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*BEFORE THE*

UNITED STATES HOUSE OF REPRESENTATIVES COMMITTEE ON ENERGY AND COMMERCE  
SUBCOMMITTEE ON HEALTH

CANNABIS POLICIES FOR THE NEW DECADE

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## **INTRODUCTION**

Chairwoman Eshoo, Ranking Member Burgess, and members of the subcommittee, good morning. I am Aaron Smith, Executive Director and Co-Founder of the National Cannabis Industry Association (NCIA). NCIA is the largest national trade association dedicated to protecting state-regulated cannabis businesses and advancing policy reforms needed to harmonize federal marijuana law with the successful medical and adult-use state cannabis programs that exist throughout the country. Founded in 2010, NCIA represents nearly 2,000 cannabis-related member businesses and tens of thousands of cannabis professionals across the United States.

For almost a century, the United States government has criminalized the production, distribution, and sale of cannabis. However, this era of prohibition has been crumbling in the face of voter and, increasingly, legislative revolt. Even as these federal laws remain unchanged, most states have legalized some form of medical cannabis, and eleven states and the District of Columbia have changed their laws to regulate adult-use cannabis in a manner similar to alcohol. Moreover, Congress recently removed hemp (and any cannabinoids derived therefrom) from the Controlled Substances Act (CSA), legalizing a subset of cannabis plants and derivatives that contain less than 0.3% THC. A recent Gallup poll indicated that 90% of the population supports the legalization of cannabis for medical purposes, and 66% favor allowing recreational use. It is undeniable that the American people are in favor of the legalization of cannabis. It is time for Congress to reflect the will of their constituents. For these, and a multitude of other reasons, I applaud the subcommittee for holding this incredibly important hearing.

As the leading advocate for the state-regulated cannabis industry, NCIA has offered reasoned and responsible approaches that the federal government could adopt to regulate cannabis products after the last vestiges of federal prohibition are removed. Our plan begins with removing cannabis from the Controlled Substances Act -- the only way to address the myriad problems caused by our nation's outdated cannabis policies, including the proliferation of unregulated and sometimes unsafe -- cannabis products produced in the criminal marijuana market, loss of potential tax revenue, a lack of transparency in the banking system, and misappropriation of scarce law enforcement resources. For more than two decades, states have moved away from the prohibition approach and over two-thirds of Americans now live in a state with laws allowing for the regulated production and sale of cannabis for either medical or adult-use purposes.

## **NCIA SUPPORTS COMPREHENSIVE REFORM: DESCHEDULING & REGULATING CANNABIS**

There have been scores of cannabis-related bills introduced over the past few years, including the Marijuana Justice Act, the Strengthening The Tenth Amendment Through Entrusting States (STATES) Act, the Secure And Fair Enforcement (SAFE) Banking Act, the Small Business Tax Equity Act, and most recently, the Marijuana Opportunity Reinvestment and Expungement (MORE) Act, which passed out of the House Judiciary Committee on November 20, 2019. NCIA has been at the forefront, advocating in support of each and every one of these bills on behalf of our broad membership base. We commend Speaker Pelosi for bringing the SAFE Banking Act to the Floor. The end result - a vote in favor of cannabis banking - passed by a bipartisan vote of 321-103. This historic vote was not only extremely consequential, but also marks the first step toward recognizing this burgeoning American industry. The state-legal cannabis industry employs more than 200,000 people (with annual growth of 34%) and is estimated to have generated roughly \$12 billion in retail sales in 2019. Longer term projections see annual retail sales in the United States surpassing \$28 billion by 2023. The cannabis industry delivered an estimated \$40 billion economic impact on the United States in 2019. By 2023, it is estimated that the economic impact could

exceed \$100 billion. The industry is projected to add roughly 235,000 new jobs by 2023. By 2023, the cannabis industry could provide the equivalent of 475,000 full time jobs.<sup>1</sup> There is no other American industry seeing this type of growth and it is time for our federal government to start fully supporting it.

