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Working to Reform Marijuana Laws

Written Testimony of Paul Armentano, Deputy Director National Organization for the Reform of Marijuana Laws (NORML) Washington, DC

To the House Committee on Oversight and Reform, Subcommittee on Civil Rights and Civil Liberties

November 15, 2022 Developments in State Cannabis Laws and Bipartisan Cannabis Reforms at the Federal Level

I wish to thank members of the Committee for inviting me to speak today.

For over 25 years, I have worked professionally on cannabis policy reform. I have witnessed seismic shifts in scientific, cultural, and political opinions during this time.

In the summer of 1996, just about one-year into my career as a cannabis policy reform advocate, there were no states regulating the possession and use of cannabis. Public support for legalization hovered around 25 percent.[1] And former House Speaker Newt Gingrich had just introduced legislation to impose the death penalty upon those convicted of importing as little as four ounces of cannabis into the country.[2]

Times certainly have changed.

Today, 21 U.S. states have policies regulating the production, use, and retail sale of cannabis to adults and 37 states authorize the use and dispensing of cannabis for medical purposes. In 25 years, not a single state has ever repealed or even rolled back their cannabis legalization laws; this is evidence that these policies are working primarily as both voters and state officials intended.

[1] https://news.gallup.com/poll/356939/support-legal-marijuana-holds-record-high.aspx
[2] HR 4170: The Drug Importer Death Penalty Act of 1996
https://www.govtrack.us/congress/bills/104/hr4170/text

In addition, more than two-thirds of Americans – including majorities of Democrats, Independents, and Republicans – say that cannabis use by adults should be legal.[3] As more states have embraced legalization, public support for these policies has risen in parallel. There is no 'buyers' remorse' among voters. They see that legalizing and regulating cannabis works and that this policy is preferable to criminalization, discrimination, and stigmatization.

America now enjoys a quarter-century real-world experience with state-level cannabis legalization. The data gathered from this experience is plentiful and reassuring. A keyword search of PubMed, the repository for all peer-reviewed scientific studies, identifies over 42,000 published studies[4] specific to cannabis and its effects. Over half of these papers were published within the past decade. This literature establishes that although cannabis is not altogether harmless, it most certainly is not so dangerous as to warrant its federal classification as a prohibited Schedule I controlled substance like heroin.

President Biden recently acknowledged this reality when he publicly criticized federal cannabis criminalization as a "failed approach" and called for a review of its prohibitive status.[5] On two recent occasions, the majority of this legislative body reached a similar conclusion when they voted to pass the Marijuana Opportunity Reinvestment and Expungement Act – which, among other changes, removes cannabis from the U.S. Controlled Substances Act in a manner similar to alcohol. This policy change is known as 'descheduling.' It eliminates the existing state-federal conflict by providing state governments with the explicit authority to establish their own cannabis laws free from the threat of undue federal interference.

Descheduling is necessary in order to close the growing and untenable divide between state and federal cannabis laws. By descheduling cannabis, tens of millions of Americans who reside in states where cannabis is legal in some form, as well as the hundreds of thousands of people who work for the state-licensed industry that services them, will no longer face needless hurdles and discrimination – such as a lack of access to financial services, loans, insurance, 2nd Amendment rights, tax deductions, certain professional security clearances, and other privileges.

More importantly, these millions of Americans will no longer have to live in fear of federal prosecution.

Nearly a century ago, the federal government wisely decided to repeal the federal prohibition of alcohol. Then, much like today, a growing percentage of politicians recognized that criminal

[3] https://www.monmouth.edu/polling-institute/reports/monmouthpoll_us_102422/
[4] https://pubmed.ncbi.nlm.nih.gov/?term=marijuana
[5] https://www.whitehouse.gov/briefing-room/statements-releases/2022/10/06/statement-from-president-biden-on-marijuana-reform/

prohibition was a politically unpopular policy that was running afoul of the policies of many states.

Congress' solution? Respect the 10th Amendment of the U.S. Constitution and empower states, not the federal government, to be the primary arbiters of local alcohol policies.

This path made sense in 1933. It makes equal sense today.

Our nation's federalist principles demand that the federal government respects voters' decisions to legalize cannabis. At a time of record public support for legalization and when the majority of states regulate cannabis use, it makes no sense from a political, fiscal, or cultural perspective for Congress to try to put this genie back in the bottle or to continue to place its collective head in the sand. It is time for the federal government to end its nearly century-long experiment with cannabis prohibition.

I thank you for your time and for your consideration of my testimony. I look forward to answering any questions you may have.

