its derivatives to be used as dietary supplements or food additives, and it is a federal crime to adulterate or misbrand an approved drug by putting it into a non-FDA-approved product.⁴⁵ However, nearly every state-regulated cannabis product exists as a food additive or a non-FDA approved product, leaving the medical cannabis industry with no regulatory framework. It will be necessary to grandfather existing state regulated products into the federal framework to prevent the wholesale restructuring of existing state-licensed cannabis industries.

Legislation introduced in the Senate and the House would recognize the need for a low-barrier-to-entry pathway for existing products in the federal marketplace and the need for a new-drug approval pathway separate from traditional cannabis products. Senator Schumer’s (D-NY) Cannabis Administration and Opportunity Act would correct much of this by allowing cannabis to be used in dietary supplements and as food additives, and requiring premarket registration of existing products under a new, hybrid medical and adult-use “cannabis products” scheme in the FDA.⁴⁶ Similarly, H.R. 5977, the States Reform Act (SRA) would grandfather medical products produced under state law into the FDA scheme as “designated state medical cannabis products” through a premarket notification process, allowing cannabis and its derivatives to be used in dietary supplements and as food additives.⁴⁷

⁴² Minority Cannabis Business Association, *National Cannabis Equity Report* (2022) (online at <https://minoritycannabis.org/equitymap/equity-download/>) (accessed Nov. 8, 2022).

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ Food and Drug Administration, *FDA Regulation of Dietary Supplement & Conventional Food Products Containing Cannabis and Cannabis-Derived Compounds* (online at www.fda.gov/media/131878/download) (accessed Nov. 8, 2022); See 21 U.S.C. §§ 351, 352.

⁴⁶ S. 4591 (2022), §§ 501, 502.

⁴⁷ H.R. 5977 (2022), tit. II, III.

D. Federal Tax Policy Should Not Penalize Legal Businesses

One of the most significant areas where the machinery of the War on Drugs has harmed small business development is tax policy. The primary goal of tax policy in this area is to reduce the criminal sources of cannabis products and encourage its replacement by licensed sources. Ensuring competitive tax rates on cannabis is crucial to that end.

Under current law, most U.S. cannabis businesses face an up-to-90% effective tax rate due to a federal tax provision that expressly disallows Schedule I drug manufacturers from taking business deductions.⁴⁸ Further, cannabis products are taxed at a high rate at the state level, often more than alcohol, raising costs to consumers for legal cannabis.⁴⁹

The MORE Act would impose a 5% federal excise tax on cannabis that would increase to 8% over 5 years. The SRA would impose a 3% federal excise tax that cannot change for ten years. Both proposals aim to accomplish the goal of a competitive rate that helps businesses and encourages legal-source purchasing.

III. FEDERAL SCHEDULING

Marijuana, along with other drugs such as heroin and LSD, is classified as a Schedule I controlled substance under the Controlled Substances Act. The Act defines Schedule I drugs as having “no accepted medical use and a high potential for abuse,” along with drugs such as heroin and LSD.⁵⁰ By comparison, cocaine and fentanyl are classified as Schedule II drugs, which are defined as “drugs with a high potential for abuse.”⁵¹

Marijuana does not meet the criteria of a Schedule I drug, nor Schedule II through V, for that matter. According to NORML, “it also lacks the abuse potential typically associated with substances categorized in Schedules II and III.”⁵² Moreover, marijuana has medicinal benefits unlike other Schedule I drugs. According to Harvard Medical School, medical marijuana can be used for many things, including pain control, as a muscle relaxant, to manage nausea and weight loss, and to treat glaucoma⁵³

⁴⁸ *How the IRS and Congress Cripple the Marijuana Industry with an Obscure, Decades-Old Law*, Washington Post (Nov. 5, 2014), (online at www.washingtonpost.com/news/morning-mix/wp/2014/11/05/how-the-irs-and-congress-cripple-the-marijuana-industry-with-an-obscure-decades-old-law/).

⁴⁹ *Marijuana Taxes Far Exceed Alcohol Taxes—And That Could Kill Legalization*, Forbes (Jan. 26, 2022) (online at www.forbes.com/sites/chrisroberts/2022/01/26/marijuana-taxes-far-exceed-alcohol-taxes-why-thats-bad-and-could-kill-legalization/?sh=c78bb7250805).