It is therefore our sincere hope that Congress will take a more comprehensive, end-of-prohibition approach in the coming months. Our member-businesses, consumers, the banking industry, and even the federal government would benefit most from more comprehensive reforms that remove marijuana from the Controlled Substances Act and begin the process of regulating the substance at the federal level. It will be through regulation and testing that we are able to displace the illicit market and bring safe and reliable products to adult consumers. De-scheduling and regulating is the responsible approach for the sake of public safety, public health, and public opinion.

It is crucial to remember that what Congress does today will shape the American cannabis industry for decades to come. Outdated and ineffective prohibition policies have caused pain for many, particularly for communities of color. While a new system is being considered, policy makers should strive to create a legal cannabis market accessible to patients and responsible adults that is designed and implemented with equity and fairness in mind. Legislation under consideration during this hearing today would do just that. H.R. 3884, the Marijuana Opportunity Reinvestment and Expungement (MORE) Act, would federally decriminalize cannabis by removing it from the Controlled Substances Act, and would require the expungement of past federal cannabis convictions. The bill would establish a Cannabis Justice Office to administer a program to reinvest resources in the communities that have been most heavily impacted by prohibition, funded by a 5% tax on state-legal cannabis commerce. It would also allow the Small Business Administration to provide loans and grants to cannabis-related businesses and support state and local equity licensing programs, and would permit doctors within the Veterans Affairs system to recommend medical cannabis to patients in accordance with applicable state laws. NCIA supports all of these efforts, however, we urge Congress to amend the bill by including a regulatory structure to safeguard the public and provide clear direction to the cannabis industry. The federalism clash that exists in current law is untenable and is not working for businesses, consumers, or policymakers, among others.

NCIA will continue to advocate for cannabis to be removed from the Controlled Substances Act, commonly referred to as “de-scheduling.” De-scheduling is the best approach in order to immediately solve myriad problems related to banking, payment processing, tax parity, as well as public health issues that will be critical to address in a post-legalization world. But, merely de-scheduling is not enough. We need to remove cannabis from the Controlled Substances Act and provide for reasonable social equity reforms that create opportunities for new entrepreneurs and repair some of the damage done by prohibition.

Along with de-scheduling, NCIA recommends that cannabis products, like other highly-regulated consumables, to be regulated by the government agencies that currently regulate most food and drugs, primarily the Food and Drug Administration (FDA) and the Alcohol and Tobacco Tax and Trade Bureau (TTB) within the U.S. Department of the Treasury. NCIA recently issued a comprehensive regulatory plan entitled, “Adapting a Proven Regulatory Framework for the Cannabis Industry” that Congress could adopt.<sup>2</sup> To best address both market and public health concerns, NCIA recommends that cannabis products be divided into four categories, based on chemical components, safety, intended use, and consumption method. Each of these groups would be regulated through a separate regulatory “lane” tailored to the public policy issues raised by that particular classification. The four lanes are: (1) Pharmaceutical drugs; (2)

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<sup>1</sup> Marijuana Business Daily, Annual Marijuana Business Factbook, 7th Edition (2019)

<sup>2</sup> <https://thecannabisindustry.org/reports/adapting-a-regulatory-framework-for-the-emerging-cannabis-industry/>

Ingested, inhaled, or topically applied products with more than de minimis amounts of THC; (3) Ingested and inhaled products with de minimis amounts of THC; and (4) Topically applied products with de minimis amounts of THC. This four-lane structure would allow for adequate controls and retail restrictions over products that have psychoactive effects, while allowing greater consumer access to non-psychoactive cannabinoid products.

### **PUBLIC HEALTH & PRODUCT SAFETY**

Successful development of a regulatory lane for cannabis products is essential to achieving key policy goals: promoting public health, improving public safety, eliminating the illicit market, creating regulatory certainty and efficiency in the legal market, and generating public revenues, both direct and indirect. As with other products with potentially intoxicating properties, appropriate warning labels should be developed and retail locations should be licensed by the state.