ADDENDUM

In order to provide evidence-based responses to some frequently raised questions regarding state-level cannabis regulations, please refer to the following text and citations.

Licensed cannabis retailers are typically not associated with increases in localized criminal activity:

Concerns that the establishment of brick-and-mortar cannabis businesses negatively impact community safety and prosperity have largely been proven to be meritless. Rather than being magnets for criminal activity, studies have consistently determined that licensed operators are associated with reductions in neighborhood crime.[6] This is because these operators take guardianship over the neighborhoods in which they operate.[7]

They employ security personnel and install security cameras. Over time, they displace illicit local operators. They are often associated with an increase in local property values[8] because they create jobs and stimulate economic growth. County-level data from Colorado has determined

[6] https://www.sciencedirect.com/science/article/abs/pii/S016604621830293X#!
[7] https://www.jsad.com/doi/10.15288/jsad.2012.73.523
[8] https://www.realestatewitch.com/marijuana-study-2021/

that localities with licensed retail facilities experience job growth at higher rates than neighboring towns that do not.[9]

Unlike street-corner sellers, licensed retailers do not provide cannabis to minors. For example, a recent study conducted by the Insurance Institute for Highway Safety and local law enforcement found 100 percent compliance with ID/age requirements among licensed cannabis retailers.[10]

Finally, it must be acknowledged that youth who reside in localities with licensed retailers are no more likely to use cannabis than are young people in other jurisdictions. According to research published by investigators with the RAND Corporation, "Young adults who live in an area with a greater density of any type of (retail cannabis) outlet are not significantly more likely to report stronger intentions to use cannabis, e-cigarettes or cannabis mixed with tobacco/nicotine in the future."[11]

Cannabis' impact on driver safety is more modest than that of alcohol

No one wishes to negatively impact traffic safety. Real-world experience with regulating cannabis for both medical purposes and for recreational use indicates that legalization can be enacted in a manner that is both safe and effective.

Scientific studies find that cannabis-positive drivers generally possess a comparatively low accident risk, particularly when compared with alcohol-positive drivers.[12] The largest controlled trial assessing cannabis use and motor vehicle accidents, published in 2015 by the National Highway Traffic Safety Administration (NHTSA), reports that cannabis-positive drivers possess virtually no statistically significant crash risk (adjusted odds ratio: 1.05) compared to drug-free drivers after controlling for age and gender. By comparison, drivers with detectable levels of alcohol in their blood at legal limits possess nearly a fourfold risk of accident (odds ratio: 3.93), even after adjusting for age and gender.[13]

Several analyses from states that have liberalized cannabis' legal status show little or no uptick in motor vehicle crashes attributable to changes in the substance's legal status. Specifically, a study published in 2021 in *The American Surgeon* journal assessed motor vehicle crash data collected over 12-years at trauma centers in legal and nonlegal states (Arizona, California, Ohio, Oregon, New Jersey and Texas). Authors concluded, "There did not appear to be a relationship between

[9] https://www.sciendo.com/article/10.2478/izajole-2021-0005
[10] https://www.iihs.org/topics/bibliography/ref/2224
[11] https://jcannabisresearch.biomedcentral.com/articles/10.1186/s42238-021-00084-y
[12] https://link.springer.com/article/10.1007/s12103-022-09705-5
[13] NHTSA. Drug and Alcohol Crash Risk. DOT HS 812 117. February 2015. https://trid.trb.org/view/1343066

the legalization of marijuana and the likelihood of finding THC in patients admitted after MVC (a motor vehicle crash). … There was no apparent increase in the incidence of driving under the influence of marijuana after legalization."[14]

By contrast, some recent studies have identified an association between the adoption of adult-use cannabis legalization laws and an increase in motor vehicle accidents in some jurisdictions while simultaneously identifying a decrease in motor vehicle accidents in others.[15] These disparate results from states with similar cannabis legalization laws implies that other variables, and not cannabis legalization *per se*, is driving these changes.

This is not to imply that it is safe to drive under the influence of cannabis or that cannabis products do not influence behaviors necessary to operate a motor vehicle safely, such as reaction time and maintaining lane integrity. In fact, many studies further show that the combined consumption of alcohol and cannabis significantly increases subjects' motor vehicle accident risk and impairs driving performance at a rate that is greater than the use of either substance alone.[16] For these reasons, NORML maintains a 'no driving' policy in our Principles of Responsible Use, stating, "The responsible cannabis consumer does not operate a motor vehicle or other dangerous machinery while impaired by cannabis. … Public safety demands not only that impaired drivers be taken off the road, but that objective measures of impairment be developed and used, rather than chemical testing."[17] NORML has called for the greater adoption of performance-based testing technology, such as DRUID[18], as a method to identify subjects under the influence of cannabis. NORML has also called for greater public service campaign efforts to discourage drugged-driving behavior, an increased emphasis on Drug Recognition Evaluator training, and other regulatory changes to minimize the likelihood of people engaging in DUI cannabis.[19]