⁵⁰ Drug Enforcement Agency, *Drug Scheduling* (online at www.dea.gov/drug-information/drug-scheduling) (accessed Oct. 26, 2022).

⁵¹ *Id.*

⁵² NORML, *How to End Marijuana Prohibition with Regard to the Controlled Substances Act* (online at <https://norml.org/marijuana/fact-sheets/how-to-end-marijuana-prohibition-with-regard-to-the-controlled-substances-act/>) (accessed Nov. 7, 2022).

⁵³ *Medical Marijuana*, Harvard Health Blog (Apr. 10, 2020) (online at www.health.harvard.edu/blog/medical-marijuana-2018011513085).

Rescheduling marijuana to a lower category would not be sufficient to remediate the many criminal justice and regulatory issues that exist due to the disparities between state and federal law.⁵⁴ Cannabis would still be prohibited at the federal level, and many of the current issues—from the lack of access to veterans, to the barrier to federal employment, to insurmountable banking regulations—would continue to exist. Descheduling is necessary to effectively end the federal prohibition and permit states to oversee their own marijuana policies.⁵⁵

It is important, however, that the federal government does not impose an overly burdensome regulatory scheme onto the cannabis market, especially considering the legal state markets that are already in place. To the extent possible, cannabis should be treated similarly to alcohol at the federal level.⁵⁶ NORML recently issued a report which makes several recommendations for federal lawmakers and regulators for what should and should not be regulated at the federal level. Some examples of these recommendations include:

- Respect state decisions on possession limits and home cultivation;
- Replace the current effective federal tax rate of 50% or more with a modest excise tax;
- Do not criminalize underage possession;
- Provide labeling and packaging rules for interstate commerce;
- Consider imposing national lab testing standards; and
- Advertising limitations should be imposed, but limited.⁵⁷

The MORE Act would remove cannabis from the Controlled Substances Act, decriminalizing it at the federal level. It would also include automatic expungement of cannabis arrests, charges, and convictions; impose a 5% tax on the retail sales of cannabis; and create the Office of Cannabis Justice. Further, the MORE Act would “open the door to research, better banking and tax laws, and help fuel economic growth as states are looking for financial resources.”⁵⁸

⁵⁴ NORML, *How to End Marijuana Prohibition with Regard to the Controlled Substances Act* (online at <https://norml.org/marijuana/fact-sheets/how-to-end-marijuana-prohibition-with-regard-to-the-controlled-substances-act/>) (accessed Nov. 7, 2022).

⁵⁵ Center for American Progress, *The Facts on Marijuana Equity and Decriminalization* (Apr. 21, 2020) (online at www.americanprogress.org/article/facts-marijuana-equity-decriminalization/).

⁵⁶ NORML, *Marijuana Policies in Legal States* (2022) (online at https://norml.org/wp-content/uploads/pdf_files/NORML-Marijuana-Policies-in-Legal-States.pdf).

⁵⁷ *Id.*

⁵⁸ Marijuana Policy Project, *The MORE Act* (online at www.mpp.org/policy/federal/the-more-act/) (accessed Nov. 7, 2022).

The SRA would remove the Controlled Substances Act’s federal preemption of cannabis through scheduling control, federally decriminalizing it. The SRA also has expungement, release, and resentencing provisions for non-violent, non-cartel, non-DUI offenders. It imposes a 3% federal excise tax that cannot change for ten years regulated under the Tax and Trade Bureau, similar to alcohol. The SRA would “end[] prohibition in a manner consistent with helping all Americans achieve their full potential and limiting the number of barriers that inhibit innovation and entrepreneurship in a free and open market.”⁵⁹

IV. WITNESSES

The Honorable Randall Woodfin

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City of Birmingham, Alabama

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⁵⁹ *Cannabis Freedom Alliance Endorses Rep. Mace’s States Reform Act*, AP News (Nov. 15, 2021) (online at apnews.com/press-release/globe-newswire/business-congress-entrepreneurship-health-529f42b4b027e342b53b15c274876832).