NCIA believes that the FDA should play the same role for cannabis products that it performs in alcohol regulation: protecting public health by registering production facilities, performing inspections in accord with standards most directly applicable to the product, evaluating the safety of non-cannabis-derived ingredients, and monitoring for any adulterants. States would continue to regulate the composition and potency of cannabis-derived ingredients.

A common concern that lawmakers have expressed when considering cannabis reform proposals is what impact legalization would have on crime. While there is no greater calling in public service than public safety, and lawmakers should always consider the health and safety of Americans in everything that they do, data shows that legal marijuana businesses do not present a threat to public safety and may even have a dampening effect on crime. A number of studies, including studies from Preventative Medicine and the Journal of Urban Economics from 2017, found that the presence of dispensaries actually reduces property crimes in the neighborhood. Data from Colorado and Washington, two early adopters of legalized cannabis, showed drops in property and violent crimes post-legalization.

Notwithstanding this encouraging data, NCIA remains committed to finding solutions to some of the important public safety issues facing the industry, like youth use, impaired driving, and diversion. People should not be violating state law, they should not be selling cannabis to minors, they should not be consuming cannabis and driving, and they should not be transporting cannabis across state lines into states that have not legalized cannabis.

NCIA remains committed to working through these public policy issues that affect the health and safety of consumers and non-consumers alike. We are hopeful that with the end of prohibition will come a renewed sense of common purpose with the law enforcement community and that collaboration on public health and safety will be the norm. NCIA stands ready to work with the Fraternal Order of Police, the National Sheriffs Association, the International Association of Chiefs of Police, and any other law enforcement groups interested in finding public policy solutions to any public health and safety issues related to federal legalization of cannabis.

### **HIGHWAY SAFETY**

One thing that both supporters and opponents of cannabis reform agree on is that policies should be adopted to prevent impaired driving and that these policies should be based on science. Several states

have adopted per se limits on THC concentration in the blood<sup>3</sup>. While this method is less inaccurate than urinalysis testing for determining relatively recent use, it remains highly unreliable for testing actual impairment. According to the American Automobile Association, there is “no science showing that drivers reliably become impaired at a specific level of marijuana in the blood.”

In 2017, NHTSA reported on the unreliability of per se THC/blood concentration and concluded that Washington State’s “per se limit appears to have been based on something other than scientific evidence.”<sup>4</sup> Instead, NHTSA recommends expanding training for law enforcement drug recognition experts and improved data collection at the state level to help guide future policies.

NCIA stands ready to work with Congress, law enforcement, and other interested parties to find appropriate methods for discouraging driving while under the influence of marijuana. We are supportive of education campaigns and other methods to convey to drivers the inherent dangers and consequences of driving under the influence. We should be exploring solutions to this, as well as other public safety issues. Prohibition will not and has not solved the issue of driving under the influence and people will continue to find a way to purchase what they desire from the illicit market. A more effective strategy would be to engage the consumer, educate them, and make certain that the products that they are consuming are safe for consumption through regulation and testing.

## **REDUCING ACCESS TO MINORS**

The National Minimum Drinking Age Act of 1984 required all states to prohibit the purchase and public possession of alcohol by individuals under the age of 21. Failure to impose this standard would result in a state losing federal highway funds. As part of an overall scheme to end cannabis prohibition at the federal level, NCIA supports a similar federal incentive for states to establish a consistent age of 21 for the legal purchase of cannabis. Such a federal law, however, must be crafted so that it does not impair the ability of state-legal medical cannabis patients to possess and use medical cannabis on advice of their physician. Currently, all states with legal adult cannabis markets have instituted age limits, including uniformly setting the legal, non-medical possession of cannabis age at 21, and industry compliance is outperforming that of other age-restricted products.

The cannabis industry is doing its part to prevent teen use by rigorously adhering to age identification laws and regulations. Unlike liquor stores, adult-use marijuana stores are required to deny even mere entry to premises for underaged persons. In fact, age check compliance rates for adult-use marijuana stores are comparable and often exceed those of liquor stores. A 2016 article in the *Journal of Studies on Alcohol and Drugs* examining identification checks in Colorado adult-use stores found that compliance was extremely high and possibly higher than compliance with restrictions on alcohol sales.