Cannabis exposure is rarely a direct cause of psychosis

The relationship between cannabis and psychiatric illness is complex and multidirectional.[20] For instance, there is evidence that some people predisposed to psychosis or other psychiatric disorders may be at higher risk for adverse events following cannabis exposure, which may in

[14] https://journals.sagepub.com/doi/10.1177/0003134821995053
[15] Insurance Institute for Highway Safety, Marijuana legalization and highway safety webinar: Changes in crash rates after legalized marijuana use and sales by state. June 17, 2021.
[16] https://www.sciencedirect.com/science/article/abs/pii/S1047279716304380
[17] https://norml.org/principles/
[18] https://play.google.com/store/apps/details?id=com.owl.druid&hl=en_US&gl=US&pli=1
[19] https://pubmed.ncbi.nlm.nih.gov/22972702/
[20] https://pubmed.ncbi.nlm.nih.gov/15847618/

some cases exacerbate symptoms of the disease.[21] However, it is also well established that those with psychiatric illness typically consume all intoxicants, including cannabis, at greater rates than do the general public.[22] In many cases, this is because patients are self-medicating with cannabis.[23] In other cases, this relationship persists because many people predisposed to psychosis are similarly predisposed to consuming cannabis.[24]

Therefore, it remains premature at best and sensational at worst, to claim that a definitive causal relationship exists between cannabis use and the onset of psychiatric disorders, particularly among those not predisposed to these conditions. Specifically, a study published this year assessing lifetime occurrences of "cannabis-associated psychotic symptoms" requiring hospitalization in a cohort of 233,000 European cannabis consumers determined that such occurrences are exceedingly rare (about 0.4 percent), even lower than rates of alcohol-induced psychosis (about 0.7 percent). Further, those most likely to experience such a result had a prior diagnosis of psychosis.[25]

Further, the fact that cannabis has been used by various populations for decades at disparate rates, yet rates of schizophrenia and other psychiatric disorders have generally remained static[26] over this same period of time, strongly argues against the claim that cannabis exposure is a frequent trigger for psychosis.

If anything, these health and safety concerns provide an argument in favor of legalizing and regulating cannabis so that it can be better kept out of the hands of young people and so that sensitive populations, like those with a history of mental illness, can be made better aware of its potential side effects.

Adult-use legalization is not responsible for upticks in cannabis use among teens

Cannabis use data compiled by the U.S. Centers for Disease Control and Prevention, as well as by many others,[27] fails to establish a positive relationship between the adoption of state-level cannabis legalization and either increased use or access among young people. Data published in the *Journal of the American Medical Association* (JAMA) in 2021 reported: "Using data from the

[21] https://www.psychologytoday.com/us/blog/your-brain-food/202202/does-cannabis-cause-schizophrenia
[22] https://archives.drugabuse.gov/news-events/news-releases/2014/01/severe-mental-illness-tied-to-higher-rates-substance-use
[23] https://pubmed.ncbi.nlm.nih.gov/35170396/
[24] https://pubmed.ncbi.nlm.nih.gov/26781550/
[25] https://www.nature.com/articles/s41398-022-02112-8
[26] https://pubmed.ncbi.nlm.nih.gov/19560900/
[27] https://norml.org/marijuana/fact-sheets/marijuana-regulation-and-teen-use-rates/

YRBS [Youth Risk Behavior Survey] for the period 1993-2019, this study provides updated estimates of the association between legalization and adolescent marijuana use. … Consistent with estimates from prior studies, there was little evidence that RMLs [recreational marijuana laws] or MMLs [medical marijuana laws] encourage youth marijuana use."[28]

Rates of problematic cannabis use among young people has fallen in parallel with legalization,[29] and studies have also found that young people's perceptions regarding the potential risks of cannabis are not negatively influenced by legalization.[30]

Finally, there exists virtually no evidence that licensed cannabis retailers are inadvertently providing cannabis products to underage patrons. Specifically, a study of licensed adult-use retailers in California determined that there was "100% compliance with the ID policy to keep underage patrons from purchasing marijuana directly from licensed outlets."[31] Studies from other states, such as Colorado and Oregon, have yielded similar results, finding, "Compliance with laws restricting marijuana sales to individuals age 21 years or older with a valid ID was extremely high and possibly higher than compliance with restrictions on alcohol sales."[32]