NCIA will continue to work with state regulatory agencies to make certain that cannabis products are not being marketed to children and that young adults have the information that they need to make good decisions.

## **RESEARCH**

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<sup>3</sup> “Findings from Four AAA Foundation for Traffic Safety” AAA Foundation for Traffic Safety. Available at: <http://publicaffairsresources.aaa.biz/wp-content/uploads/2016/04/Cannabis-Research-Fact-Sheet-FINAL.docx>, accessed May 8, 2018.

<sup>4</sup> U.S. Department of Transportation, National Highway Traffic Safety Administration, “Marijuana-Impaired Driving, A Report to Congress,” July 2017, <https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/812440-marijuana-impaired-driving-report-to-congress.pdf>.

As an association with a broad membership base, NCIA supports myriad of cannabis related bills that address a multitude of issues, such as research, legalizing cannabis, and social equity. Today, the subcommittee is considering six different bills that seek to address these issue areas. NCIA supports all of these pieces of legislation, with the exception of H.R. 171, the Legitimate Use of Medicinal Marijuana Act (LUMMA).

H.R. 171 seeks to move cannabis from Schedule I to Schedule II of the Controlled Substances Act, meaning that the drug has some medicinal benefit but also a high potential for abuse. According to the National Institute for Drug Abuse (NIDA), about 9% of cannabis consumers will become dependent-- about the same rate as caffeine addiction. As stated earlier in my testimony, NCIA supports removing marijuana from the Controlled Substances Act, not moving it to another schedule. NCIA and our members believe that by re-scheduling marijuana, successful marijuana programs operating in 33 states would be upended across the country. Re-scheduling would also likely require that a pharmacist dispense cannabis only if prescribed by a medical doctor, which would not align federal law with the state laws that are already allowing thousands of state-licensed cannabis businesses to safely serve patients and adult consumers.

### **VAPING**

As reports began to appear of a potential linkage between lung injuries and use of nicotine and/or cannabis vaping products (with the source of those products uncertain at the time), NCIA's Policy Council established a Safe Vaping Task Force. Today, it appears that public health experts have concluded that additives from the illicit market appear to be the primary cause of this outbreak (though the Center for Disease Control has not yet conclusively opined on the proximate cause for all cases). Ultimately, one thing is clear: we must stop the flow of unregulated and untested products to consumers from the illicit market.

The answer to the outbreak of vaping-related health issues is to offer products that have been tested and are regulated by the state. The most effective way to ensure that consumers have access to tested and regulated products is by de-scheduling cannabis. If we de-schedule, test, and regulate these products, then we have a much greater chance at displacing the illicit market. Of course, these regulated products must be able to compete with the illicit market on price, therefore we recommend that states keep taxes low so that the regulated market is not directly competing with the illicit market in terms of cost.

### **GATEWAY THEORY & OPIOIDS**

The theory that cannabis use leads to an increased likelihood of using other controlled substances is not supported by the available science. In fact, even the Drug Enforcement Administration (DEA) has said, "little evidence supports the hypothesis that initiation of marijuana use leads to an abuse disorder with other illicit substances." Cannabis has long been the most frequently used federally illicit drug, which is why its use commonly occurs before use of other substances, but there is no evidence that cannabis consumption is the reason why people move on to other substance use. Moreover, use of other substances, such as caffeine, nicotine, and alcohol often predate initial use of cannabis<sup>5</sup>.

On the contrary, there is some evidence to support the notion that cannabis has the potential to be an "exit drug" for individuals engaging in abuse of other substances, such as opioids. A 2017 study found that 97% of subjects reported decreasing the amount of opiates they consumed when they also use cannabis. That study also found that 81% of subjects ultimately preferred cannabis by itself rather than using it concurrently with opioids, demonstrating the possible exit effect. Another 2017 study observed a "growing

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<sup>5</sup> Reiman, A, et al. "Cannabis as a Substitute for Opioid-Based Pain Medication: Patient Self-Report." Cannabis and Cannabinoid Research., U.S. National Library of Medicine, 1 June 2017, [www.ncbi.nlm.nih.gov/pubmed/28861516](http://www.ncbi.nlm.nih.gov/pubmed/28861516).

body of research supporting the medical use of cannabis as an adjunct or substitute for opioids,” and urged policymakers to incorporate cannabis in any opioid response strategy<sup>6</sup>. In fact some states (including Colorado) are allowing the reasons for prescribing medicinal cannabis to supplant the reasons that a doctor is authorized to prescribe opioids.

Perhaps the most striking data comes from a 2014 study of fatal opioid overdoses between 1999 and 2010. That survey found that the 13 states with medical cannabis laws during that period had 24.8% fewer opioid deaths than other states<sup>7</sup>. What’s more, the effect of medical cannabis appeared to strengthen over time – overdose death reductions grew from roughly 20% the first year after medical marijuana implementation to nearly 34% five years after implementation.

Similarly, a 2017 study published by the American Journal of Public Health found that the legalization of adult-use marijuana in Colorado was associated with a decline in opioid deaths<sup>8</sup>. While it cannot be concluded that legal access to cannabis is directly responsible for the reduced fatalities, it demonstrates that marijuana does not lead to increased use of opioids in line with opponents’ “gateway theory” and may actually be contributing to the decline.

## **POTENCY**

Similar to beer, wine, and hard liquor, cannabis products can contain varying amounts of THC and other cannabinoids. There must be standardized testing and labeling requirements for cannabis related products so that consumers can safely know what they are purchasing and consuming. In fact, every state with a modern marijuana program on the books requires testing and accurate labeling to ensure consumers and patients know the potency of the product before consuming it -- a safeguard that only exists in the legal and regulated market. Any federal cannabis policy reform should continue to allow states to decide how to best regulate product potency.

## **CONCLUSION**

The cannabis industry has evolved into a national commercial enterprise generating significant tax revenue, generating hundreds of thousands of jobs, and providing people access to plant-based medicines that work to alleviate pain and treat symptoms of myriad diseases. State laws that have replaced the criminal markets with systems that provide for tightly regulated production and sale of cannabis to patients and adults over 21 are improving public safety. But, the unnecessary burdens caused by outdated federal policies must be resolved to benefit our communities’ entrepreneurs while also safeguarding consumers and the general public. It is for these reasons that NCIA supports the de-scheduling and regulation of cannabis. Of all the proposals put forward this Congress, the clearest path toward the aforesated goals is the passage of the MORE Act, along with the addition of a robust regulatory structure. While imperfect, the MORE Act deschedules cannabis and provides social equity fixes that are long overdue.

I want to thank the Chair, Vice Chair, Ranking Member, and members of the Subcommittee for your time to discuss the future of cannabis policy in the new decade. As always, NCIA remains ready to work with

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<sup>6</sup> Lucas, Philippe. “Rationale for Cannabis-Based Interventions in the Opioid Overdose Crisis.” *Harm Reduction Journal*, vol. 14, no. 1, 18 June 2017, doi:10.1186/s12954-017-0183-9.

<sup>7</sup> Bachhuber, Marcus A., et al. “Medical Cannabis Laws and Opioid Analgesic Overdose Mortality in the United States, 1999-2010.” *JAMA Internal Medicine*, vol. 174, no. 10, 1 Aug. 2014, p. 1668., doi:10.1001/jamainternmed.2014.4005.

<sup>8</sup> Livingston, Melvin D., et al. “Recreational Cannabis Legalization and Opioid-Related Deaths in Colorado, 2000–2015.” *American Journal of Public Health*, vol. 107, no. 11, Nov. 2017, pp. 1827–1829., doi:10.2105/ajph.2017.304059.

Congress on public policy solutions that will benefit the burgeoning American cannabis industry, small and large businesses, lawmakers, and the American public.