A BRIEF HISTORY OF CANNABIS RESCHEDULING PETITIONS IN THE UNITED STATES

On October 6, President Joe Biden called upon[33] the Secretary of Health and Human Services and the Attorney General to "initiate the administrative process" to review whether cannabis is properly categorized under federal law as a Schedule I controlled substance. Such substances are defined as possessing "a high potential for abuse;" "no currently accepted medical use in treatment in the United States;" and a "lack of accepted safety for … use … under medical supervision."[34]

This is not the first time that federal agencies have undertaken a review of cannabis' Schedule I status. Since 1972, multiple groups have petitioned HHS and DEA to conduct similar reviews, each of which have failed to result in any change in cannabis' scheduling under federal law.

[28] https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2783850
[29] https://pubmed.ncbi.nlm.nih.gov/32222560/
[30] https://pubmed.ncbi.nlm.nih.gov/36301559/
[31] https://www.sciencedirect.com/science/article/abs/pii/S002243752200055X
[32] https://pubmed.ncbi.nlm.nih.gov/27797687/
[33] https://www.whitehouse.gov/briefing-room/statements-releases/2022/10/06/statement-from-president-biden-on-marijuana-reform/
[34] https://www.dea.gov/drug-information/drug-scheduling

In 1972, NORML filed the first ever administrative petition to review cannabis' Schedule I status. This resulted in a favorable ruling[35] in 1988 from the DEA's own Administrative Law Judge, who determined that cannabis did not meet the criteria of a Schedule I controlled substance. However, in 1990, then DEA Administrator John Lawn set aside this ruling. Following additional legal challenges, the U.S. Court of Appeals for the District of Columbia in 1994 chose to let Lawn's decision stand.

In 1995, former NORML Director Jon Gettman filed another administrative rescheduling petition. The DEA denied this petition in 2001.

In 2002, a coalition of groups including NORML filed yet a third rescheduling petition. For several years, the DEA failed to respond to this petition, forcing parties to sue in federal court in order to compel the agency to take action. The DEA denied the petition in 2011.[36]

A final rescheduling petition was filed later that year on behalf of the Governors of Rhode Island and Washington.[37] The DEA denied their petition in 2016.[38]

Separately, in 2011 a petition was filed with the U.S. FDA requesting the agency grandfather the approval of certain marijuana formulations that had previously been produced and distributed prior to 1938. The agency denied this petition in 2022.[39]

END

AUTHOR'S NOTE: Paul Armentano has nearly three decades of experience working professionally in cannabis policy. He is the Deputy Director of NORML – The National Organization for the Reform of Marijuana Laws – the nation's oldest and only consumer-oriented cannabis reform advocacy organization.

His writing on cannabis and cannabis policy has appeared in over 1,000 publications, scholarly and/or peer-reviewed journals, as well as in more than two dozen textbooks and anthologies. Mr. Armentano is the co-author of the book Marijuana is Safer: So Why Are We Driving People to Drink? (2009, 2013: Chelsea Green), which has been licensed and translated internationally. He is

[35] https://www.druglibrary.org/schaffer/library/studies/young/index.html
[36] https://norml.org/news/2011/07/14/dea-responds-to-nine-year-old-marijuana-rescheduling-petition-maintains-that-cannabis-lacks-medical-utility
[37] https://www.cbsnews.com/news/govs-chafee-gregoire-lobby-for-reclassification-of-marijuana/
[38] https://norml.org/news/2016/08/11/dea-reaffirms-flat-earth-position-with-regard-to-scheduling-marijuana/
[39] https://www.marijuanamoment.net/fda-finally-rejects-petition-for-federal-exemption-for-marijuana-more-than-a-decade-after-it-was-filed/

also the author of the book Clinical Applications for Cannabis and Cannabinoids (2021: National Organization for the Reform of Marijuana Laws), which summarizes over 450 peer-reviewed studies specific to the safety and efficacy of cannabis among different patient populations.

Mr. Armentano works closely with politicians and regulators with regard to drafting and enacting cannabis policy reforms, and he is a frequently sought speaker on the topic at legal and academic seminars.

Mr. Armentano was the principal investigator for defense counsel in the federal case U.S. v Schweder et al., one of the first legal cases in decades to challenge the constitutionality of cannabis as a Schedule I controlled substance. He was also an expert in the successful Canadian constitutional challenge, Allard v Canada, which preserved qualified patients right to grow cannabis at home.

He is the 2013 Alfred R. Lindesmith award recipient in the achievement in the field of scholarship, and he is the 2019 Al Horn Memorial Award recipient in appreciation of advancing the cause of justice.